Proposed new Manual of Standards Part 138 (Aerial Work Operations) and regulation amendments – (CD 1919OS)

# Overview

Part 138 of the *Civil Aviation Safety Regulations (CASR) - Aerial Work Operations* and its Manual of Standards (MOS) are designed to address the safety risk of current and future aerial work operations.

The rules will apply to people and operators who conduct aerial work activities in aeroplanes and rotorcraft. This includes:

* mustering
* spotting and survey operations
* media operations
* external load operations
* surveillance operations
* marine pilot transfers (now reclassified as aerial work)
* emergency service operations such as search and rescue, police and customs operations.

**Key changes at-a-glance**

The main changes in Part 138 and Part 138 MOS, when compared to current rules, include the following:

* The consolidation of the rules authorising the aerial work activity into Part 138 and Part 138 MOS. This removes the need for almost all permissions, approvals and exemptions for most aerial work activities as they are now included within the Regulation and MOS.
* A new concept of aerial work passengers which:
  + defines who can be an aerial work passenger and differentiates between air transport passengers and aerial work passengers
  + significantly alleviates the current rules, to allow the carriage of passengers on aerial work operations without requiring an air transport AOC.
* Performance requirements for certain higher risk aerial work operations for rotorcraft and significant simplification of the current CAO 20.7.4 requirements for aeroplane performance.
* A new category of crew member ‘task specialists’, together with outcome-based requirements related to their training and checking.
* Requirements for risk assessments and hazard identification applicable to the size and nature of the operation, to ensure the unique risks of aerial work operations are addressed through appropriate mitigation measures.
* The description of the different classes of external load, to ensure the risk presented by each class of external load is managed appropriately.

**How Part 138 works in conjunction with Part 91 general operating and flight rules**

In order to permit certain aerial work operations to occur it is necessary to 'turn off' or disapply particular requirements of Part 91, the general operating and flight rules. These disapplication provisions (off switches) are specified in regulation 91.035 of CASR. The primary task of Part 138 is to outline a separate set of safety risk management processes, risk mitigations and operational circumstances, which must be applied by the operator and the crew members for the flight.

**Overlap with Part 137 (aerial application in aeroplanes)**

Part 137 of CASR currently regulates aerial application operations in aeroplanes. Work on the amendments to integrate CASR Part 137 with CASR Part 91 and CASR Part 138 prior to the commencement of these Parts is ongoing. These amendments to Part 137 will include the incorporation of helicopters and the requirement for an Aerial Application Certificate rather than Air Operators Certificate (AOC). There will be some overlap between Part 137 - Aerial application operations and the dispensing operations under Part 138 - Aerial work. Operators will be able to elect which Part is best suited to the conduct of their application/dispensing operations. Key considerations when considering the benefits and costs of one part over the other, will be other types of aerial work conducted, the limitations on the type of aircraft that can operated in CASR Part 137 and whether all operations can be conducted under the same CASR part, to avoid the need to have multiple certificates.

**Consultation**

CASA has worked closely with industry for many years to refine and develop aerial work policy (see the previous consultations section below) and develop a MOS that supports the entire breadth of aerial work operations. Recently, work has focused on reducing both the complexity of the requirements in the MOS and the repetition of rules from other CASR parts. Two examples are the fuel and equipment fitment requirements which were duplicated from the Part 91 MOS.

As a result of working group feedback, Annexes have been included for specific industry sectors to show, aspects of the MOS are relevant to their operations.

CASA is currently developing, aerial work specific guidance material including plain English guides and sample operations manuals to be included in the Manual Authoring and Assessment Tool (MAAT) to assist with manual development.

CASA acknowledges full support for this draft of the MOS was not gained by the most recent technical working group. However, the group supported the proposal to seek wider industry and community feedback on the MOS.

**Feedback sought**

This consultation seeks feedback on the proposed Part 138 MOS. It also proposes amendments to the Part 138 Regulations that were made into law during December 2018 and have yet to commence.

**Fact Bank:** **Previous consultations**

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| Fact Bank content  Joint Part 138 working group meetings (under various consultation structures) and briefings were held as follows:   * 15-16 June 2010, to recommence the Part 138 work * 23-24 November 2010, aerial work policy briefing * 31 March 2011, SA CFS and NSW RFS meeting with CASA * 25-26 July 2012, joint media operations specific meeting * 25-27 September 2013, industry briefing on medical transport operations/Part 138/night vision imaging systems (NVIS) * 1 April 2014, Part 138 briefing at the Operational Standards Sub-committee meeting * 30 March 2015, Part 138 briefing at the Operational Standards Sub-committee meeting * 31 July 2015, Part 137/138 firefighting policy meeting * 14 to 15 October 2015, industry consultation meeting * 16 March 2016, Part 138 aerial mustering industry meeting * 10 to 11 October 2018, Part 138 industry technical working meeting * 27 to 28 March 2019, Part 138 MOS industry technical working group meeting * 12 November 2019, Part 138 MOS industry technical working group teleconference * 05 February 2020, Part 138 MOS industry technical working group teleconference * 12 March 2020, Part 138 MOS industry technical working group meeting   *.* |

## **Why we are consulting**

CASA recognises the valuable contribution community and industry consultations make to the policy decision-making process and future regulatory change. We are consulting to ensure that the proposed new rules are clearly articulated and will work in practice as they are intended.

