



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, **MARK GOSCHE**, Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *23rd* day of *May* 2002

by **MARK GOSCHE**

Mark Gosche
Associate Minister of Transport
Minister of Transport

Civil Aviation Rules

Part 139, Amendment 2

Aerodromes - Certification, Operation and Use

Docket 1/CAR/1361

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Rule objective

Part 139 applies to the certification, operation, and, until all remaining small aeroplane operators are certificated under Part 135, the use of aerodromes in New Zealand. The objective of amendment 2 to Part 139 is to introduce and define the legal boundaries within which UNICOM and Automatic Weather Information Broadcast (AWIB) services may be provided.

Extent of consultation

In January 2000 the CAA formed a Civil Aviation Industry Rules Advisory Group Technical Study Group (CIRAG TSG) to examine the requirements for rules to control the provision of UNICOM services. The TSG represented aerodrome operators, aircraft operators, pilots, flight training organisations, and UNICOM service operators. This TSG examined and discussed the various issues raised, including the requirements for AWIB services and accepted the wording of a draft Notice of Proposed Rule Making (NPRM). During this development of the draft NPRM, input was also accepted from other interested parties.

NPRM 02-01 containing the proposed amendments to Part 139 *Aerodromes–Certification, Operation and Use* was subsequently issued for public consultation under Docket 1/CAR/1361 on 15 August 2001.

The publication of this NPRM was advertised in the daily newspapers in the five main provincial centres, and the *New Zealand Gazette* on 23 August 2001. The NPRM was published on the CAA web site and mailed to 50 identified stakeholders including representative organisations who were considered likely to have an interest in the proposal. Approximately another 200 other aviation organisations, who it was considered may have had an interest, were advised of the NPRM by letter.

A period of 37 days was allowed for comment on the proposed rule.

The responses were considered along with legal opinion regarding the provision of advice and information to pilots, and where appropriate the proposed rule was amended to take account the comments made. Minor modifications were then made to ensure that there was no conflict between the rules for UNICOM and AWIB services and the existing regime for air traffic services under Part 172 of the Civil Aviation Rules.

No fundamental or conceptual changes were made as a result of the submissions on the NPRM.

The rule as amended was then referred to and signed by the Minister of Transport.

Summary of comments

A total of six responses were received, three written and three verbal. There were no submissions on the consequential amendment to Part 1. The submissions on the NPRM consisted of both comments and submissions on the Rules, and comments on the editorial area of the NPRM. There were comments in the area of the CAA answers to issues raised by the TSG, on the provision of traffic information, and that the services provided might cause confusion to pilots. There was also comment in the area of radio licensing, and on industry representation on the TSG. Submissions were made on editorial content, additions to clarify content of rules, on the provision of data to the AIS, the compliance time, and making Aerodrome Frequency Response Units (AFRU) mandatory.

Examination of comments

Comments may be examined by application to the Docket Clerk at Aviation House 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 existing rules and the insertion of new rules.

Effective date of rule

Amendment 2 to Part 139 comes into force on 1 July 2002.

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 139 Amendments

Subpart A — General

Rule 139.1 is revoked and the following new rule is inserted:

139.1 Purpose

This part prescribes—

- (1) rules governing the certification and operation of aerodromes; and
- (2) rules for security at certificated aerodromes; and
- (3) rules for operators of aircraft using aerodromes; and
- (4) rules for providing and operating UNICOM services and AWIB services.

The following new subpart F is inserted:

Subpart F – UNICOM and AWIB Services

139.351 Provision of UNICOM and AWIB Services

- (a) No person may—
 - (1) provide or operate a UNICOM service unless it is provided and operated in accordance with this subpart:
 - (2) broadcast aerodrome information or weather information, in support of aviation, that is not associated with an air traffic service, unless it is provided and operated as an AWIB or UNICOM service in accordance with this subpart:
- (b) Nothing in this subpart precludes any person from providing a basic weather report under 174.6.
- (c) An individual aerodrome may not be provided with more than one UNICOM service or more than one AWIB service at any one time.

