Australian Government
Civil Aviation Safety Authority

SUMMARY OF CONSULTATION

Proposed new Part 131 MOS - Balloons and hot air airships

Date	December 2021
Project number	OS 00/08
File ref	D21/364511

Contents

Overview

This consultation sought detailed comments on the proposed Part 131 Manual of Standards (MOS) that will support the Part 131 regulations commencing on 2 December 2021.

The consultation opened on 16 August 2021 and following a request to CASA, the closure date was extended from 13 September to 15 September 2021.

This document summarises the main themes that emerged from review of the responses, the CASA response to the feedback and the changes CASA will make to the proposed Part 131 MOS as a result of this feedback.

Respondents

Key feedback

A total of 8 responses to the consultation were received. Four respondents identified as AOC holders and 2 represented the views of the Australian Ballooning Federation. Four people identified as a commercial balloon pilot, 2 as a private balloon pilot and 2 as also hot air airship pilots. Only 1 respondent was not a pilot. Five respondents were happy to have their responses published and 3 requested to remain anonymous.

Each submission was evaluated to determine the key issues and themes expressed in the responses. Examples of responses received in submissions to the policy proposals have been included in the feedback section below. Feedback is attributed to the respondents via anonymous ID labels.

CASA values the contributions made by all respondents. Where permission to publish has been granted by the respondent, individual consultation responses can be found at Proposed new Part 131 Manual of Standards - Balloons and Hot Air Airships - (CD 2103OS) - Civil Aviation Safety Authority - Citizen Space (casa.gov.au).

Policy topic 1 - Definitions

Balloon tether system

There should be no requirement for a balloon tether system to be approved under Part 21 of CASR.

> ANON-PW16-T531-U - In the case of a Type Certified balloon, not all certification standards require limitations and equipment to be specified for tether operations. Specifically, any balloon certified under BCAR31 will not have a certified tether system or procedures.
>
> This affects all Kavanagh Balloons and many other manufactures with aircraft certified outside of or before EASA CH-31HB was adopted.

Balloon launch restraint

A balloon attached to a launch restraint prior to flight or at night for a night glow should not be considered to be tethered.

> ANON-PW16-T531-U - the definition in the CAR dictionary for Tethered is too specific. The result of that definition is that any inflation with a balloon connected to the ground or an object on the ground is under tether.
>
> By default the definition for tether includes any balloon on a launch restraint prior to flight which is problematic because again, launch restraint systems are not covered by certification.

CASA response

Balloon tether system

CASA agrees that only balloons certified recently under EASA CH-31HB are likely to have an approved tether system. CASA accepts that balloon manufacturers provide in aircraft flight

manuals suitable requirements and recommendations for procedures and systems to be used when tethering a balloon. CASA will remove the requirement for a balloon tether system to be approved under Part 21 of CASR.

Balloon launch restraint

It was not intended that a balloon attached to a launch restraint should under the definition be considered to be tethered. However, the definition of the term *tethered* has been in the CASR Dictionary for many years and cannot be amended prior to the commencement of Part 131 of CASR. CASA will amend the MOS to make it clear that the provisions of Chapter 20 do not apply to a balloon that is attached to a launch restraint.

Policy topic 2 - Additional requirements for specialised balloon operations

One respondent asked if there was an ETA for this information to be released.

One respondent thought that specialised balloon operations should require an AOC.

> ANON-PW16-T53T-X - Specialised balloon operations should require an AOC. CASA is requested to provide the safety case for the operations to only require CASA approval as the sanctions for a CASA approved non AOC operator when compared to an AOC operator in the event of a safety compromise or negative outcome are not clear

CASA response

This chapter of the MOS is reserved for future circumstances, operations, or events that CASA has not anticipated. There is no ETA for additional information because no requirement to use this provision has yet emerged. Any additional requirements that might be added into the MOS at some point in the future would need to meet the consultation requirements of Subpart 11.J of CASR.

Under regulatory changes certain flight training activities and aerial work operations no longer require an AOC. CASA considers that the risks and frequency associated with specialised balloon operations do not warrant the regulatory oversight of an AOC.

A specialised balloon operation may be commercial or non-commercial and may be a one-off event or an ongoing operation. These operations are not intended for the carriage of paying passengers and must be conducted in accordance with the conditions prescribed in an approval issued under regulation 131.035 of CASR. The conditions will vary depending on the intended length and complexity of the operation and the operator may be subject to surveillance.