A copy of the Summary of proposed change CD 1918OS and other documents related to this consultation are provided below in the ‘Related’ section as attachments or links. This includes a downloadable MS Word copy of this consultation for ease of distribution and feedback within your organisation.

To make it easier to work out which rules would apply to you, we have included a comparison of the new rules with the current requirements for specific operations:

* an R22 day VFR mustering operation
* a combined task specialist, incendiary dropping and external load operation
* a task specialist C441 aerial survey operation.

There is also a comparison of current aerial work requirements compared to proposed requirements under Part 138 of CASR and Part 138 MOS.

Documents for review and reference:

1. Summary of proposed change on CD 1918OS
2. Annex A to CD 1919OS - Draft for Part 138 Manual of Standards
3. Annex B to CD 1919OS - MOS comparison and review for a R22 day VFR mustering operation
4. Annex C to CD 1919OS - MOS comparison and review for a combined task specialist, incendiary dropping and external load operation
5. Annex D to CD 1919OS - MOS comparison and review for a task specialist C441 aerial survey operation
6. Annex E comparison of current aerial work requirements compared to proposed requirements under CASR Part 138 and Part 138 MOS.
7. MS Word copy of online consultation - Proposed new Manual of Standards Part 138 (Aerial work operations) and regulation amendments – (CD 1919OS

You will find all the documents above under ‘Related’ together with links for additional information.

*Note: The word document and PDF are not to be used as an emailed submission, unless there are extenuating circumstances and this form of submission has been agreed to by the consultation project lead.*

**General comments and** **file upload option**

There is a general comments page available at the end of the consultation, into which you can place your comments on matters related to the regulatory amendment, which have not already been addressed in the consultation.

*Note: CASA can no longer offer the option to upload files because of the potential risk of malware.*

Information about how we consult and how to make a confidential submission is available on the [**CASA website**](https://www.casa.gov.au/rules-and-regulations/changing-rules/consultation-and-project-history/consultation-industry-and-public).

To be notified of any future consultations, you can subscribe to our [**consultation and rulemaking mailing list**](https://mailinglist.casa.gov.au/lists/?p=subscribe&id=3).

**Using an iPad**

If you are using an iPad to complete the survey you will be asked to 'download the relevant PDF'. Depending on the software you have on your iPad you may need to download the free viewer to review the single document PDF files. Where a file is a 'multi-file or portfolio PDF you will need to source the Adobe free view - available from iTunes.

## **What happens next**

At the end of the response period for public comment, we will review each comment and submission received. We will make all submissions publicly available on the CASA website, unless you request your submission remain confidential. We will also publish a summary of consultation which summarises the feedback received, outlines any intended changes and details our plans for the MOS.

CASA will be conducting further public consultation in the coming months on the proposed transitional rules, that migrate existing operators from the existing CAR/CAO based legislation to the future CASR/MOS based legislation.

The new rules (CASR/MOS) are planned to commence in 2021. Delayed provisions will take effect at the later dates applicable to each individual provision.

CASA is currently working on essential guidance material, including where appropriate, the publishing of acceptable means of compliance, and plans to have this ready for industry well in advance of the start of the new rules.

Give Us Your Views

[Online Survey](https://consultation.casa.gov.au/regulatory-program/pp1816us/consultation/)

**Related**

List of documents to attach to the consultation

1. Summary of proposed change on CD 1918OS
2. Annex A to CD 1919OS - Consultation Draft for Part 138 Manual of Standards
3. Annex B to CD 1919OS - MOS comparison and review for a R22 day VFR mustering operation
4. Annex C to CD 1919OS - MOS comparison and review for a combined task specialist, incendiary dropping and external load operation
5. Annex D to CD 1919OS - MOS comparison and review for a task specialist C441 aerial survey operation
6. Annex E comparison of current aerial work requirements compared to proposed requirements under CASR Part 138 and Part 138 MOS.
7. MS Word - consultation - Proposed Manual of Standards Part 138 - Aerial work operations – (CD 1919OS)

Links:

1. [Current Part 138 Of Civil Aviation Safety Regulations](https://www.legislation.gov.au/Details/F2018L01789)
2. [Current Part 91 Of Civil Aviation Safety Regulations](https://www.legislation.gov.au/Details/F2020C00067)
3. [Proposed Part 91 MOS](/regulatory-program/part-91-of-casr-and-associated-mos-for-general-ope/)
4. [Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019](https://www.legislation.gov.au/Details/F2020C00110)

## **Audiences & Interest groups**

## Audiences

* CASA Staff
* Air operators
* Pilots
* Aircraft owner/operator
* Aerial work operator

## Interests

* Operational standards

# Page: Consultation Contents

This consultation seeks feedback on the proposed Part 138 Manual of Standards (MOS). It also proposes amendments to the Part 138 of *Civil Aviation Safety Regulations (CASR)* that were made into law during December 2018 and have yet to commence.

We will ask you for:

* **personal information**, such as your name, any organisation you represent, and your email address
* **your consent** to publish your submission
* **your responses** to the proposed changes in the regulations
* **any comments** you may want to provide
* **demographic information** to help us understand your interest in the regulations

Our [**website**](https://www.casa.gov.au/rules-and-regulations/changing-rules/consultation-and-project-history/consultation-industry-and-public) contains more information on making a submission and what we do with your feedback.

The survey has been designed to give you the option to provide feedback on the survey in its entirety or to provide feedback on the policy topics applicable to you.

When you have completed the sections on which you wish to provide feedback, select the **‘Finish’** button at the bottom right of this page.

