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Civil Aviation Amendment Regulations 1999 (No. 5)

Statutory Rules 1999 No. 5

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Civil Aviation Act 1988*.

Dated **20 OCT 1999** 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

JOHN ANDERSON

Minister for Transport and Regional Services



Civil Aviation Amendment Regulations 1999 (No. 5)¹

Statutory Rules 1999 No. 4²

262

made under the

Civil Aviation Act 1988

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Civil Aviation Amendment Regulations 1999 (No. 4)

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1 Name of Regulations

These Regulations are the *Civil Aviation Amendment Regulations 1999 (No. 1)*.

5

2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 5 and Schedule 2;
- (b) on 1 December 1999 — Schedule 3;
- (c) on 1 January 2000 — Schedules 1 and 4.

3 Amendment of *Civil Aviation Regulations 1998*

Schedule 1 amends the *Civil Aviation Regulations 1998*.

4 Amendment of *Civil Aviation Regulations 1988*

Schedules 3 and 4 amend the *Civil Aviation Regulations 1988*.

5 Amendment of *Civil Aviation Amendment Regulations 1999 (No. 1)*

Schedule 2 amends the *Civil Aviation Amendment Regulations 1999 (No. 1)*.

**Schedule 1 Amendments of Civil Aviation
Regulations 1998
commencing on
1 January 2000**
(regulation 3)

[1] After Part 35

insert

Part 39 Airworthiness directives

39.1 CASA may issue airworthiness directives

- (1) CASA may issue an airworthiness directive for a kind of aircraft, or a kind of aeronautical product, if:
 - (a) an unsafe condition exists in an aircraft or aeronautical product of that kind; and
 - (b) the condition exists, or is likely to exist, or could develop, in other aircraft or aeronautical products of that kind.
- (2) The airworthiness directive must:
 - (a) be in writing; and
 - (b) state the kind of aircraft or aeronautical product to which it relates; and
 - (c) require that the action set out in the instrument (being action that relates to aircraft or aeronautical products of the kind stated and is, in the opinion of CASA, necessary to correct the unsafe condition) be taken at the time, or in the circumstances, mentioned in the instrument.

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- (3) Subject to subregulation (4), the airworthiness directive may require a person to comply with a directive (a *foreign directive*) mentioned in the airworthiness directive that is:
- (a) issued by the aviation authority of a foreign country; and
 - (b) of the same nature as an airworthiness directive.
- (4) The airworthiness directive may require a person to comply with a foreign directive as in force or existing either at a particular time or from time to time.
- (5) An airworthiness directive issued under subregulation (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note For *aeronautical product* see the Dictionary.

39.2 Aircraft etc covered by AD

If an AD has been issued for a kind of aircraft or a kind of aeronautical product, then, except for aircraft or aeronautical products excluded from the operation of the AD under regulation 39.4 or 39.5, all aircraft or aeronautical products of that kind are covered by the AD until:

- (a) the AD is revoked; or
- (b) all the requirements of the AD have been complied with.

Note For *AD* and *aeronautical product* see the Dictionary.

39.3 Australian aircraft covered by AD etc not to be operated

A person must not operate an Australian aircraft that is covered by an AD, or is fitted with an aeronautical product covered by an AD, and the registered owner of such an aircraft must not allow the aircraft to be operated:

- (a) in contravention of a requirement (if any) of the AD that affects the operating limitations of the aircraft; or
- (b) while any other requirement of the AD has not been complied with.

Penalty: 50 penalty units.

Note For *Australian aircraft* see subs 3 (1) of the Act; for *AD* and *aeronautical product* see the Dictionary.

39.4 Aircraft etc excluded from operation of AD on adoption of alternative method for correcting unsafe condition

- (1) Subject to subregulation (2), CASA may, on the written request of a person (the *applicant*), by instrument in writing, exclude from the operation of an AD an aircraft or aeronautical product that, apart from this regulation, would be covered by the AD, on condition that the applicant takes the action set out in the instrument, at the time, or in the circumstances, mentioned in the instrument.
- (2) CASA must not issue an instrument under subregulation (1) unless CASA and the applicant have agreed that the action specified in the instrument, if taken in accordance with the instrument, will provide an alternative method for correcting the unsafe condition that the AD seeks to correct.

-
- (3) If CASA issues the instrument, the aircraft or aeronautical product is excluded from the operation of the AD unless the applicant fails to comply with the condition set out in the instrument.

Note For *AD* and *aeronautical product* see the Dictionary.

39.5 Aircraft etc excluded from operation of AD because unsafe condition has ceased to exist

- (1) A person may ask CASA in writing to exclude from the operation of an AD an aircraft or aeronautical product that, apart from this regulation, would be covered by the AD, on the ground that the unsafe condition that the AD seeks to correct does not exist, and cannot develop, in the aircraft or aeronautical product because of:
- (a) a modification of, or repairs to, the aircraft or aeronautical product that were approved under regulation 35 of CAR 1988; or
 - (b) a modification of the aircraft or aeronautical product that was carried out in accordance with a supplemental type certificate applicable to the aircraft or aeronautical product.
- (2) If CASA is satisfied that the unsafe condition does not exist, and cannot develop, in the aircraft or aeronautical product:
- (a) CASA must, by instrument in writing, exclude the aircraft or aeronautical product from the operation of the AD; and
 - (b) the instrument has effect accordingly.

