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# **Summary of Public Submissions Received on NPRM Part 139— Runway Conditions Reporting**

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## General

Notice of Proposed Rule Making **Part 139 Runway Condition Reporting (NPRM) 22-01** was issued for public consultation on 29 September 2022 which closed on 29 November 2022. The purpose of NPRM 22-01 was to update the Civil Aviation Rules (the Rules) relating to the assessment of runway conditions and the provision of runway condition reports.

A copy of the NPRM was sent to:

- the Ministry of Transport;
- the Aviation Community Advisory Group (ACAG); and
- internal CAA stakeholders.

The NPRM was also published on the CAA website on 29 September 2022 and notified to the industry by automatic email alerts.

## Summary of Submissions

A total of four (4) written submissions were received which came from organisations. There were no oral submissions. The submitters showed general support for the proposal and appreciated the need for New Zealand to utilise an ICAO standard approach to runway condition reporting (RCR). The submitters shared the same sentiments expressed by the CAA that using an ICAO standard approach would allow for the best possible safety outcome for aircraft operations.

However, the submitters expressed some concerns about certain aspects of the proposal. They considered that the proposal would be acceptable if proposed changes specified in their submissions as set out under the headings below, are adopted.

### Global Reporting Format (GRF)

A submitter expressed his disappointment over the lack of implementation by New Zealand of the ICAO Global Reporting Format (GRF). The submitter pointed out that the GRF requirements for ICAO Annex 14 Aerodromes have been well notified to States for several years prior to the original implementation date of November 2020. The implementation date was extended to November 2021. The extended period provided sufficient time for the GRF to have been implemented.

The submitter further expressed that the NPRM 22-01 and associated draft AC139-3 Revision 5 are interwoven and should have been included together and not been issued separately. In his view, such a situation should be avoided in future, as it seems an inappropriate way to make changes to such important aviation safety secondary legislation.

Another submitter outlined that the proposed rule amendments (and associated draft AC139-3) deals simultaneously with 2 distinct different matters. Firstly, the method of assessment that informs the condition report in the GRF and secondly, a requirement to issue Runway Condition Reports (RCR). The submitter pointed out as to whether a differentiation needs to be made as to when to issue a RCR, and whether the RCR has been

issued with the intention of it being relied upon for take-off and landing performance assessment, in order to determine braking action.

It is the submitter's view that there are benefits in having all airports that report the condition of their runway at any time, adopt the GRF. The submitter clarified that this does not mean that the conditions at the airport are being monitored and that the report can be relied upon for take-off and landing performance assessment.

It is the submitter's understanding that ICAO's intention for GRF is primarily for aerodromes serving either international operations or aircraft, where a GRF code can be used by the FMS to determine braking action. It is not intended for non-certificated or unattended aerodromes where aircraft are smaller and less likely to have a runway excursion. This is supported by the ICAO emphasis on ATC reporting process.

### **CAA Response**

The CAA appreciates the concern raised regarding the delayed implementation of the GRF and advises that several factors contributed to the delayed GRF implementation. As industry would be well aware, a major factor has been the impact of the COVID-19 global pandemic which largely hindered the aviation sector's ability to progress work for the implementation of the GRF within the original or extended time frame. These factors are beyond the CAA's control.

Regarding the separate publication of the NPRM on the CAA web (in the 'NPRM open for submission' folder) from draft AC139-3 (in the 'Draft AC open for consultation' folder), the CAA considers the approach taken to be appropriate. Previous practices of publishing NPRMs and draft ACs together in one document have shown that sometimes NPRMs (containing draft rules) were given a fleeting review by industry, whilst their main focus has been on the draft ACs. This approach to have a 'all-in-one' document raises the risk that a substantive draft rule can be easily overlooked. In addition, combining the NPRM and draft AC into one document can become voluminous, thus discourage potential reviewers from reviewing the document at all.

Although published in different sections of the CAA web, the CAA advises that NPRM 22-01 was accompanied by a blurb which informed that in tandem with the NPRM, the CAA has also done a substantive revision of AC139-3. A link to the AC which took viewers to the 'Advisory Circulars open for consultation' page was provided. Finally, the blurb advised that the submission close-off date for draft AC 139-3 was 30 November 2022. The CAA considers that sufficient information was provided on the CAA web to show the linkage between NPRM 22-01 and draft AC139-3, and that it was not necessary (or desirable) to have the documents published together as one document.