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| Page | Table of content |
| 1 | Personal information (required) |
| 2 | Consent to publish submission (required) |
| 3 | Aerial Work Passengers |
| 4 | Rotorcraft and aeroplane requirements for aerial work passengers and operations with significant third-party risks |
| 5 | Rotorcraft performance requirements |
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| 7 | Additional operations that require a training and checking system |
| 8 | Flight Crew training and checking – with a training and checking system |
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| 10 | Air crew member training and checking |
| 11 | Task specialist training and checking |
| 12 | Risk Assessments |
| 13 | Additional Rules for External Load Requirements |
| 14 | Requirements for Carrying, Possessing and Discharging Firearms |
| 15 | Limited Aerial Work Operators - Aerial Work Operations not required to hold an Aerial Work Certificate |
| 16 | Proposed Part 138 regulation amendments |
| 17 | General comments |
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Page 1: Personal information

## First name

(Required)

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## Last name

(Required)

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## Email address

If you enter your email address you will automatically receive an acknowledgement email when you submit your response.

## Email

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## Do your views officially represent those of an organisation?

(Required)

*Please select only one item*

* Yes, I am authorised to submit feedback on behalf of an organisation
* No, these are my personal views.

## If yes, please specify the name of your organisation.

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Demographic question

Which of the following best describes the group you represent?

*Please select only one item*

Current aerial work AOC holder

Aerial work operator without an AOC

Pilot conducting aerial work operations

Other

Please specify “Other” if selected.

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Page 2: Consent to publish submission

In order to provide transparency and promote debate, we intend to publish all responses to this consultation. This may include both detailed responses/submissions in full and aggregated data drawn from the responses received.

Where you consent to publication, we will include:

* **your last name**, if the submission is made by you as an individual
* **the name of the organisation** on whose behalf the submission has been made
* **your responses and comments**

We **will not** include any other personal or demographic information in a published response.

## Do you give permission for your response to be published?

(Required)

*Please select only one item*

Yes - I give permission for my response/submission to be published.

No - I would like my response/submission to remain confidential but understand that de-identified aggregate data may be published.

I am a CASA officer.

Information about how we consult and how to make a confidential submission is available on the [**CASA website**](https://www.casa.gov.au/rules-and-regulations/changing-rules/consultation-and-project-history/consultation-industry-and-public) [*<https://www.casa.gov.au/rules-and-regulations/landing-*](http://www.casa.gov.au/rules-and-regulations/landing-) *page/consultation-process>* .

Page 3: Aerial work passengers

The carriage of passengers in aerial work operations is not currently permitted, so many aerial work operators also require a charter AOC to conduct their operations legally.

**Policy proposal**

This proposal introduces the concept of an aerial work passenger and permits their carriage under specific circumstances, without the requirement for the operation to be regulated as an air transport operation (this is the future combination of current charter and RPT). The Part 138 MOS will require the operator to have procedures for the carriage of aerial work passengers that ensure the persons are required for the aerial work operation.

**Policy aim**

The aim of this proposed policy is to appropriately differentiate between air transport passengers and aerial work passengers, by identifying classes of people that from a risk perspective, are necessary to the aerial work operation and appropriate to be carried.

**Fact Bank:** Excerpts from new insertions in CASR dictionary and proposed Part 138 MOS

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| Fact Bank content  **2.01 Aerial work passengers — additional classes of persons**  The following classes of persons are prescribed for the definition of ***aerial work passenger*** in the CASR Dictionary:  (a) any person rescued as part of a search and rescue operation;  (b) any restricted person if the flight is conducted as part of an emergency service operation;  (c) any emergency service operation personnel if the flight is conducted as part of an emergency service operation;  (d) a marine pilot, when being transferred to or from a ship requiring the services of a marine pilot;  (e) a person whose presence on the aircraft is solely and reasonably required to facilitate an aerial work operation.  (f) a person carried on a positioning flight.  *Note*   For paragraph (e), see also section 7.04. Examples of a person mentioned in paragraph (e) include a person carried on a positioning flight or a person whose absence would be likely to do any of the following:  (1) increase the risks associated with the operation;  (2) make the operation longer in duration;  (3) result in the operation being frustrated or incomplete;  (4) result in training and checking objectives not being accomplished;  (5) result in relevant safety information not being collected to inform an operator’s safety management system. |

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 4: Rotorcraft and aeroplane requirements for aerial work passengers and operations with significant third-party risks

**Policy proposal**

The Part 138 MOS is proposed to introduce new performance requirements for certain higher-risk operations carrying passengers.

These are operations that possess the potential for significant consequences to third-party individuals, such as people on the ground or aerial work passengers involved in the aerial work flight. This is consistent with the Part 138 risk-based methodology.

**Policy aim**

The aim of this proposed policy is to appropriately mitigate risk of operations carrying aerial work passengers or with potentially significant consequences for third-party individuals.

