



PURSUANT to Sections 28 and 29 of the Civil Aviation Act 1990
I, HARRY JAMES DUYNHOVEN, Minister for Transport Safety,
HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *22nd* day of *November* 2006
by **HARRY JAMES DUYNHOVEN**

A handwritten signature in black ink, appearing to read 'Harry James Duynhoven', is written over a large, stylized, abstract graphic element that resembles a signature or a stylized letter 'D'. The signature is positioned above the printed name 'Minister for Transport Safety'.

Minister for Transport Safety

Civil Aviation Rules
Part 39 — Amendment 1 (Re-issue)
Airworthiness Directives
Docket 1/CAR/1357

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Rule objective

The objective of Amendment 1 to Part 39 (re-issue) is to amend and update the rules relating to the issue and compliance with airworthiness directives to delete the repetition of the provisions in the Act for the Director to issue airworthiness directives, to delete the rules relating to procedures for the Director to issue airworthiness directives, and to amend the compliance requirements to allow Appendix A to be deleted.

The amendment to Part 39 is associated with the following amendments to other Parts:

- Amendment 7 to Part 21
- Amendment 1 to Part 26
- Amendment 1 to Part 146
- Amendment 2 to Part 148

Extent of consultation

In 1999 the Civil Aviation Industry Rules Advisory Group (CIRAG) Executive established a Technical Study Group (TSG) to participate in a rule making project to amend and update various rules relating to the airworthiness and maintenance requirements for aircraft. A number of the issues to be addressed arose from an investigation carried out by the CAA in 1997 into the concerns about maintenance standards and practices for aircraft less than 5,700 kg maximum certified take-off weight (MCTOW). Other issues to be addressed arose from various petitions for amendments to be made to airworthiness and maintenance rules.

The TSG was made up of representatives from general aviation (fixed wing operators), aircraft maintenance organisations, helicopter operators, and the Aircraft Owners and Pilots Association. The TSG met 4 times and concluded its work in early 2002. The CAA continued to refine the draft rule proposals during 2002 and 2003 and released the draft rules to a representative industry group for comment before they were published for public consultation.

A Notice of Proposed Rulemaking, NPRM 05-05, containing the proposed rule amendments to Parts 21, 26, 39, 146, and 148 was issued for public consultation under Docket 1/CAR/1357 on 5 May 2005.

Two other associated Notices of Proposed Rulemaking, NPRM 05-04 dealing with amendments to Parts 1, 43, 91, and 145, and NPRM 05-06 dealing with amendments to Parts 119, 103, 104, 121, 125, 135, and 137, were also issued for public consultation under Docket 1/CAR/1357 on 5 May 2005.

The publication of these NPRMs was notified in the Gazette on 5 May 2005 and advertised in the daily newspapers in the 5 main provincial centres on 7 May 2005. These NPRMs were published on the CAA web site and mailed to identified stakeholders including representative organisations who were considered likely to have an interest in the proposal.

A period of 46 days was initially allowed for comment on the proposed amendments to the rules and this was extended upon industry request for a further 10 days.

New Zealand Transport Strategy

The development of the NPRM and the proposed rule changes took into account the objectives of the New Zealand Transport Strategy (NZTS) and the provisions of the Civil Aviation Amendment Act (No 2) 2004.

The re-issue of Part 39 has been assessed as follows against the NZTS:

Assisting Economic Development— the rule amendment is unlikely to affect economic development:

Assisting safety and personal security— the rule amendment contributes to aviation safety with the amended compliance requirements by removing any potential delays in the applicability of foreign airworthiness directives for the larger aircraft:

Improving access and mobility—the rule amendment is unlikely to affect access and mobility issues:

Protecting and promoting public health— the rule amendment is unlikely to affect public health:

Ensuring environmental sustainability—the rule amendment is unlikely to affect environmental sustainability.

Summary of submissions

Eighty written submissions were received on the 3 NPRMs. One submission was made on Part 39 but this related to the definition for State of Design and is addressed in amendment 32 to Part 1. The submissions and comments have been considered and as a result no changes have been made to the final rule for Part 39.

The rule was then referred to Parliament’s Regulations Review Committee before being signed by the Minister for Transport Safety.

Examination of submissions

Submissions may be examined by application to the Docket Clerk at the Civil Aviation Authority between 8:30 am and 4:30 pm on weekdays, except statutory holidays.

Insertion of Amendments

The amendments to the rules in this Part are reflected by the revocation of the existing Part 39 and the re-issue of a new Part 39

Effective date of rule

Amendment 1 (re-issue) of Part 39 comes into force on 1 March 2007.