The CAA agrees with the point made that the proposal deals with two distinct matters - (1) the method of assessment that informs the condition report in the GRF; and (2) a requirement to issue RCR. The CAA also agrees with the view that ideally, it would be beneficial for all airports to report the condition of their runway at any time, using the GRF.

However, the CAA advises that Part 121 operations are presently conducted at certificated aerodromes with and without an ATC service on site. As such the rule is written to enable

RCRs to be produced at both certificated aerodromes with and without ATC, noting the differing level of resource available at each of these certificated aerodromes.

### **RCR should be closely aligned with airport reporting when not monitored**

A submitter expressed that it is inadequate for the distinction of whether an RCR can be relied upon for take-off and landing performance assessment (specifically for Part 121 and 125 operations) and when not to be relied upon, by reference only to the Part 139 Advisory Circular (AC). This means that the reference “Runway condition not monitored” only has the status of being an acceptable means of compliance. It is the submitter’s view that the aircraft operating rules should be more closely aligned with the airport reporting when not being monitored.

The submitter noted that the preamble in the NPRM loosely uses the term ‘RCR’ when in some cases it is probably referring to the ‘GRF’. As a consequence, the proposed rules as drafted do not determine explicitly when a RCR can be relied upon for take-off and landing performance assessment, specifically for Parts 121 and 125 operators; and when not to be relied on.

The majority of NZ Airports to which Part 121 and Part 135 aircraft operations occur are not controlled 24/7. For a large part of the day, they are uncontrolled, and unattended, adding to the risk of misinterpretation as to when an RCR can be relied upon for take-off and landing performance assessment.

NZ Airports supports (p.8 of the NPRM) consistency in the use of GRF across domestic and international airports notwithstanding ICAO intentions.

### **CAA Response**

The CAA advises that the rule has been further amended to make it clear that runway condition reports are to be provided at controlled aerodromes when the runway surface conditions are other than dry or wet. An ATC service has been required by the Director at 15 of the 24 airports currently serving Part 121 operations. The published ATC hours of service are scheduled around the movements of Part 121 operations. The rule requires RCR to be provided at all airports when the required ATC service is on watch. This is easy to interpret and understand. This results in approximately two thirds of NZ certificated aerodromes providing RCR to Part 121 operators. Or if viewed from the travelling public’s perspective, it means approximately two thirds of the travelling public are afforded the additional safety enhancement of RCR. In addition, the rule also provides a suitable regulatory mechanism for the provision of RCR at certificated aerodromes without ATC when serving Part 121 operations. The CAA further advises that operators of non-certificated aerodromes are not required to provide RCR.

### **Aerodrome issuing of Runway Condition Reports**

A submitter raised his concern that the proposed amendment to rule 172.93(c) (“to visually determine and promulgate) is inconsistent with the intention of Part 139 that runway condition assessment and reporting is primarily the responsibility of the aerodrome operator. In the submitter’s view, the proposed amendment is also inconsistent with ICAO Annex 11 and 14 which requires the aerodrome operator to perform the assessment, not air traffic control. Similarly, comments in the preamble of the NPRM (‘Consequential

Amendments’ on page 15) are also wrong in attributing responsibility for assessing RCR to air traffic services.

The submitter pointed out that the rules should provide for the aerodrome operator, at the operator’s discretion, to having a contractual agreement with the relevant air traffic service provider when ATC is in place, to have a delegation and responsibility to visually assess the runway condition in certain circumstances. Those circumstances should be operationally agreed between the parties, and the obligation as specified in Part 172 should simply require the ATS provider to promulgate runway condition reports provided by the aerodrome operator. The submitter therefore proposes that the phrase “visually determined and” should be deleted.

On a separate but related issue, the submitter questioned whether the proposed rule 172.93(d) is the correct or only place within the rules for describing the terminology to be adopted for GRF when the terminology is intended to apply beyond airports when attended by an ATS provider.