**Fact Bank:** Draft proposal

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| Fact Bank content  Summary of new rotorcraft requirements below.   |  |  |  |  |  | | --- | --- | --- | --- | --- | | **Operational Circumstances** | **Performance Class** | | | | | If a performance class is not required by the operational circumstances below the minimum requirement is compliance with the rotorcraft flight manual and Operations Manual. | **PC3** | **PC 2 with exposure** | **PC 2** | **PC 1** | | **Below the minimum height for IFR or NVFR for other than taking off or landing**  No aerial work passengers unless an ESO | Minimum required.  If the flight is conducted at night must use NVIS and, if there are no available suitable forced landing areas, aircraft must have:   * Usage monitoring system * Dual hydraulics * Dual fuel control   \*Note: NVIS is not required for Frost Protection Operations. | Permitted | Permitted | Permitted | | **Below minimum height over a populous area for other than taking off or landing**  Day or night  IFR or VFR  No aerial work passengers unless an ESO | Minimum required.  If using a multi-engine rotorcraft must have en route OEI stay up capability.  If not using a multi-engine rotorcraft must have available suitable forced landing areas when below the minimum height unless:   * Flight below minimum height is essential for the operation * no aerial work passengers carried unless the flight is an ESO * If flight is at night NVIS is used * Aircraft has:   + Usage monitoring system   + Dual hydraulics   + Dual fuel control | Permitted | Permitted | Permitted | | **NVFR with 2 or less aerial work passengers**  (exceptions for ESOs) | Minimum required. NVIS must be used.  If there are no available suitable forced landing areas, only permitted if the aircraft has:   * Usage monitoring system * Dual hydraulics * Dual fuel control | Permitted | Permitted | Permitted | | **NVFR more than 2 aerial work passengers**  (exceptions for ESOs) | Not permitted | Minimum required.  NVIS required if not IFR equipped. | Permitted | Permitted | | **IFR with 1 to 9 aerial work passengers**  (exceptions for ESOs) | Not permitted | Minimum required. | Permitted | Permitted | | **Class D external load operations**  (exceptions / conditions for ESOs) | No specific performance class.  For winching:   * OEI HOGE capable during the winching operation unless day VFR and aircraft is a turbine with a usage monitoring system, dual hydraulics, dual fuel control and aircraft mass does not exceed 90% of the AFM MTOW HOGE at the most limiting mass for the operation.   For belly hook or platform:   * OEI HOGE capable during the operation unless aircraft is a turbine with a usage monitoring system, dual hydraulics, dual fuel control and aircraft mass does not exceed 90% of the AFM MTOW HOGE at the most limiting mass for the operation. | | | |   **Specific draft rules for aeroplanes and rotorcraft**  The specific draft rules for aeroplanes and rotorcraft can be found in the following sections of the Part 138 MOS:  Chapter 9 Division 3 – rotorcraft IFR flight, VFR flight at night and flight below minimum heights   * 9.02 Requirements for aircraft flight in close proximity to an object in an area that is not a populous area or a public gathering * 9.03 Additional requirements for rotorcraft IFR flight, and VFR flight at night, below minimum height * 9.04 When no suitable forced landing area is available   Chapter 9 Division 4 – Aircraft IFR flight below minimum height over the sea   * 9.09 Flight below 1 500 ft   Chapter 9 Division 5 – Rotorcraft IFR flight that is a SAR operation involving an auto-hover over the sea   * 9.15 The rotorcraft requirements   Chapter 9 Division 6 – Aircraft operations over populous areas etc. and other areas   * 9.21 Requirements for aeroplane flight over populous areas or public gatherings * 9.22 Requirements for rotorcraft flight over populous areas or public gatherings   Chapter 11   * 11.02 Carriage of 1 to 9 aerial work passengers in IFR flights * 11.03 Carriage of 1 or 2 aerial work passengers in VFR flights at night * 11.04 Carriage of 3 to 9 aerial work passengers in VFR flights at night * 11.05 Carriage of more than 9 aerial work passengers   Chapter 15 Division 1 – General   * 15.06 Operational requirements if a person is picked-up or set-down |

**Question:**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 5: Rotorcraft performance requirements

Part 138 requires specific kinds of operations outlined in the table in the previous question (page 4 - Rotorcraft and aeroplane requirements for aerial work passengers and operations with significant third-party risks) to comply with certain aspects of the new Australian rotorcraft performance code. In all other circumstances where the performance code does not apply, Part 138 simply requires compliance with the Rotorcraft Flight Manual and the operator’s procedures in the Operations Manual.

Some elements of Australian rotorcraft performance code are broadly similar to long-standing Australian rotorcraft performance requirements whereas other aspects are new. The code has been customised for Australian operational conditions from the international standard. The code consists of four classes – performance class 1 (PC1), performance class 2 (PC2), performance class 2 with exposure (PC2WE) and performance class 3 (PC3).

**Policy proposal**

As many operators will also be conducting air transport operations under Part 133 - Australian air transport operations - rotorcraft, CASA proposes the performance class requirements in the Part 138 MOS be made as common as possible between the two parts.

*For a rotorcraft that is required to comply with the new performance code, relevant rules and criteria are contained within:*

* *Chapter 18*
* *Chapter 21.*

*The proposed performance requirements for a rotorcraft that is NOT required to comply with the new performance code, are contained within Chapter 20.*

**Policy aim**

The aim of this proposed policy is to clearly state the rotorcraft performance requirements and prescribe rotorcraft performance requirements, appropriate to the risk of the aerial work operation (including third parties).

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 6: Aeroplane performance requirements

**Policy proposal**

CASA proposes that for aeroplanes currently subject to CAO 20.7.1B, the rules in the Part 138 MOS be made broadly similar, but contain some modified elements related to en route drift down obstacle clearance requirements. These proposed changes have been aligned with EASA requirements and were previously discussed with working groups for Part 121 - Australian air transport operations - larger aeroplanes.

