



**WELLINGTON NEW ZEALAND**

**PURSUANT** to Section 28 of the Civil Aviation Act 1990

**I, MAURICE WILLIAMSON, Minister of Transport,**

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This *12* day of *December* 1996

by **MAURICE WILLIAMSON**

*Maurice Williamson*  
Minister of Transport

**Civil Aviation Rules**

**Part 39**

**Airworthiness Directives**

*Docket Nr. 1040*

**Civil Aviation Rules**  
**Part 39**

**Airworthiness Directives**

## **RULE OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT**

The objective of Part 39 is to establish a system for the issue and control of New Zealand airworthiness directives and the regulatory requirements for compliance with applicable airworthiness directives.

In May 1990 the Air Transport Division of the Ministry of Transport published a notice of intention to carry out a complete review of the aviation regulatory system. This notice, in Civil Aviation Information Circular Air 3, listed the areas in which rules would be made and invited interested parties to register their wish to be part of the consultative process. The Register was identified as the Regulatory Review Consultative Group.

A draft of Part 39 was developed by the rules rewrite team in consultation with members of the consultative group. An informal draft was published and distributed on 20 October 1995 and a period of informal consultation followed. This culminated in the issue of Notice of Proposed Rule Making (NPRM) 96-2 under Docket 1040 on 20 March 1996.

The publication of the notice was advertised in the daily newspapers in the five main provincial centres on 20 March 1996. The notice was mailed to members of the Regulatory Review Consultative Group and to other parties, including overseas Aviation Authorities and organisations, who were considered likely to have an interest in the proposal.

A period of 41 days was allowed for comment on the proposed rule. Fourteen written submissions were received in response to this notice. All commenters provided valuable input into the format of the publication that is to contain the New Zealand airworthiness directives.

The submissions and verbal comments were considered and where appropriate the proposed rules amended to take account of the comments made.

The rules as amended were then referred to and signed by the Minister of Transport.

Part 39 comes into force on 14 March 1997.

## List of Rules

<b>Subpart A — General .....</b>	<b>3</b>
39.1 Applicability.....	3
39.3 Exemptions.....	3
<b>Subpart B — Airworthiness Directives .....</b>	<b>3</b>
39.51 Issue.....	3
39.53 Compliance.....	3
39.55 Promulgation.....	4
39.57 Amendments .....	4
39.59 Cancellation .....	4
39.61 Alternative means of compliance .....	4
<b>Appendix A — Mandatory airworthiness requirements .....</b>	<b>6</b>

## Subpart A — General

### 39.1 *Applicability*

This Part prescribes rules governing the issue of airworthiness directives for each New Zealand registered aircraft issued with an airworthiness certificate under Part 21, Subpart H and any aeronautical product associated with those aircraft.

### 39.3 *Exemptions*

The Director shall not exempt any person from the requirements of 39.53.

## Subpart B — Airworthiness Directives

### 39.51 *Issue*

(a) The Director may, by notice in the Gazette, issue an airworthiness directive in respect of aircraft or aeronautical products if the Director believes on reasonable grounds that—

- (1) an unsafe condition exists in any aircraft or aeronautical product; and
- (2) that condition is likely to exist or develop in any other aircraft or aeronautical product of the same design.

(b) The Director shall specify in each airworthiness directive the date by which each holder of a certificate of registration for an aircraft must comply with the airworthiness directive.

### 39.53 *Compliance*

(a) The holder of a New Zealand certificate of registration shall not permit the operation of that aircraft unless the certificate holder ensures, by the date specified in the airworthiness directive, compliance with—

- (1) each applicable airworthiness directive issued in accordance with 39.51; or
- (2) an alternative means of compliance approved under 39.61 for each applicable airworthiness directive.

(b) In addition to paragraph (a), the holder of a New Zealand certificate of registration shall not permit the operation of that aircraft unless the certificate holder ensures compliance with—

- (1) each of the applicable mandatory airworthiness requirements listed in Appendix A; or

- (2) an alternative means of compliance approved under 39.61 for each of the applicable mandatory airworthiness requirements.

### **39.55 Promulgation**

(a) The Director shall—

- (1) publish an airworthiness directive within 28 days of its issue; and
- (2) publish emergency airworthiness directives and forward them, as soon as practicable, by letter, facsimile, or other appropriate means to each holder of a New Zealand certificate of registration for the aircraft type to which the emergency airworthiness directive applies.