Availability of rules

Civil Aviation Rules are available from—

CAA web site: <http://www.caa.govt.nz/>

Freephone: 0800 GET RULES (0800 438 785)

Part 39 is revoked and replaced by the following new Part 39:

Part 39 Airworthiness Directives

Subpart A — General

39.1 Purpose

This Part prescribes rules relating to:

- (1) operator compliance with an airworthiness directive;
- (2) the approval of an alternative means of compliance regarding the requirements specified in an airworthiness directive.

39.3 Exemptions

The Director may not grant an exemption from the requirements of rule 39.51.

Subpart B — Airworthiness Directives

39.51 Compliance

- (a) An operator of an aircraft must not operate the aircraft unless the operator complies with—
 - (1) every applicable airworthiness directive issued by the Director in accordance with section 72I(3A) of the Act; and
 - (2) for an aircraft in excess of 5,700 kg MCTOW, every—
 - (i) applicable airworthiness directive issued by the State of Design of the aircraft; and
 - (ii) applicable airworthiness directive issued by the State of Design of an aeronautical product that is used on the aircraft; or
 - (3) an alternative means of compliance approved by the Director under rule 39.53 for an airworthiness directive that is applicable to the aircraft under paragraphs (1) and (2).

(b) If a person is notified by the Director of an emergency airworthiness directive in relation to an aircraft and the person does not hold a New Zealand certificate of registration for the aircraft, the person must immediately notify the Director that he or she does not hold the certificate.

39.53 Alternative means of compliance

(a) An operator of an aircraft who is required under rule 39.51(a)(1) and (2) to comply with the requirements of an airworthiness directive, may apply to the Director for the approval of an alternative means of complying with the requirements specified in the airworthiness directive.

(b) An applicant for the approval of an alternative means of compliance under paragraph (a) must—

- (1) complete form CAA 24039/01; and
- (2) submit it to the Director with a payment of the appropriate application fee prescribed by regulations made under the Act.

(c) The Director may approve an alternative means of compliance for an operator regarding an airworthiness directive if the Director is satisfied that the alternative means of compliance provides an equivalent level of safety to that achieved through compliance with the requirements specified in the airworthiness directive.

39.55 Deferred compliance

If an airworthiness directive requires a series of inspections of an aircraft or an aeronautical product installed in an aircraft, the operator of the aircraft may, unless specifically prohibited by the airworthiness directive, defer a required inspection, except the initial inspection, for a period of not more than 10% of the inspection interval specified in the airworthiness directive to allow the inspection to be carried out during other scheduled maintenance.

39.57 Conflict with other continuing airworthiness instructions

If there is a conflict between the requirements specified in an airworthiness directive and any other applicable instruction for

continuing airworthiness, the requirement specified in the airworthiness directive prevails.

Consultation Details

(This statement does not form part of the rules contained in Part 39. It provides details of the consultation undertaken in making the rules.)

A review of the continuing airworthiness and maintenance requirements for New Zealand aircraft has been under development since 1998 following a review of the state of aircraft maintenance that was carried out in 1997. The changes to Part 43 are the central part of a package of changes that update rules relating to the maintenance of aircraft. The package was developed under docket 1/CAR/1357 and published in May 2005 as 3 separate Notices of Proposed Rule Making, NPRM 05-04 dealing with Part 43 and related rule Parts 91, and 145, NPRM 05-05 dealing with Part 21 and related Parts 26, 39, 146, and 148, and NPRM 05-06 dealing with Part 119 and related Parts 103, 104, 121, 125, 135, and 137. The changes to the various rules are based on the 1997 review of aircraft maintenance and proposals arising from a CAA-Industry Technical Study Group set up in 1999.

The 3 Notices of Proposed Rulemaking, NPRM 05-04 Part 43 General Maintenance Rules, NPRM 05-05 Part 21 Certification of Products and Parts, and NPRM 05-06 Part 119 Air Operator – Certification, containing the proposed rules were issued for public consultation under Docket 1/CAR/1357 on 5 May 2005.

Comments arising from the NPRM

A total of eighty written submissions were received on the 3 NPRMs, mostly in relation to the Part 43 and 91 changes. The CAA has worked through these submissions and as a result has amended the rules where appropriate.

The structure of some rules has been amended and editorial changes have been made to provide clarity and, in some cases, to maintain consistency in the terminology used.

The consultation details relating to the re-issue of Part 39 are contained in the consultation details of amendment 5 to Part 43. The submissions and all background material used in developing the rules are held on the docket file and are available for public inspection at Aviation House, 10 Hutt Road, Petone. Persons wishing to view the docket should contact the Docket Clerk on Phone +64 560 9603 and ask for docket 1/CAR/1357.