The rules for these kinds of aeroplanes will be standardised across Parts 121, Part 135 - Australian air transport operations - smaller aeroplanes, and Part 138.

*These proposed rules are contained within Chapter 19.*

For aeroplanes currently subject to CAO 20.7.4, the rules in the Part 138 MOS are a lot simpler and are identical to those contained in Part 91. The rules for these aeroplanes are no longer the same as the rules that will be applied to air transport operations (the new combination of charter and RPT).

*These proposed rules are contained within Chapter 20.*

**Policy aim**

The aim of this proposed policy is to maintain commonality with existing rules where appropriate and prescribe aeroplane performance requirements appropriate to the risk of the aerial work operation (including third parties).

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 7: Additional operations that require a training and checking system

Regulation 138.125 (which commences in December 2021) requires aerial work operators conducting certain types of operations to have a formalised training and checking system. The training and checking system, while similar to that currently required by CAR 217, is significantly more flexible and can be tailored to the size and complexity of the operation.

The regulation also provides for the Part 138 MOS to specify additional types of operations which are required to have a training and checking system.

**Policy proposal**

Since the Part 138 regulations were made, CASA has identified that certain kinds of operations are commonly required through operator instruments to also have a training and checking system. Therefore, CASA proposes specifying these operations in the MOS to increase transparency and clarity for all operators.

**Policy aim**

The aim of this proposed policy is to incorporate current requirements specifying that certain specialised aerial work operators must have a formalised training and checking system.

**Fact Bank:** Proposed Chapter 4 – Training and checking

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| Fact Bank content  **CHAPTER 4 TRAINING AND CHECKING SYSTEM**  **4.01 Training and checking system**  (1) For paragraph 138.125 (1) (c), an aerial work certificate holder who conducts 1 or more of the following operations must have a training and checking system:  (a) an auto hover search and rescue operation;  (b) an operation using offshore airborne radar approach procedures in accordance with section 8.6 of the Part 173 Manual of Standards;  (c) an operation that uses the descent and operational procedures set out in Division 3, 4 or 5 of Chapter 9, as the case requires.  (2) Paragraph (1) (c) does not apply if the operation is a task specialist operation that:  (b) is below minimum height; and  (c) is for the purpose of protecting agricultural crops from frost; and  (d) complies with the requirements in Division 3 of Chapter 9. |

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 8: Flight crew training and checking – with a training and checking system

This policy proposal relates to operators who are required to have a formalised training and checking system for their flight crew under regulation 138.125 (this also includes those operations specified in the MOS that are required to have a system).

**Policy proposal**

CASA proposes that the Part 138 MOS prescribes outcome-based flight crew training and checking requirements including general competency and duration of competency checks, for operators required to have a formalised training and checking system.

*The proposed requirements are contained within Chapter 24.*

**Policy aim**

The aim of this proposed policy is to provide operators who are required to have a formalised training and checking system with appropriate outcome-based flight crew training and checking requirements, including general competency and duration of competency checks.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 9: Flight crew training and checking – without a training and checking system

This policy proposal relates to operators that are not required to have a formalised training and checking system for their flight crew, under regulation 138.125 (including the subordinate MOS provision specified on page 7 - Additional operations that require a training and checking system).

**Policy proposal**

CASA proposes that the Part 138 MOS contain outcome-based flight crew training and checking requirements including general competency and the duration of competency checks, for an operator that is not required to have a formalised training and checking system.

*The proposed rules are contained within Chapter 25.*

**Policy aim**

The aim of this proposed policy is to provide operators who are not required to have a formalised training and checking system with appropriate outcome-based requirements for flight crew training and checking, including general competency and the duration of competency checks.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 10: Air crew member training and checking

It is a requirement that air crew members be trained and checked for competency by operators with a formal training and checking system.

Air crew members are defined in the new additions to the CASR dictionary that will come into force on the commencement date.

The CASR dictionary defines an air crew member as *a crew member, other than a flight crew member, who* *carries out a function during the flight relating to the safety of the operation of the aircraft, or the safety of the use of the aircraft*.

Noting that the aerial work sector is variable and complex, there is an ability for the Part 138 MOS to describe other persons as being air crew members, or as not being air crew members. These options for the MOS are not being used at this time. Any proposed future use of these provisions would be subject to a full public consultation process.

**Policy proposal**

CASA proposes the Part 138 MOS contain air crew member requirements for operators that are required to have a formalised training and checking system under regulation 138.125 (including the subordinate MOS provision specified on page 7 - Additional operations that require a training and checking system).

*These proposed rules are contained within Chapter 26.*

**Policy aim**

The aim of this proposed policy is to provide operators that are required to have a formalised training and checking system with appropriate outcome-based requirements for air crew member training and checking.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 11: Task specialist training and checking

The Part 138 regulations contain requirements related to a specialised crew member called an ‘aerial work specialist’. It also uses the terms ‘task specialist’ and ‘aerial work specialist’ for what is effectively the same person. To align the description of this specialised crew member with the types of aerial work operations, CASA proposes (as outlined in the regulation amendments in the final consultation question) renaming these crew members as ‘task specialists’ within the Part 138 regulations. The definition currently applied to an ‘aerial work specialist’ in regulation 138.015 will be the basis for the definition for the ‘task specialist’ in the Part 138 amendments. The Part 138 MOS has been drafted using the proposed new term ‘task specialist’.