Note For *AD*, *aeronautical product* and *supplemental type certificate* see the Dictionary.

39.6 Request for review of operation of AD

A person may ask CASA in writing to review the operation of an AD on the ground that all aircraft or aeronautical products covered by the AD, or all aircraft or aeronautical products of a kind mentioned in the request (being aircraft or aeronautical products covered by the AD), need no longer be covered by the AD because:

- (a) the instructions issued by the manufacturer or manufacturers of those aircraft or aeronautical products for the carrying out of maintenance on those aircraft or aeronautical products have been amended; and
- (b) if maintenance is carried out on those aircraft or aeronautical products in accordance with those instructions as amended, the unsafe condition that the AD seeks to correct will no longer exist, or is not likely to exist, or cannot develop, in those aircraft or aeronautical products.

Note For *AD* and *aeronautical product* see the Dictionary.

39.7 Action to be taken by CASA on receiving request under regulation 39.6

- (1) Within 28 days after receiving a request from a person (the *applicant*) under regulation 39.6, CASA must give to the applicant a notice setting out:
 - (a) the steps that CASA proposes to take to investigate whether the ground on which the request is made can be substantiated; and
 - (b) an estimate of the time likely to be taken by the investigation.
- (2) In carrying out the investigation, CASA must consider:
 - (a) all information provided by the applicant (whether on his or her own initiative or at the request of CASA); and
 - (b) any other information that CASA reasonably considers to be relevant to the investigation.

-
- (3) If, after carrying out the investigation, CASA is satisfied that the ground for making the request has been substantiated, CASA must revoke or amend the AD (as the case requires) so that those aircraft or aeronautical products to which the request relates are not covered by the AD.
- (4) This regulation does not affect the power that, apart from this regulation, CASA has to revoke or amend an AD.

Note For *AD* and *aeronautical product* see the Dictionary.

[2] Regulation 201.4

omit

a decision

[3] Paragraph 201.4 (a)

before

refusing

insert

a decision

[4] Paragraph 201.4 (b)

before

imposing

insert

a decision

[5] Paragraph 201.4 (c)

before

under

insert

a decision

[6] Paragraph 201.4 (c)

omit

application.

insert

application; or

[7] After paragraph 201.4 (c)

insert

(d) a decision refusing to grant a request made under subregulation 39.4 (1) or 39.5 (1) or regulation 39.6.

[8] After Part 201

insert

Part 202 Transitional

202.1 Certificates of type approval

(1) A certificate of type approval for an aircraft, or an aircraft engine or a propeller, that was, immediately before 1 October 1998, in force under regulation 22 of CAR 1988 as then in force continues in force on and

after that date as if it were a type certificate issued under regulation 21.13A or 21.29.

- (2) A certificate of type approval for an aircraft that was, immediately before 1 October 1998, in force under regulation 22A of CAR 1988 as then in force continues in force on and after that date as if it were a type acceptance certificate issued under regulation 21.29A.
- (3) A certificate of type approval continued in force under this regulation remains subject to any condition to which it was subject immediately before 1 October 1998.

202.2 Certificates of airworthiness

- (1) A certificate of airworthiness that was, immediately before 1 October 1998, in force under regulation 24 of CAR 1988 as then in force continues in force on and after that date as if it were a certificate of airworthiness issued under regulation 21.176.
- (2) A certificate of airworthiness continued in force under subregulation (1) remains subject to any condition to which it was subject immediately before 1 October 1998.
- (3) Subject to Division 7 of Part 4A of CAR 1988, a direction that was, immediately before 1 October 1998, in force under paragraph 25 (1) (b) of CAR 1988 as then in force continues in force on and after that date according to its terms.

202.3 Export certificate of airworthiness

An export certificate of airworthiness that was, immediately before 1 October 1998, in force under regulation 28 of CAR 1988 as then in force continues in force on and after that date as if it were an export airworthiness approval issued under regulation 21.324.

202.4 Airworthiness directives

If an airworthiness directive issued under regulation 37A of CAR 1988, or such an airworthiness directive as subsequently varied, had effect immediately before the commencement of this regulation, then, subject to these Regulations, the airworthiness directive, or the airworthiness directive as varied, continues to have effect after that commencement as if it were an airworthiness directive issued by CASA under regulation 39.1.

202.5 Application for exemption from, or variation of, requirement of airworthiness directive

If an application under regulation 42ZR of CAR 1988 for an exemption from, or a variation of, a requirement of an airworthiness directive, in so far as it relates to a particular aircraft, was still pending immediately before the commencement of this regulation, the application has effect as if it were a written request made by the applicant, on the commencement of this regulation, for CASA to exclude, under regulation 39.4, the aircraft from the operation of the airworthiness directive.