139.353 UNICOM and AWIB Service Requirements

- (a) A person intending to provide a UNICOM or AWIB service must—
- (1) apply to the Director for the allocation of a call sign under 171.17; and
 - (2) apply to the Ministry of Economic Development for the grant of a radio licence issued under the Radiocommunications Act 1989 for the radio apparatus; and
 - (3) obtain the written consent of the aerodrome operator where the service is intended to be provided.
- (b) A person providing or operating a UNICOM or AWIB service must ensure that the UNICOM or AWIB service is operated—
- (1) with the allocated call sign referred to in paragraph (a) (1); and
 - (2) under the authority of, and according to the conditions of a licence referred to in paragraph (a) (2); and
 - (3) in accordance with the applicable system characteristics prescribed in ICAO Annex 10, Volume III, Part II Chapter 2; and
 - (4) in accordance with the applicable communications procedures prescribed in ICAO Annex 10, Volume II.
- (c) A person providing or operating a UNICOM or AWIB service must ensure that the UNICOM or AWIB service does not—
- (1) transmit erroneous or misleading information; or
 - (2) change the information received during onward transmission; or
 - (3) conflict with any air traffic service or meteorological service.
- (d) A person providing or operating a UNICOM or AWIB service must ensure that the UNICOM or AWIB service—

- (1) is provided with safeguards to ensure that the service does not transmit erroneous or misleading information; and
 - (2) is not allowed to continue in operation if the operator or service provider has any cause to suspect that the information being provided by the service is erroneous; and
 - (3) meets the requirements for basic weather reporting under 174.6.
- (e) A person providing or operating a UNICOM service may—
- (1) provide basic weather reports according to 174.6, or meteorological information under the authority of a meteorological service certificate issued under Part 174; and
 - (2) provide information on the preferred runway in use, as indicated by wind direction information from either a basic weather report or other appropriate meteorological information, and reports from pilots of aircraft using the aerodrome; and
 - (3) provide a flight following service meeting the requirements of an air operator under Part 119; and
 - (4) initiate emergency responses; and
 - (5) provide an Aerodrome Frequency Response Unit ; and
 - (6) at the request of a pilot, provide information on the general location of any aircraft the UNICOM service operator has knowledge of; and
 - (7) give details of temporary or permanent hazards to air navigation associated with the aerodrome that are normally published or notified by the AIS.
- (f) A person providing or operating a UNICOM service must not—
- (1) provide any air traffic services; or
 - (2) give or suggest traffic information; or

(3) initiate or derive traffic information.

(g) A person providing a UNICOM service must implement procedures for training, assessing for competence, and authorising persons operating a UNICOM facility under this sub-part.

(h) A person providing or operating an AWIB service may provide information on the following:

- (1) wind direction and strength:
- (2) visibility:
- (3) cloud cover:
- (4) temperature:
- (5) mean sea level air pressure, or QNH under the authority of a meteorological service certificate issued under Part 174:
- (6) the preferred runway in use, as indicated by wind direction information from a basic weather report under 174.6 or other appropriate meteorological information, and reports from pilots of aircraft using the aerodrome:
- (7) operational matters, excluding traffic information, that are relevant to the operation of aircraft using the aerodrome.

139.355 Requirements for UNICOM Service Operators

A person operating a UNICOM service must be—

- (1) trained and assessed as competent to the level of the flight radio telephony requirements of a private pilot licence or equivalent; and
- (2) trained and assessed as competent to meet the requirements of the services offered; and
- (3) given written evidence of the scope of their authorisation to operate the service.

139.357 Notification of UNICOM or AWIB Service Information

A person intending to provide a UNICOM or AWIB service must, at least 90 days before commencing services, provide the following information to the NZ AIS for publication in the NZAIP:

- (1) location, call sign, and radio frequency:
- (2) identification of the aerodromes that the service is intended to serve:
- (3) operational hours:
- (4) services provided:
- (5) any other relevant operational information:
- (6) administrative details including—
 - (i) the name of the service provider, including postal address and, where available, email, telephone, and facsimile numbers; and
 - (ii) the name, telephone number, postal address and, where available, email, and facsimile numbers, of a responsible person who will update the published information and request NOTAM action as may be required.

139.359 Transition arrangements for existing Services.

Any person already broadcasting a service falling within the requirements of this subpart must comply with these requirements within 6 months of this subpart coming into force.

CONSULTATION DETAILS

(This statement does not form part of the rules contained in Part 139. It provides details of the consultation undertaken in making the rules.)

Notice of Proposed Rule Making

To provide public notice of, and the opportunity for comment on, the proposed new rules for UNICOM and AWIB Services, Notice of Proposed Rule Making 02-01 was issued under Docket Number 1/CAR/1361 on 15 August 2001. It was notified in the New Zealand Gazette and advertised in the 5 major daily New Zealand newspapers on 23 August 2001. This notice proposed amendments to Part 139 *Aerodromes—Certification, Operation and Use*, and consequential amendments to Part 1 *Definitions and Abbreviations*. The NPRM rule wording was developed and agreed to by a CIRAG TSG, with the development including input from other interested parties. During the public consultation a legal opinion was sought to ensure that the final rules do not conflict with the existing regime for air traffic services provided under Part 172.