**Policy proposal**

CASA proposes the MOS contains task specialist requirements applying to all operators—regardless of whether they are required to have a formalised training and checking system under regulation 138.125 (including the subordinate MOS provision specified on page 7 - Additional operations that require a training and checking system).

*These proposed rules are contained within Chapter 27.*

**Policy aim**

The aim of this proposed policy is to provide operators with appropriate outcome-based requirements for ‘task specialist’ training and checking.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 12: Risk assessments

The Part 138 MOS would have requirements related to the conduct of risk assessments and hazard identification to ensure that the unique risks of aerial work operations are addressed through appropriate mitigation measures.

The Part 138 working group provided feedback that the requirements of Chapter 13 were too complex. However, CASA is also aware simplified rules can generate more questions than answers. If the requirements within the MOS were to be significantly simplified, additional explanatory material would need to be written into a guidance document, (possibly an Advisory Circular) to ensure operators understood the expectations of the regulator.

CASA welcomes industry views on whether the detailed requirements should be contained within the MOS or within a guidance document.

**Policy proposal**

*These proposed rules**for risk assessment and hazard identification requirements are contained within:*

* *1.05 Aerial work zone (AWZ)*
* *13.01 Conduct of risk assessments — risk criteria*
* *13.02 Conduct of risk assessments — assessment and mitigation processes*
* *13.03 Additional risk assessments for a Class D external load operation*
* *13.04 Preparation of an AWZ-RMP — external loads and dispensing*
* *13.05 Preparation of an AWZ-RMP — task specialist operations*

**Policy aim**

The aim of this proposed policy is to prescribe risk assessment requirements for an aerial work operator appropriate to the size and nature of the operation, to identify the hazards and risks unique to their operation and ensure that the operation can be conducted with an acceptable level of risk.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 13: Additional rules for external load requirements

Part 138 MOS would define the different classes of external loads and some of the specific external load operational requirements.

**Policy proposal**

*The proposed rules for classes of external loads and some of their specific operational requirements are contained within:*

* *15.01 Classes of external loads*
* *15.02 Classes of persons who may be carried as external loads*
* *15.03 Aerial work operation requirements if persons carried as external loads*
* *15.04 Operational requirements if person carried on or in an attachment to an aircraft*
* *15.05 Classes of persons who may be picked-up or set-down*
* *15.06 Operational requirements if a person is picked-up or set-down*
* *15.07 Helicopter external load operations at night over water*
* *15.08 Additional requirements for external loads*
* *15.09 Additional approvals required for certain external load operations*
* *15.10 External load operations over an AWZ*
* *15.11 External load operations — AFM supplement*
* *15.12 External load operations — loads etc.*
* *15.13 External load operations — visibility etc.*
* *15.14 Additional requirements for Class E external loads*

**Policy aim**

The aim of this proposed policy is to appropriately describe the different classes of external load to enable where necessary, either common or specific rules for the different kinds of external load operations to ensure the risks of each class of external load is mitigated appropriately.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 14: Requirements for Carrying, Possessing and Discharging Firearms

The Part 138 MOS would contain requirements for the carriage and discharge of firearms to ensure the safety of the aircraft and occupants.

**Policy proposal**

*These proposed rules for the carriage and discharge of firearms are contained within:*

* *17.03 Carrying, otherwise possessing and discharging firearms*
* *17.04 Pilot requirements*
* *17.05 Task specialist requirements - firearms*
* *17.06 Firearm requirements*
* *17.07 Communication requirements*

**Policy aim**

The aim of this proposed policy is to prescribe requirements for the carriage and discharge of firearms during task specialist operations to ensure the safety of the aircraft and its occupants.

**Question**

Does the proposal achieve the aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 15: Limited Aerial Work Operators - Aerial Work Operations not required to hold an Aerial Work Certificate

The current rules provide in CAR 2(7) for certain types of aerial work to be classified as “private operations” not requiring an Air Operators Certificate (AOC). Part 138 provides for similar relief to the requirement to hold an aerial work certificate, in 138.030 and the definition of limited aerial work operations in Chapter 1 of the MOS.

***limited aerial work operation*** *means an aerial work operation by an aircraft:*

*(a) that is described in subsection 138.030 (2); and*

*(b) for which the operator is not required by subsection 138.030 (1) to be an aerial work certificate holder.*

*Note   The effect of this definition is that a limited aerial work operation is either or both of the following:*

*(a) spotting or photography where no remuneration is received by any of the following for the operation:*

*(i) the pilot;*

*(ii) for a registered aircraft — the registered operator;*

*(iii) for an unregistered aircraft — the aircraft owner;*

*(iv) a person or organisation on whose behalf the operation is conducted;*

*(b) an operation that is:*

*(i) for a registered aircraft — conducted over land owned or occupied by the registered operator; and*

*(ii) otherwise — conducted over land owned or occupied by the aircraft owner; and*

*(iii) not conducted over a populous area or public gathering; and*

*(iv) not an external load operation involving the carriage of a person as an external load.*

**Policy proposal**

CASA proposes the definition of limited aerial work operations in Chapter 1 of the MOS continues the existing private operations alleviation that permits the conduct of certain kinds of aerial work without a need to hold a certificate.

**Policy aim**

The aim of this proposed policy for the Part 138 regulations is to continue the existing private operations alleviation that permits the conduct of certain kinds of aerial work without a need to hold a certificate.