(b) If the recipient of an emergency airworthiness directive is not the operator of the aircraft the recipient shall immediately forward the emergency airworthiness directive to the operator.

### **39.57 Amendments**

The Director may issue an amendment to an airworthiness directive in accordance with 39.51 and shall identify the amendment by a suffix to the original airworthiness directive number.

### **39.59 Cancellation**

The Director shall cancel an airworthiness directive when the Director is satisfied that the grounds required by 39.51(a) for issue of the airworthiness directive no longer exist.

### **39.61 Alternative means of compliance**

(a) An applicant for the approval of an alternative means of compliance to that specified in an airworthiness directive or a mandatory airworthiness requirement listed in Appendix A shall—

- (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.

(b) Form CAA 24039/01 shall require—

- (1) the make, model, and serial number of the aircraft or aeronautical product to which the airworthiness directive applies; and
- (2) in the case of an aircraft to which an airworthiness directive applies, its registration markings; and
- (3) the name and address for service in New Zealand of the applicant; and

- (4) the identification of the airworthiness directive for which the alternative means of compliance is sought; and
- (5) such further particulars as the Director may require relating to the aircraft or aeronautical product, or the approval of an alternative means of compliance.

(c) The Director shall approve an alternative means of compliance 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 in the airworthiness directive.

(d) Where an airworthiness directive requires repetitive inspection, the holder of a New Zealand certificate of registration for an aircraft may, unless specifically prohibited by the airworthiness directive, permit an inspection to be deferred for a period of no more than 10% of the inspection interval specified in the airworthiness directive, to allow accomplishment during other scheduled maintenance.

## Appendix A — Mandatory airworthiness requirements

(a) For the following specified aircraft types the mandatory airworthiness requirements for the airframe are:

- (1) USA FAA airworthiness directives for—
  - (i) Boeing 737 series aircraft; and
  - (ii) Boeing 747 series aircraft; and
  - (iii) Boeing 767 series aircraft; and
  - (iv) General Dynamics Convair 580:
- (2) UK CAA airworthiness directives and manufacturer's modifications and inspections declared mandatory by the UK CAA for—
  - (i) BAe 146 series aircraft; and
  - (ii) Hawker Siddeley 748 series aircraft:
- (3) Netherlands CAD airworthiness directives for Fokker F27 series aircraft:
- (4) Transport Canada airworthiness directives for De Havilland Canada DHC-8 series aircraft:
- (5) Swedish Civil Aviation Administration, Luftfartsverket, airworthiness directives for SAAB-SCANIA 340 series aircraft:
- (6) French Direction Générale de l'Aviation Civile airworthiness directives for Aerospatiale/Alenia ATR series aircraft.

(b) The mandatory airworthiness requirements for the aeronautical products used on an aircraft type specified in paragraph (a) are the mandatory airworthiness requirements of the aeronautical product's country of origin.



## 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.)

### Background to the Rules

In April 1988 the Swedavia-McGregor Report on civil aviation regulation in New Zealand was completed. Following the recommendations contained in that report, the Civil Aviation Authority (CAA) (formerly the Air Transport Division of the Ministry of Transport) commenced a complete review of all existing civil aviation legislation. The existing legislation that is still appropriate is being rewritten into the new *Rules* format. New legislation is being generated where necessary for the areas not presently covered.

Considerable research was carried out to determine the format for the new legislation. It was decided that the legislative framework should incorporate the advantages of the regulatory system of the Federal Aviation Administration (FAA) of United States of America and the system being developed by the European Joint Aviation Authorities and published as Joint Aviation Requirements (JAR).

The new rules are structured in a manner similar to the Federal Aviation Regulations (FAR) of the FAA, and aim to achieve maximum harmonisation whilst allowing for national variations. Close co-operation is also being maintained with the Civil Aviation Safety Authority of Australia to ensure maximum harmonisation with their regulatory code.

New Zealand's revised legislation is published as Civil Aviation Rules (CAR) which is divided into Parts. Each Part contains a series of individual rules which relate to a particular aviation activity.

Accompanying most Parts will be at least one associated Advisory Circular (AC) which will expand, in an informative way, specific requirements of the Part and acceptable means of compliance. For instance an AC may contain examples of acceptable practices or procedures which would meet the requirements of a particular rule.

