

PART 39 Airworthiness directives

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39.001 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.
- (3) Subject to subregulation (4), the airworthiness directive may require a person to comply with either or both of the following:
 - (a) a directive (a *foreign directive*) mentioned in the airworthiness directive that:
 - (i) is issued by the NAA of a foreign country; and
 - (ii) is of the same nature as an airworthiness directive;
 - (b) an instruction, direction or requirement that:
 - (i) is issued by the manufacturer of aircraft or aeronautical products of the kind to which the airworthiness directive relates; and
 - (ii) is mentioned in the airworthiness directive.

- (4) The airworthiness directive may require a person to comply with a foreign directive, or an instruction, direction or requirement mentioned in paragraph (3) (b), 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 legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Note For *aeronautical product* see the Dictionary.

39.002 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.

39.003 Australian aircraft covered by AD etc not to be operated

- (1) A person must not operate an Australian aircraft that is covered by an AD (other than an aircraft to which subregulation (4) applies), or that is fitted with an aeronautical product covered by an AD (other than an aircraft to which subregulation (5) applies):
 - (a) in breach of any requirement 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 subsection 3(1) of the Act; for *AD* and *aeronautical product* see the Dictionary.

- (2) The registered operator of an Australian aircraft that is covered by an AD (other than an aircraft to which subregulation (4) applies), or that is fitted with an aeronautical product covered by an AD (other than an aircraft to which subregulation (5) applies), must not permit a person to operate the aircraft:
 - (a) in breach of any requirement 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 subsection 3(1) of the Act; for *AD* and *aeronautical product* see the Dictionary.

- (3) An offence against subregulation (1) is an offence of strict liability.
- (4) This subregulation applies to an aircraft covered by an AD if:
 - (a) the AD does not contain a statement to the effect that a special flight permit must not be issued for an aircraft covered by the AD; and
 - (b) the aircraft is authorised to operate under a special flight permit that is in force.
- (5) This subregulation applies to an aircraft that is fitted with an aeronautical product covered by an AD if:
 - (a) the AD does not contain a statement to the effect that a special flight permit must not be issued for an aircraft fitted with an aeronautical product covered by the AD; and
 - (b) the aircraft is authorised to operate under a special flight permit that is in force.

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

- (1) 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) In making its decision, CASA must:
 - (a) take into account any reasons given by the applicant in the applicant's application for the exclusion of the aircraft or aeronautical product from the operation of the AD; and
 - (b) regard the preservation of a level of aviation safety that is at least acceptable as paramount.
- (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.

39.005 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; 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.

39.006 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.

39.007 Action to be taken by CASA on receiving request under regulation 39.006

- (1) Within 28 days after receiving a request from a person (the *applicant*) under regulation 39.006, 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.

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