202.6 Exemption from requirement of airworthiness directive

If an exemption from a requirement of an airworthiness directive granted, under regulation 42ZS of CAR 1988, in relation to an aircraft was still in force immediately before the commencement of this regulation, then, subject to these Regulations, the exemption has effect as if it were an instrument issued under regulation 39.4, on the commencement of this regulation, excluding the aircraft from the operation of the airworthiness directive.

[9] **Dictionary, after definition of Act**

insert

AD see the definition of *airworthiness directive*.

aeronautical product means any part, apparatus, appurtenance, accessory, instrument, mechanism, equipment (including communication equipment), or material, that is used, or intended for use, in an aircraft.

airworthiness directive or **AD** means:

- (a) an airworthiness directive that has been issued by CASA under regulation 39.1 and has effect; or
- (b) a CAR 1988 airworthiness directive.

[10] **Dictionary, after definition of CAR 1988**

insert

CAR 1988 airworthiness directive means an airworthiness directive that:

- (a) was issued by CASA under regulation 37A of CAR 1988 as in force immediately before the commencement of this definition; and
- (b) continues to have effect because of regulation 202.4.

**Schedule 2 Amendment of Civil Aviation
Amendment Regulations
1999 (No. 1) commencing on
gazettal**
(regulation 5)

[1] **Schedule 2, Part 2, item 3**

omit

**Schedule 3 Amendment of Civil Aviation
Regulations 1988
commencing on
1 December 1999**

(regulation 4)

[1] After regulation 323

insert

324 Transitional: warnings

- (1) The requirement in paragraph 262AM (4) (c) is taken to be complied with if a placard bearing the warning stated in subregulation 262AM (6) (as in force immediately before the commencement of this regulation):
 - (a) is displayed in accordance with paragraph 262AM (4) (c); and
 - (b) was so displayed immediately before the commencement of this regulation.

- (2) The requirement in paragraph 262AP (8) (c) is taken to be complied with if a placard bearing the warning stated in subregulation 262AP (9) (as in force immediately before the commencement of this regulation):
 - (a) is displayed in accordance with paragraph 262AP (8) (c); and
 - (b) was so displayed immediately before the commencement of this regulation.

**Schedule 4 Amendments of Civil Aviation
Regulations 1988
commencing on
1 January 2000**

(regulation 4)

**[1] Subregulation 2 (1), definition of *airworthiness
directive***

substitute

airworthiness directive means:

- (a) an airworthiness directive that has been issued by CASA under regulation 39.1 of CAR 1998 and has effect; or
- (b) an airworthiness directive that was issued by CASA under regulation 37A (as previously in force) and continues to have effect because of regulation 202.4 of CAR 1998.

[2] Part IV, Division 6

omit

**[3] Subregulation 42ZQ (2), definition of *related
document*, paragraph (a)**

omit

[4] Subregulation 42ZQ (2), definition of *related document*, paragraph (b)

omit

314 (3)

insert

202.2 (3) of CAR 1998

[5] Subregulations 313 (1) and (2)

omit

[6] Subregulation 313 (6)

after

approval

insert

for an aircraft component (other than an aircraft engine or propeller)

[7] Subregulation 313 (7)

omit

[8] Subregulation 313 (9)

omit

[9] Subregulations 314 (1), (2), (3) and (4)

omit

[10] Regulation 316*omit***[11] Subregulation 317 (3)***omit***Notes**

1. These Regulations amend (in Schedule 1) Statutory Rules 1998 No. 237, as amended by 1999 No. 166.

These Regulations also amend (in Schedule 3 and 4) Statutory Rules 1988 No. 158, as amended by 1988 Nos. 209, 373 and 376; 1989 Nos. 31 and 276; 1990 Nos. 100, 215, 216, 258, 260, 289, 310, 331, 332 and 466; Act No. 25, 1990; Statutory Rules 1991 Nos. 54, 147, 157, 247, 287, 382, 409, 410, 426 and 487 (as amended by 1992 No. 174); 1992 Nos. 36, 174, 254, 258, 279, 325, 342, 380, 417 and 418; 1993 Nos. 221, 268, 319 (new regulation 239 contained in regulation 16 was disallowed by the Senate on 23 March 1994) and 368; 1994 Nos. 93, 173, 187, 188, 260, 294, 382 and 396; 1995 Nos. 122, 147, 148 and 224; 1996 No. 88; 1997 Nos. 23, 67, 111, 139 and 220; 1998 Nos. 31, 32, 219, 234 (disallowed by the Senate on 8 March 1999), 235, 236 and 288; 1999 Nos. 166, 167, 210 and 229.

These Regulations also amend (in Schedule 2) Statutory Rules 1999 No. 166.

2. Made by the Governor-General on *L* 1999, and notified in
the *Commonwealth of Australia Gazette* on *L* 1999.

20 October
27 October