The CAR numbering system is based on the FAR system. As a general principle the subject matter of a rule Part will be the same or similar to the FAR although the title may differ to suit New Zealand terminology. Where a CAR Part does not readily equate with a FAR number code, a number has been selected that does not conflict with any existing FAR Part.

The objective of the new rules system is to strike a balance of responsibility between the State authority and those who provide services and exercise privileges in the civil aviation system. This balance must enable the State authority to set standards for, and monitor performance of, aviation participants

whilst providing the maximum flexibility for the participants to develop their own means of compliance.

Section 12 of the Civil Aviation Act 1990 requires participants in the aviation system to carry out their activities safely and in accordance with the relevant prescribed safety standards and practices. Section 28(1)(c)(ii) of the Act allows the Minister to make ordinary rules related to the Director's functions which in this case is the issue of airworthiness directives.

### **Notice of Proposed Rule Making**

To provide public notice of, and opportunity for comment on the proposed new rules, the Authority issued Notice of Proposed Rule Making 96-2 under Docket Number 1040 on 20 March 1996. This Notice proposed the introduction of Civil Aviation Rules Part 39 to provide a regulatory safety boundary for the continuing airworthiness of aircraft through the issue of Airworthiness Directives.

### **Supplementary Information**

All comments made on the Notice of Proposed Rule Making are available in the rules docket for examination by interested persons. A report summarising each substantive contact with the Civil Aviation Authority contact person concerning this rule making has been filed in the docket.

### **Availability of the Document**

Any person may view a copy of these rules at Aviation House, 1 Market Grove, Lower Hutt. Copies may be obtained from Publishing Solutions Ltd, PO Box 983, Wellington 6015, Telephone 0800 800 359.

### **Summary of Comments on Docket Number 1040 NPRM**

#### **1. General comments on the NPRM**

From the 14 submissions received, three general issues were raised. These are discussed as follows:

**1.1** Two commenters specifically supported the responsibility of the operator to ensure airworthiness directives were complied with. One commenter disagreed and suggested that the engineer is ultimately responsible to ensure that the airworthiness directive is complied with.

**CAA response:** The rule follows the rest of the CAA rules and the basic philosophy that the holder of the certificate of registration is responsible in all cases for the airworthiness and operation of their aircraft. To clearly identify this responsibility, 39.53 has been amended to refer specifically to the holder of the certificate of registration. The CAA recognises that this shift in responsibility is a perceived change in focus for many operators and engineering bases but

considers the placing of the responsibility on the holder of the certificate of registration to be appropriate. Engineers continue to be responsible for the completion of any maintenance required by the operator in accordance with the acceptable procedures and to the required standards.

**1.2** Four commenters fully supported the inclusion of the alternative means of compliance ability. One commenter asked if this process could be used to extend an overhaul period if there was a delay in receiving required replacement items.

**CAA response:** The CAA will make the alternative means of compliance system as straightforward and user friendly as possible.

The alternative means of compliance facility is designed specifically for the airworthiness directive system and the CAA does not consider extending it to include the variance of routine overhaul times to be appropriate.

**1.3** Twelve commenters provided views on the format of the publication to replace the New Zealand Civil Airworthiness Requirements Volume 2. Two of these commenters provided a more detailed economic analysis regarding the options for publication. The commenters agreed that there should be a move to electronic availability of the airworthiness directives and the majority recognised the need for a paper version to co-exist, certainly in the short to medium term.

Comments ranged from;

- forcing industry onto the World Wide Web by only providing the airworthiness directives in that format;

to;

- providing a paper copy and at a less frequent period, say quarterly, providing the airworthiness directives and all rules and advisory circulars on CD ROM.

The majority of comments favoured Option Four from the NPRM as the paper version. Option Four suggested rearranging the present publication into more relevant groupings of schedules.

**CAA response:** The NPRM provided an ideal chance to seek out these comments and the CAA thanks those contributors. The economic analysis provided in the NPRM was never meant to be exhaustive but rather a concise method of providing approximate information to elicit the industry's thoughts on the publication format.

The CAA agrees that the electronic format of the airworthiness directives is preferable but does not agree that this should be the only form of information availability. The issue of information availability extends across a greater range

than just the airworthiness directives system and a project team has been set up to examine the publication of CAA information. This team will examine the airworthiness directive and other scheduled publications first. The initial concept is likely to be the provision of airworthiness directives on the World Wide Web reflecting a revised version of the present publication (Option Four from the NPRM).

