

NPRM Submission Form



NPRM 13-01	Title: Part 115 Drug and Alcohol Impairment
Date of your submission:	Comment close-off date: 19 October 2012
Please return this response sheet to the Docket Clerk by comment close-off date – by post: CAA, PO Box 3555, Wellington 6140, or by email: docket@caa.govt.nz, or by fax: +64 4 560 9481	

Please indicate your acceptance or otherwise of the proposal by ticking [4] the appropriate box below. Any additional constructive comments, suggested amendments or alternative action will be welcome and may be provided on this response sheet or by separate correspondence.

The proposal is **acceptable without change**.

The proposal is **acceptable but would be improved if the following changes were made:**

We fully support a regulatory regime for drugs and alcohol but feel that the regime provided for here on the one hand is so non prescriptive that it does little to assist with the development of an appropriate programme and on the other because of its non prescriptive nature imposes an unfair regulatory burden on operators to justify actions when it comes to determining whether an employee is impaired or not

The proposal is **not acceptable but would be acceptable if the following changes were made:**
(Please provide explanatory comment and use additional pages if required)

Our view is the mixing of the non prescriptive nature of the HSE Act with our own very prescriptive CAA rule environment needs to be carefully thought through and in particular we question whether it is possible to extend the jurisdiction of the Civil Aviation Act to persons who are not document holders. This is the effect when persons referred to in Sub part 115.52 (4) are included The question then arises as to who makes the decision and judgement about the extent of coverage under this clause – is it the operator or the CAA who determines and is such a determination possible. We note in Australia the restriction is to safety sensitive roles and the regulator has determined the extent of coverage In New Zealand we are aware that other operators have determined that all employees hold safety sensitive roles and this is a matter that has been consulted through with employees and their unions where appropriate.

In our view it is also important to distinguish between the consumption of alcohol away from work premises – it is not the intent of the clause that there be prohibition on the consumption of alcohol as this would be an infringement of a persons human rights. Similarly it is possible to consume some drugs as these may be a requirement of holding a license or a particular role – these drugs of course are designed to remove possible impairment so it is possible the consumption of particular drugs may reduce or mitigate the risks ie not all drugs are bad. However because of the generic statement in the rule it appears to imply all drugs are bad however what we are attempting to discourage is the use of mind altering type drugs which we all agree should not be consumed at work irrespective of the particular type of work.

We appreciate that the definition of impairment is derived from the Maritime Sector and we always encourage CAA to use definitions which has some prior standing however we think that defining impairment in this way could potentially be confusing and in the aviation environment it is about diminished effectiveness and not attributing the diminished effectiveness to any specific set of circumstances. We are concerned for example that a medical condition could be quite acceptable within an aviation environment ie acknowledged on a license but in the particular

circumstances on the day may be the cause of diminished effectiveness. This would mean that the Operator would have to override the judgement of the CAA's own medical examiner who has said the person is acceptable. We think this is a very significant call for an operator to make and could result in employment related claims for lost earnings. It may also cause the operator to think the CAA doctor knows better and not to exercise his/her judgement in the particular circumstances. Our preference is to keep the definition simple and say Impaired means diminished effectiveness.

[] *The proposal is **not acceptable under any circumstance:** (Explanatory comment must be provided using additional pages if required)*

Individual's details (complete if your submission is on behalf of yourself)		Organisation's details (if your submission is on behalf of the organisation you represent)	
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I would prefer to receive a copy of the Final Rule by: (circle your preference) <i>Post</i> or <i>Electronically</i>			