### CAA Response:

Upon further review, the CAA agrees with the submission that the proposed amendment to rule 172.93(c) is inconsistent with the intent behind Part 139 and is also inconsistent with ICAO Annex 11 and 14, as pointed out in the submission.

Based on the feedback received, the CAA advises that the final draft rule 139.72(c) has been amended as highlighted, along the following lines below:

*“(c) Subject to paragraph (ca), an applicant for the grant of an air traffic service certificate for an aerodrome control service must establish procedures for the air traffic service personnel to promulgate one of the following runway surface conditions used in the runway condition report which establishes the basis for the determination of the runway condition code for aeroplane performance purposes -*

- (1) dry runway;*
- (2) wet runway;*
- (3) slippery wet runway; or*
- (4) contaminated runway.*

*(ca) An applicant for the grant of an air traffic service certificate for an aerodrome control service is not required to visually determine the runway surface condition as part of the procedures referred to in paragraph (c), unless the applicant has an agreement with a holder of an aerodrome operator certificate referred to in rule 139.107(b) that the applicant is to provide runway condition reports on behalf of the aerodrome operator, in the manner specified in paragraph (c).*

Note that the new paragraph (ca) effectively provides that an applicant for the grant of an air traffic service certificate is not required to visually determine the runway surface condition unless there is an agreement between the applicant and an affected Part 139 aerodrome operator that the applicant provides a visual determination of the runway

surface condition when dry or wet. In the absence of such an agreement, it is expected that the affected Part 139 aerodrome operator will provide the visual determination.

Upon review of draft rule 172.93(d), the CAA advises that it would be more appropriate to transfer those defined terms to Part 1. Given that Part 1 definitions generally apply throughout the Rule Parts and the CAA is mindful that those definitions could potentially be used in other Rule Parts in the future.

The CAA further advises that the defined terms ‘dry snow’, ‘compacted snow’, ‘frost’, ‘ice’, ‘slush’ and ‘wet ice’ are removed from rule 172.93(d) and are not defined in Part 1. The CAA is of the view that the proposed definitions of these terms are consistent with their ordinary meaning as defined in the Oxford Dictionary. Given that their ordinary meanings are to apply, their dictionary definitions suffice. Whilst the definitions of ‘standing water’, ‘slippery wet runway’ and ‘wet ice’ are transferred to Part 1 as these terms have a special meaning.

### **Incorporation by reference of ICAO Circular 355**

It was proposed in the NPRM that **ICAO Circular 355 Assessment, Measurement and Reporting of Runway Conditions** (ICAO Circular 355) is to be incorporated (as a whole document) by reference into rule 139.107.

A submitter highlighted that ICAO Circular 355 includes details that go beyond the RCR and includes significant material of an advisory nature. In the submitter’s view, such incorporation of material by reference poses the following issues –

- Are updates of ICAO Circular 355 automatically New Zealand rule changes without further process within the NZ system, or is it a specific edition being referenced?
- Is it only part of the content of ICAO Circular 355 (Section 4) that is intended to be adopted as a rule by reference?
- Is the advisory content of ICAO Circular 355 appropriate to have the weight of a rule?

The submitter contended that rule 139.107 should simply refer to runway condition reporting “in a format acceptable to the Director” without the need to incorporate ICAO Circular 355 by reference. The submitter further contended that there are sufficient details in the draft AC to identify an acceptable means of compliance. The AC can refer to ICAO Circular 355 for background and reference material.

### **CAA response:**

It was never intended that advisory aspects of the ICAO Circular 355 become mandatory requirements for purposes of an assessment, or reporting, of a runway condition. At the time of drafting the NPRM, our thinking was that it would be more appropriate to incorporate ICAO Circular 355 as a whole document, for fuller context. It was considered then that the advisory material contained in the ICAO Circular 355 which details the compliance process was equally important to note as much as a runway code itself.