The revised publication would form the basic code document to control the airworthiness directive system. Most maintenance organisations will wish to hold all airworthiness directives and the full document would be available on a subscription service from a publishing organisation.

## **2. Specific comments on the NPRM**

The three specific comments received from the 14 submissions are discussed as follows:

**2.1** One commenter expressed concern over the consultation process for developing an airworthiness directive. The commenter suggested that the US FAA system of each airworthiness directive going through an NPRM process be adopted.

**CAA response:** The CAA disagrees with introducing the FAA NPRM process because it hinders the response of the CAA to an airworthiness issue. The US process is seen as unsuitable for an aviation environment the size of New Zealand's. The process of developing an NPRM, publishing it for comment, analysing the responses, and producing the final directive adds significantly to the administrative costs and resource requirements to produce an airworthiness directive without an equivalent rise in effectiveness.

The CAA recognises the need for industry input into the development of airworthiness directives and the CAA airworthiness directive development procedures reflect this. These procedures were included in the advisory circular attached to the NPRM. If an airworthiness directive has been issued and it subsequently proves to be difficult to implement there is provision for the amendment of that airworthiness directive.

**2.2** One commenter suggested that a repetitive airworthiness directive should not be cancelled as suggested in page five of the advisory circular. The commenter suggested that the provision of this information further ensures that all the mandatory checks are carried out by acting as a check for the existing schedules when;

- a new maintenance facility is established; and
- a new aircraft arrives at a maintenance facility.

**CAA response:** The CAA agrees that there needs to be some thought put into the cancellation of any airworthiness directive. In the case of a repetitive airworthiness directive, the aim should always be to amend the appropriate maintenance manual to remove the need for compliance with an airworthiness directive. If a maintenance manual is correctly amended all subsequent maintenance will automatically include the requirements of the airworthiness directive.

This process relies on several industry participants, from manufacturers to operators to maintenance organisations, to develop and carry out an amendment. The CAA recognises that in general this will not happen and the repetitive airworthiness directive will remain. A repetitive airworthiness directive will not be cancelled unless the CAA is satisfied that all manuals reflect the requirement.

**2.3** One commenter suggested that Appendix A incorrectly identified the foreign mandatory airworthiness requirements that would be applicable to some aircraft types. The commenter suggested that for an American aircraft with British engines the only airworthiness directives applicable to the engines should be the UK CAA ones. The Appendix requires operators in this situation to comply with USA FAA airworthiness directives also.

The commenter indicated that this could result in conflicting airworthiness directives and that the country of origin airworthiness directives should be the only ones applicable to any aeronautical product.

**CAA response:** The CAA agrees that the possibility for different airworthiness directives on the same requirement is not appropriate. The CAA also agrees that the airworthiness requirements of the country of origin of an aeronautical product should take precedence.

The appendix could be simplified to require all aeronautical products to meet the country of origin requirements but the CAA considers there is a need for the identification of the airframe requirements separately. The appendix has been amended to address the commenter's concerns but separately specifies the mandatory airworthiness requirements for the listed airframes and the other aeronautical products.

### **Transitional arrangements**

Airworthiness directives made pursuant to the Civil Aviation Regulations 1953 current at 28 November 1996 have been notified in the Gazette and continue in force.

### **Regulatory activities**

The existing authority for the issue of airworthiness directives, regulations 8A and 173(1) will be revoked at the close of 31 March 1997.

## **Commencement**

Part 39 comes into force on 14 March 1997. This date has been chosen to coincide with the publication cycle of airworthiness directives that has already been notified. Airworthiness directives will be issued under Part 39 from 14 March, not under the authority of the Civil Aviation Regulations 1953.

## **Conclusion**

The Authority concludes from this consultation that the majority of aviation industry participants favour the direction of the new rules. Specific issues that were identified in the comments received from the consultative group have been addressed. The rules also meet New Zealand's international obligations under the applicable ICAO Annex. The comments and all the background material used in developing the rules are held on the docket file and are available for public scrutiny. Persons wishing to view the docket file should call at Aviation House, 1 Market Grove, Lower Hutt and ask for docket file 1040.