An AOC holder who currently is authorised to perform aerial work operations will be able to continue with those activities as a specialised balloon operation under the AOC.

Policy topic 3 - Personnel fatigue management

No responses were received on this topic.

Policy topic 4 - VMC and VFR

There was either no response or agreement with this topic.

Policy topic 5 - Visual Flight Rules

There was either no response or agreement with this topic.

Policy topic 6 - Standard visual signals

There was either no response or agreement with this topic.

Policy topic 7 - Flight related documents

One comment was received:

> ANON-PW16-T53G-H - Whilst there is a new requirement for a pilot to carry a Part 131 ASAO pilot authorisation, the ABF understand that this can be carried as an electronic copy provided by the ABF. Please confirm.

CASA response

CASA confirms that under regulation 131.265 of CASR copies of documents required for flight in Australian territory may be carried as electronic copies. This would include a copy provided by the ABF.

Policy topic 8 - Reporting and recording information

One comment was received:

> ANON-PW16-T53Y-3 - 6.03 refers to the operator logging the flight time of the pilot in command. Is this their personal PIC total as at the end of the flight? Why is the operator required to retain this? Is 6.03 solely for transport operations or does it include recreational?

CASA response

The requirement for an operator to retain records for at least 3 months is only intended to apply to a balloon transport operator. CASA will amend subsection 6.03(2) of the Part 131 MOS to make this clear.

Policy topic 9 – Flights over populous areas, public gatherings and other areas

Two comments were received on this topic:

> ANON-PW16-T53Y-3 - Why has 1,000' been selected? Wouldn't 500' be just as safe and effective given helicopters operate at that height? (and are noisier)?
>
> Is there a limit to how far away from a suitable & safe landing spot this minimum distance does not apply? If engaged in determining the suitability of a landing area then that could be 5km back to get a check of likely winds. Could also be conducting manoeuvres for a safe landing from far away if needing to be in specific winds to target the safe field.
>
> ANON-PW16-T53T-X - CASA is requested to provide the rationale and safety case for the 1000ft minimum. PTB calls for the minimum to be reduced to 500 ft - despite the exceptions listed in the proposed regulations

CASA response

For flights over a populous area 1000 ft AGL is the current rule. The horizontal distance from the nearest obstacle has been reduced from 300 m to 100 m and exemptions from maintaining 1000 ft AGL have been included to allow balloons to use the available winds to navigate to a suitable landing at any time during the flight.

Policy topic 10 – Dropping things from aircraft

There was either no response or agreement with this topic.

Policy topic 11 – Flight preparation

Two comments were received:

> ANON-PW16-T53W-1- during the hour immediately before" presents a great difficulty if taken literally as we have one flying site that is a 45minute drive from base. For operations in this circumstance 2 hours before commencing a flight, is required to comply.
>
> ANON-PW16-T53G-H - We request that CASA work with the ABF to define the procedure to be followed if no or little internet coverage is available to access weather forecasts in some remote flying areas where recreational activity takes place.

CASA response

CASA acknowledges the circumstances outlined in the 2 comments outlined above. Compared to the AIP ENR 1.10 requirements, the MOS mistakenly does not include the alleviation mentioned in paragraph 1.2.2 of ENR 1.10. In circumstances where a weather forecast or report is required but cannot be obtained, this alleviation permits pilots to depart provided that the pilot is satisfied that the weather at the departure point will permit the safe return of the flight within one hour of departure. CASA will insert a version of this alleviation relevant to Part 131 aircraft in the MOS.

Policy topic 12 – Flight notification requirements

There was either no response or agreement with this topic.

Policy topic 13 – Matters to be checked before take-off

One comment was received:

> ANON-PW16-T53Y-3 -14.02(f) indicates that a pilot must check the accuracy of their pressure altitude reading devices yet 14.03(2) says this is only to occur IF the pilot has an accurate QNH and an accurate site elevation.
>
> Can 14.02(f) be changed to align with this condition as otherwise it indicates you must check the system yet gives no alternate method if you don't have access to accurate QNH & site elevation (eg: launching from a field far from an aerodrome).