The Part 138 Technical Working Group has questioned whether this policy needs to be continued in Part 138, noting:

* an aim of Part 138 was to achieve consistent aviation safety outcomes regardless of commerciality
* an AOC is no longer required and is being replaced by an Aerial Work Certificate
* CASA will provide a Standard Operations Manual for these kinds of operations.

**Questions**

**1. Should operators currently conducting ‘private’ aerial work be permitted under Part 138 to continue to conduct these operations without an aerial work certificate?**

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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**2. If your answer is yes, will the provision as it is currently drafted, achieve this outcome?**

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 16: Proposed Part 138 regulation amendments

Since the Part 138 regulations were made into law in December 2018 (note that the start date of these regulations is not until 2 December 2021), CASA has been conducting detailed drafting of the Part 138 MOS and has been involved in multiple working group discussions.

**Policy proposal**

As a result of the working group discussions, it has become apparent that multiple Part 138 regulations need to be modified. CASA is proposing changes to Part 138 of CASR that would:

* ensure approvals issued under the Part 138 MOS are legally effective
* clarify certain terminology and defined terms align with other CASR parts
* require operators not required to hold an aerial work certificate to comply with additional regulations in order to achieve the necessary aviation safety outcomes.

**Policy aim**

The aim of amending certain Part 138 regulations is to:

* ensure approvals are legally effective
* increase flexibility for industry in relation to certain matters
* align with other CASR parts where appropriate
* ensure appropriate aviation safety outcomes for operations not required to hold an aerial work certificate.

**Proposed amendments**

Proposed amendments to terminology, legal approvals and new requirements for operators previously excluded from holding an aerial work certificate are contained in the fact banks below.