Summary of Comments on Docket Number 1/CAR/1361 NPRM

1. General comments on the NPRM

1.1 A total of six responses were received, three written and three verbal. There were no submissions on the consequential amendment to Part 1. The submissions on the NPRM consisted of both comments and submissions on the Rules, and comments on the editorial area of the NPRM. There were comments in the area of the CAA answers to issues raised by the TSG, on the provision of traffic information, and that the services provided might cause confusion to pilots. Comment was also made in respect of radio licensing, and industry representation on the TSG.

The CAA has considered all submissions and comments and where applicable some have been incorporated in the final rules.

2. Specific comments on the NPRM

2.1 **On the Issues Raised by the CAA CIRAG TSG.** **Air Nelson and Eagle Air** both commented on the CAA reply to the issue of *broadcasting meteorological information and especially the*

broadcasting of QNH by non certificated persons. The CAA response indicated that basic weather reports were not intended for IFR flight. The commenters corrected this by pointing out the provision in Parts 121, 125, and 135 that allows basic weather reports to be used by pilots of aircraft operating under those Parts to use a basic weather report for approach and landing if the flight originates and terminates within New Zealand.

CAA Comment: The CAA accepts that Parts 121, 125, and 135 allow this use of basic weather reports, but as a general rule, mean sea level air pressure, as provided in a basic weather report is not a substitute for meteorological information for the planning, performance and operation of flights under Parts 121, 125, and 135.

2.2: On the Impact of this Proposal. Commenters made verbal and written comment on paragraph 3 of the discussion in the NPRM which indicated that UNICOM and AWIB services are below the level of certificated air traffic and meteorological services. It also indicated that a service provider may wish to provide meteorological services by either obtaining certification or providing services under exemptions in the current Part 174. **The Meteorological Service of NZ Ltd** suggested that this may be a contradiction and **The New Zealand Air Line Pilots' Association** assumed that that this paragraph indicated that it logically followed that there should be an indication of a level of activity above which a certificated service under Part 172 would be needed to maintain safety. The latter then went on to submit that the level should be set at 30,000 movements.

CAA Comment: With reference to the contradiction, - there has always been a provision in Part 174 to control basic weather reporting for aviation outside the requirements for certification for the provision of meteorological services. This provision ensures that basic weather reports are fit for purpose but does not require the provider to be certificated. There has also always been provision for certification authorising the provision of meteorological services varying from a single service up to a range of services supported by a network of meteorological offices interacting with the New Zealand air navigation system. The UNICOM and AWIB service rules support this existing structure.

The inference drawn that a Part 172 certificated service provider will be required at a certain level of airspace activity to maintain safety was not intended to be given. The whole subject of airspace safety is currently under review in an airspace project which is developing policy on air traffic services and airspace. The submission has been forwarded to the project manager responsible for that project.

It should be noted that it is possible that a UNICOM/AWIB service may be operated at an aerodrome provided with an air traffic service outside the operating hours of the ATS service.

2.3 On the General Summary. Airways New Zealand commented that they agreed with the concept of the rules but had some concerns as to where in the Rules system they fitted. They agreed that UNICOM and AWIB services are clearly not air traffic services. **Airways New Zealand, The Guild of Air Pilots and Air Navigators, The New Zealand Air Line Pilots' Association, and the CAA** were also concerned that traffic information might be provided.

On Rule 139.353 (e) (6) and (f). The NZ Airline Pilots' Association, Airways NZ, and the Guild of Air Pilots and Air Navigators were either concerned with, or indicated that there was anecdotal evidence that traffic information was or had been passed by UNICOM service operators, and that the rules are contradictory in what they allow and do not allow a UNICOM service operator to pass. **The NZ Airline Pilots' Association** also made a submission to include rules to preclude UNICOM services from relaying ATS derived information.

CAA comment: Before this NPRM there were no guidelines for the operation of UNICOM and AWIB services except the clear limitations that they are not allowed to provide air traffic services without being certificated to Part 172. Part 172 defines air traffic services broadly with an inclusive list of activities. Legal opinion was sought to determine if there is a conflict between the proposed UNICOM services in the draft NPRM and the existing regime for air traffic services under Part 172. The opinion distinguishes between what is, and what is not, an air traffic service. The services able to be provided by UNICOM and AWIB services were written on the basis of this distinction. The services defined as air traffic services include aerodrome flight information service and any flight information service – these services provide a complete comprehensive service to aviators whereas a

UNICOM or AWIB service provides isolated items of basic information that might be useful to pilots. Any service providing these latter items of basic information without the interpretation of facts or the provision of advice does not fall within the definition of services under Part 172. The services prescribed by UNICOM/AWIB service rules do not come within the scope of the services defined as air traffic services under Part 172.

The Part 139 rules pertaining to aerodromes already have the requirements for the provision of aerodrome air traffic management, aerodrome apron management services, and rescue and firefighting services and it was therefore considered that Part 139 was most appropriate for the UNICOM and AWIB service rules.