However upon review, the CAA agrees that it is only section 4 of the ICAO Circular 355 that should be incorporated by reference in rule 139.107. In this regard, final draft rule 139.107(a)(1)(i) is revised as highlighted, along the following lines:

**139.107      Assessment of runway condition and provision of runway condition report**

- (a) *A holder of an aerodrome operator certificate must ensure that the assessment of the runway condition and the provision of runway condition report –*
- (1) *is in accordance with –*
- (i) **section 4 of the ICAO Circular 355 Assessment, Measurement and Reporting of Runway Conditions; and**
- (ii) *.....”.*

### **Implications of removing TALPA**

A consequential amendment as a result of the proposal is to remove references to TALPA and TALPA procedures in Parts 1, 121, 125 and 135 as the use of these terms will become redundant. A submitter voiced his support for the proposed removal of TALPA ARC and its associated procedures from the Rules. However, the submitter is concerned that an aircraft will need to retain the ability to use OEM performance data for despatch and inflight. If the provision to use TALPA ARC is removed, then there needs to be another compliant mechanism to use OEM data. The submitter suggested that a new rule should be added to specifically allow the use of OEM performance data for despatch and inflight. The submitter queried whether the CAA is confident that removing appendix D.3 in Parts 121, 125 and 135 will not prevent operators from using OEM inflight data.

### **CAA response:**

The CAA considered the concern raised regarding the ability to use OEM performance data for despatch and inflight after removing TALPA from the Rules. The CAA advises that the removal of TALPA does not adversely affect an aircraft’s ability to use OEM performance data as the affected current rules still allow for the use of OEM performance data. Refer to rules 121.221(c), 125.233(c), 135.233(c), and appendices D.1 and D.2 of Parts 121, 125 and 135.

The CAA therefore advises that the proposed consequential amendments in Parts 121, 125 and 135 to remove references to ‘TALPA’ and ‘TALPA procedures’ are retained and included in the final rules package.

### **Publication of runway condition assessment matrix (RCAM) in the NZAIP**

It is proposed in the NPRM that the definition of ‘contaminated runway’ be placed in Civil Aviation Rule Part 1. Note that it is standard practice to place definitions in Part 1 that are to be used in more than one Rule Part.

Submitters have no issue with placing the proposed definition in Part 1 however, a submitter raised his concern with regards to the accessibility of the contents of the proposed definition. The proposed definition refers to the NZAIP as the reference point containing the RCR descriptors. It is the submitter’s view that such an approach is likely to



be problematic for operators outside of New Zealand, including Air New Zealand. The submitter suggested that the ICAO runway condition matrix assessment (RCAM) should be published in the NZAIP for local operators.

### CAA Response:

The CAA agrees with the submitter's suggestion and advises that the ICAO RCAM will be published in the NZAIP, for the benefit of local operators. For operators outside of New Zealand, they can access advisory circular AC139-3 which will contain the same RCAM material as specified in the NZAIP.

Note that the AC is not the source of authority with regards to the definition of 'contaminated'. However, it will be the main point of reference for those operators who are not able to access the NZAIP. The CAA will endeavour to ensure that the NZAIP and AC are updated each time an amendment is made to the ICAO Circular 355, so that the 3 sources of information are aligned and provide the same information.

The CAA acknowledges that for external users, advisory circulars are only available on the CAA web. This means that accessing the CAA web can be problematic especially when in flight. The CAA believes that adding the ICAO RCAM into the NZAIP increases the overall accessibility of information supporting the use of RCR.

For context, the definition of 'contaminated' is set out below:

*Contaminated, in relation to a runway, means a significant portion of the runway surface area (whether in isolated areas or not) within the length and width being used is covered by one or more of the substances listed in the runway surface condition descriptors as contained in the NZAIP:*

### **Proposed rule 139.107 (Assessment of runway condition and provision of runway condition report) need to be simplified and clarified**

A submitter contended that the proposed rule 139.107 is unduly prescriptive and misses a key point. Namely, that in adopting the GRF as applying to all condition reporting for all certificated domestic and international airports in New Zealand, it is necessary to ensure clarity of whether the conditions reported as being monitored.

Paragraph(b)(1) of rule 139.107 begs the question of what is meant by 'start of the operation'. For instance, is it just after midnight for an operation in Auckland? Does the phrase only refer to Part 121 operations? The submitter contended that there appears to be a level of detail that is unnecessary for the rules. The submitter noted that the ICAO requirement is to produce an RCR where there has been a change in conditions. The submitter is concerned that mixing regular inspections up with this rule is overly complicating the change.