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| Fact Bank: Terminology and definition changes   * Replace all references to ‘aerial work specialist’, by the term ‘task specialist’.   + Part 138 uses both terms, effectively to mean the same persons. The terminology should be standardised, which CASA proposes to do by using the term ‘task specialist’. The definition of ‘aerial work specialist’ in regulation 138.015 of CASR will form the basis of the definition of ‘task specialist’ in the amendments. * The definition of ‘significant change’ is currently contained within the Part 138 MOS. It is proposed to move this definition into the Part 138 regulations. This would make Part 138 consistent with Parts 119, 141 and 142 where this definition is also contained within the regulations. * Insert a definition for 'operations manual' that is consistent with the definition in Part 141 and similar to the definitions of 'exposition' for Parts 119 and 142.   operations manual for the holder of an aerial work certificate means  (a) the set of documents approved by CASA under regulation 138.045 in relation to the operator; or  (b) if the set of documents is changed under regulation 138.065 or as required to comply with regulation 138.155 – the set of documents as changed.   * Amend paragraph (c) of the definition of emergency service operation in the CASR Dictionary by adding a reference to ‘protecting the environment’. It is conceivable that some emergency service operations, such as those conducted over territorial waters, would not involve law enforcement, or the saving or protection of persons or property. * Include a note at the end of the Dictionary definition of aerial work passenger to the effect that the provisions of Part 138 prohibit certificated operators from carrying a passenger who is not an aerial work passenger, and non-certificated operators from carrying any passenger. This is associated with a proposed amendment to regulation 138.310 (see fact bank below).   Fact Bank: Applying additional regulations to aerial work operators without a certificate   * Part 138 permits certain aerial work operations to be conducted without an aerial work certificate (see regulation 138.030 of CASR). * The legal structure of Part 138 states that all Part 138 regulations apply to aerial work certificate holders but only regulations that state they apply “whether or not an aerial work certificate is held” apply to aerial work operations conducted without a certificate. * CASA has reviewed the regulations that are expressed to apply to operations conducted without an aerial work certificate and has identified a number of additional regulations that, in order to achieve the aviation safety outcomes of the Part, should be amended to apply to these ‘non-certificated’ aerial work operations. * The regulations proposed to be amended to apply to non-certificated aerial work operations are:   + 138.295 – Fuel requirements   + 138.305 – Carriage of aerial work passengers – general (also see the specific amendment to this regulation outlined below)   + 138.370 – Operator must conduct risk assessments   + 138.400 – Certain night operation prohibited unless operation is an emergency operation or approved by CASA   + 138.420 – Possessing and discharging firearms   + 138.435 – Take-off weights   + 138.440 – Landing weights   + 138.465 – Instruments, indicators, equipment and systems - requirements   + 138.470 – When aircraft may be flown with inoperative instruments, indicators, equipment or systems   + 138.495 – Pilot in command   + 138.500 – Qualifications as pilot in command   Fact Bank: New Part 138 Regulations   * Changes to Division 138.B.3 of CASR:   + Currently, there are 2 regulations within this division of the Part 138 regulations.   + The first regulation – 138.060 – is unique to Part 138. Other certificate based CASR parts (119, 131, 141, 142) do not include this regulation and instead include specific regulations related to certain kinds of changes, including regulations that outlines the process for making changes to operations manuals (or expositions for 119, 131 and 142).   + This difference in CASR parts when the majority of operators conduct operations in multiple CASR parts increases administrative burden as operators won’t have consistent rules across the multiple CASR parts. Additionally, the lack of these similar regulations in Part 138 means that the ‘significant change’ process, which underpins the change process across the future regulatory suite, won’t work effectively within Part 138.   + It is proposed to:     - Delete existing regulation 138.060.     - Insert a regulation that matches the intent of 119.085 (which is a newer version of 141.080). This regulation outlines the process for changes of operator name, contact details or operational headquarters.     - Insert a new regulation that matches the intent of 119.090 (which is a less complex version of 141.085). This regulation outlines the requirements relating to approvals of significant changes.     - Insert a new regulation that matches the intent of 119.095 (which is a newer version of 141.090). This regulation outlines the requirements on CASA relating to what it must consider when approving significant changes.     - Insert a new regulation that matches the intent of 141.095 (which doesn’t refer to another regulation like 119.100 and therefore better matches the legislative structure of Part 138). This regulation prescribes that the operator commits an offence if they make a change that is not in accordance with the change process in their operations manual.   Fact Bank: Amendments to specific Part 138 Regulations   * Regulation 138.005   + A technical amendment is required to subregulations (3) and (4) to clarify their intent. The reference in each subregulation to ‘the operator holds an aerial work certificate’ should more properly read that ‘the operator holds an aerial work certificate for the operation’. It would not be relevant that the operator holds a certificate for some other type or kind of aerial work operation. * Regulation 138.010   + It is proposed to delete subparagraph (5)(b) of the definition of aerial work operation as it is redundant.   + External load operations will be authorised to be conducted under Part 133, but only in respect of winching in a medical transport operation (CASA intends to amend Part 133 to reflect this policy change). Medical transport operations are already excluded from the definition of aerial work operation under paragraph 138.010(5)(a). * Regulation 138.025   + To facilitate the issuance of approvals under the Part 138 MOS, it is proposed this provision be amended to acknowledge that approvals may also be issued under the Part 138 MOS, and that persons may apply to CASA for these approvals. * Regulation 138.105   + To clarify the responsibilities of the head of training and checking (where one is required), it is proposed this regulation be amended to reflect that the head of training and checking is responsible for managing all training for flight crew, and not only ‘recurrent’ training.   + The exception to this is the training mentioned in paragraph 138.105(3)(d) which refers to the training contracted out to a Part 142 operator. Part 142 operators are currently limited under Part 142 to conducting contracted recurrent training. * Regulation 138.110   + It is proposed to delete paragraph (2)(a) which requires a safety manager to have sufficient relevant experience in carrying out or managing air operations as the requirements of paragraph (2)(c) are sufficient (this latter paragraph requires the safety manager to have a satisfactory record in the conduct or management of air operations). * Regulation 138.205   + It is proposed to amend paragraph (1)(c) to include a reference to utility category aircraft. The use of such aircraft should be permitted under Part 138, provided any flight manual or placard limitation and any instruction or restriction on the carriage of passengers in the form of aerial work passengers are complied with. * Regulation 138.275   + It is proposed to legally re-frame this regulation to specify requirements that must be met instead of circumstances. This change simplifies the legal drafting for the Part 138 MOS with no change in functional outcome.   + The existing regulatory wording is proposed to be renumbered as subregulation 138.275(1) and add a new subregulation 138.275(2) that permits the Part 138 MOS to prescribe requirements related to minimum heights.   + It would be an offence if the operator or the pilot in command did not comply with a requirement of the MOS that applies to them. * Regulation 138.305   + The organisational safety mitigators that enable the new policy of permitting aerial work passenger carriage cannot be achieved in a non-certificated aerial work operation.   + This regulation is proposed to be amended so that it applies whether or not the operator holds an aerial work certificate and to create appropriate offences for operators and pilots-in-command. * Regulation 138.310   + It is proposed to amend 138.310(2)(a) so that the offence applies if any aerial work passengers are carried on a VFR flight at night. The requirements of subregulation (3) should apply regardless of the number of passengers carried. * Regulations 138.435 and 138.440   + Similar to the proposal for regulation 138.275, it is proposed to amend these regulations to permit the Part 138 MOS to prescribe ‘requirements’ rather than ‘circumstances’ and ‘methods’.   + This change simplifies the legal drafting for the Part 138 MOS with no change in functional outcome. * Regulation 138.445   + It is proposed to amend this regulation to add a requirement for an operator to hold an approval under regulation 138.025 if the rotorcraft will be flown in performance class 2 with exposure during the relevant stage of the flight.   + This approval requirement would have been in the Part 138 MOS however moving it to the regulation increases transparency and regulatory consistency with Part 133 which also has the approval requirement in the regulations and not the MOS. * Regulation 138.475   + Paragraph 138.475(2)(c) does not appropriately encompass foreign registered aircraft.   + It is proposed to amend this regulation to require each flight crew member to be appropriately authorised or qualified to pilot an Australian aircraft under Part 61 and a foreign registered aircraft under the law of the aircraft’s State of registry or the State of the operator.   + This aligns the formulation of these requirements with similar regulations in Part 91. * Division 138.D.6 – fuel requirements   + For clarity and consistency between multiple CASR parts (similar provisions exist in Parts 133 and 135), it is proposed to add a new provision requiring operators to include in their operations manual fuelling safety procedures. |

**Question**

Are the proposed amendments to Part 138 as described above appropriate and do they achieve the identified aim?

*Radio buttons*

Yes

No (please specify why below)

Not applicable to my aerial work operation(s)

Comments

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Page 17: General comments

The earlier questions in this consultation have identified specific matters of significant change. However, operators are encouraged to conduct a thorough review of the sections of the Part 138 MOS relevant to their operations, to ensure that they have considered all the proposed rule changes.

**Question:**

Please provide any additional comments you may have regarding the proposed Part 138 MOS, as well as the proposed amendments to the Part 138 Regulations made into law during December 2018 but have yet to commence.

Comments

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