With regard to passing traffic information and the submission to preclude UNICOM services from passing ATS originated information. There is already the facility to allow non ATS licensed personnel to pass on ATS originated information. ICAO Doc 4444 allows this and requires procedures to be in place to ensure the integrity of the information passed. In New Zealand the policy on passing ATS originated information is to assess requests individually and lay down requirements on a case by case basis. The passing of information requiring certification is regulated by Rule Part 172.

Subpart F, read in conjunction with the associated Advisory Circular, should give operators and the CAA clear guidelines on the delineation between certificated air traffic services and UNICOM or AWIB services. It is also intended to provide guidance to industry. UNICOM services are currently operating in New Zealand without the benefit of any specific rules.

2.4 On rule 139.351 Provision of UNICOM and AWIB Services – 139.351 (a) (2). The **Meteorological Service of NZ** submitted that the rule should be clarified to ensure it was understood that the weather information broadcast is in support of aviation. They also suggested cloud base be added to rule 139.353 (h) (3).

CAA Response

The CAA accepts that this clarification should be added to the rule and during discussion on this point it was realised that the rule was intended

to provide a disjunctive option by using the word “or” instead of the word “and”. The rule has been amended.

With regard to the addition of cloud base to the basic weather report. The requirements are taken from the definition of a “basic weather report” in Part 174 and CAA considers that the addition of the cloud base information elevates this from a basic weather report to a meteorological report. It is not intended that basic weather reporting be anything other than verbal comment, cloud base reporting is meteorological reporting and as such comes under Part 174.

2.6 On 139.353 UNICOM and AWIB Service requirements.

There were several comments on the service requirements covering the radio licensing and the removal of the issuing authorities name, the avoidance of overlapping services at adjacent aerodromes, mutual interference, and making some services (AFRU) mandatory. On the latter subject the submitter felt that the statement in the NPRM on harmonisation with other States indicated that CAA was suggesting that those States do not have aerodromes in close proximity.

CAA Response

Taking the last point first the CAA did not intend to indicate that the States New Zealand harmonises Rules with do not have aerodromes in close proximity with each other.

The TSG studied the provision of AFRUs and made 2 decisions. The first was that the AFRU, if provided, should respond to modulated signals rather than just an unmodulated carrier. The second was not to make the provision of AFRU mandatory but leave it as an option. There can be problems with AFRU where several aerodromes are in the same radio coverage and common frequencies are used - the response can be from each aerodrome.

In the case of interfering signals - interference is controlled under the Radiocommunications Act 1989. Non-interference is a licence condition prescribed by the Radiocommunications (Radio) Regulations 1993 under the Radiocommunications Act. The allocation of frequencies is carried out by the Radio Spectrum Management Group of the Ministry of Economic Development and interference problems are their responsibility. Conflict was considered in the development of the

draft NPRM and was refined to rule 139.353 (c) (3), which states that a UNICOM or AWIB services must not conflict with any air traffic or meteorological service, and Rule 139.353 (a) (3) which requires the written consent of the aerodrome operator where the services are provided. It was considered that as a UNICOM or AWIB service cannot provide air traffic information there would not be a need to coordinate services with adjacent providers.

The submissions on radio licensing and the name of the authority issuing such licences were considered and CAA feels the Rules as drafted provide clear instruction to any intending service provider. Clause (b) of Rule 139.353 requires the provider to have the radio licence, clause (a) (2) advises how they must go about providing that service. In line with accepted drafting guidelines the relevant legislation is referred to to facilitate applications under these rules.

2.7 On Rule 139.357 Notification of UNICOM or AWIB Service Information. The NZ Airline Pilots' Association made a submission that the notification to the AIS provider should be made prior to the commencement of service.

CAA Response

The CAA agrees with this submission and has investigated the requirements. The Standards and Recommended Practices (SARPS) of ICAO Annex 15 recommend the notification of information under a regulated cyclical system called the Aeronautical Information Regulation and Control (AIRAC) system. The recommendation is for information to be distributed 2 AIRAC cycles (56 days) before the effective date. To achieve this the information should be with the AIS provider 90 days before the effective date. Rule 139.357 has been amended.

2.8 On Rule 139.359 Transition arrangements for existing Services. The NZ Airline Pilots' Association made a submission that 12 months for existing service suppliers to comply with the requirements is too long and that transitional arrangements should be 6 months.

CAA Response

This was briefly discussed during the TSG deliberations and the consensus was that 12 months was an appropriate time for existing operators to meet the requirements. The CAA has considered this internally and as the management of currently operating UNICOM services have been aware of the general thrust of these rules, a transition period of 6 months would be more appropriate.