### CAA response:

Firstly, the CAA clarifies that the requirement for a Part 139 certificated aerodrome operator to provide a RCR only applies for an aircraft performing an air transport operation under Part 121. As highlighted in the NPRM, the rationale for capturing Part 121 air transport operations is to facilitate coverage of all regular passenger transport operations by

aircraft with 30 or more seats. This would ensure that the majority of passengers will reap the safety benefits of RCR. New Zealand has 24 certificated aerodrome serving regular operations by a Part 121 operator. Of the 24 certificated aerodromes, 15 are controlled (ATC present), the remaining 9 are uncontrolled aerodromes (no ATC).

The proposed rule distinguishes between a controlled aerodrome and an uncontrolled aerodrome. It is proposed that a RCR is only required at an uncontrolled aerodrome after agreement between the Part 121 operator and aerodrome operator is reached regarding when and how RCR information is passed to aircraft. This acknowledges that ATC staff and associated technologies are not available at uncontrolled aerodromes. The uncontrolled aerodromes currently serving aeroplanes operated by Air New Zealand which carry out Part 121 air transport operations are Taupo, Bay of Islands, Hokitika and Timaru. The uncontrolled aerodromes currently serving aeroplanes operated by other airlines carrying out Part 121 air transport operations are Whakatane, Whangarei, Whanganui, Chatham Islands and Kapiti Coast.

The CAA disagrees with the view that it is necessary to specify in the rules as to whether or not the runway conditions reported have being monitored. The Part 139 rule mandates that RCR is to be provided at aerodromes with ATC. The Part 172 rule states that upon agreement between the ANSP and aerodrome operator, the runway surface conditions of DRY or WET will be monitored by ATC. Other changes to runway surface conditions and runway contaminants are to be monitored by the aerodrome operator during ATC hours of watch.

Certificated aerodromes where the provision of an ATC service is not required must assess with its Part 121 operators if there is a need for, and they can accurately provide RCR. Certificated aerodromes that do not provide RCR must state this in the AIP as ‘runway not monitored’. The ongoing status of ‘runway not monitored’ should be reviewed regularly by the aerodrome operator. Such certificated aerodrome operators are to ensure that proposed changes should be aligned with the NZAIP production cycle and consider if there is an increased risk of runway contamination due to snow or ice as the seasons change.

After considering feedback received on draft rule 137.107(b)(1), the CAA agrees that proposed wording “at the start of an operation” is unclear as to its meaning. The CAA advises that the final draft rule has been revised as highlighted, along the following lines below, to better clarify intent:

**“139.107 Assessment of runway condition and provision of runway condition report**

(a) .....

(b) *“The holder of an aerodrome operator certificate referred to in paragraph (a) for a controlled aerodrome must ensure that for an aircraft performing an air transport operation under Part 121, the runway condition report for conditions other than dry or wet runway -*

*(1) is compiled and produced each calendar day immediately before **the first aircraft takes off or lands at the aerodrome**; and*

*(2) is amended –*

*(i) when there is a change in the conditions since the last report was made; and*

- (ii) immediately before **an aircraft takes off or lands at the aerodrome**; and
- (3) is issued in a timely manner to operators... ”.

### **New rule 139.107B is inserted**

Upon further review and being mindful that the assessment of runway conditions and providing a RCR means new processes and new ways of doing work, the CAA considered it appropriate that the requirement regarding the training of personnel who perform such work should be specified in Part 139. The requirement was overlooked when developing the NPRM. However, it has always been part of the original policy intent and communicated to industry via meetings and other forums. The NPRM alluded to training costs when discussing compliance costs, where it stated - “...*these marginal costs will depend on the current situation at each individual aerodrome, and in many cases will be limited to the costs of training staff...*”.

In this regard, the CAA advises that the final draft rule 139.107B is worded along the lines below:

**“139.107B Training and competency of personnel for assessment of runway condition and provision of runway condition report**

*The holder of an aerodrome operator certificate must ensure that personnel who perform the task of assessing the runway condition and providing a runway condition report are suitably trained and competent to perform those tasks.”.*

The CAA further advises that the proposed training requirement does not come into force until 30 November 2023, which is the commencement date for the new rules. This is to allow sufficient time for affected aerodrome operators to get their personnel suitably trained and competent by the commencement date if training has not started already.