CASA response

CASA acknowledges that the wording of paragraph 14.02(f) of the MOS should be modified to be clearer. However, as currently written, it would only legally require the check to be conducted if the conditions mentioned in section 14.03 applied and therefore the pilot would not be in

breach if, at a site without a known elevation and accurate QNH, the accuracy of the pressure altitude system was not checked. CASA will amend paragraph 14.02(f) or section 14.03 (or both) to make the requirement clearer.

Policy topic 14 – Air traffic services prescribed requirements

There was either no response or agreement with this topic.

Policy topic 15 – Use of radio – Broadcasts and reports

There was either no response or agreement with this topic.

Policy topic 16 – Operations at non-controlled aerodromes

One comment was received:

> ANON-PW16-T53Y-3 -17.03 (3) (b) Why must a balloon immediately climb to 1,500' on take off? Fixed wing aircraft are not required to do this so why a balloon?
>
> It is not uncommon to launch at an uncontrolled airport (at dawn or dusk) and remain lower than 1,500' AGL to ensure a suitable direction is maintained to clear the vicinity of the aerodrome and proceed towards the intended landing location.
> This restriction should be removed.

CASA response

CASA agrees and will delete paragraph 17.03(3)(b) of the MOS.

On further review of Chapter 17, CASA identified that all the rules in section 17.02 and subsection 17.03(1) either unnecessarily duplicated, or created conflicting safety outcomes, with the give way and avoid creating a hazard rules in Part 91 of CASR that apply to Part 131 aircraft. Therefore, CASA will propose the deletion of all of section 17.02, subsection 17.03(1) and paragraph 17.03 (3)(c).

Policy topic 17 – Flights over water

One comment was received:

> ANON-PW16-T53Q-U - I don't agree with the terminology of (sea, a lake, bay, or estuary), I understand that there are some big lakes in Australia but I think it should be the same as maritime regs with open water rules and staying above or inland of high water mark. All I can see is the usual problem pilots/children pushing the boundaries (as they do now) by trying to get their big glamour shot on fbook, insta, grinder.

CASA response

CASA recognised the wide variability of circumstances for Part 131 aircraft operations by only legally mandating that pilots, and balloon transport operators, identify, consider and plan to take into accounts the risks of any particular flight, whilst having regard to a legally defined set of risk considerations. There is no specific legal requirement that mandates how the risk evaluation must be performed, or how it must be recorded. The provisions of this Chapter provide a greater level of flexibility for the over water operations of Part 131 aircraft compared to the rest of the aviation industry. CASA does not propose to make any changes to this Chapter.

Policy topic 18 – Operation of a tethered Part 131 aircraft other than a subpart 131.Z tethered gas balloon

In addition to the comments on the definition of "tether" discussed above comments were received on the requirement that tether operations must be conducted in VMC.

> ANON-PW16-T53Y-3 - Would 20.02 (5) preclude a night glow? It is common for balloon owners/pilots/operators to conduct night glow events where-in one or more balloons are tethered and glow at night. This can be conducted in less than VFR conditions and/or at night, which this condition would preclude. Tethered flight should be able to be conducted in any conditions the PIC determines to be safe, whether during daylight, night, VFR or other conditions.
>
> ANON-PW16-T531-U - Requiring VMC will have a negative impact on the typical uses of tethered flight for balloons.
>
> Specifically, if you apply VMC we can not perform tethers at night (Night Glows etc.) or in fog. This would impact static displays, maintenance and even test inflations when we manufacture a new balloon where inflations may not meet VMC.
>
> Personally, I don't think anything where the top of the balloon is under 300ft should be under the control of CASA but that is probably a different discussion.

One respondent agreed with the VMC requirement.

CASA response

CASA agrees that the requirement in subsection 20.02(5) of the MOS, for all tethered operations to be conducted in VMC, would inappropriately constrain current activities. This was not the policy intent.

CASA will delete subsection 20.02(5) of the MOS.

Policy topic 19 - Emergency and survival equipment information

There was either no response or agreement with this topic.

Policy topic 20 - Fuel and ballast requirements

Two comments were received:

> ANON-PW16-T53Q-U - You never have enough fuel until you are on fire.
> I disagree with reducing the reserve fuel for commercial or private operations. A minimum of 30 minutes should still be maintained to ensure safe operations. Even flying in rural areas I am still happy to land with a surplus of fuel. I'm unaware of the conditions or usage in cloudhoppers so let them do what ever they are able to.
>
> ANON-PW16-T53W-1 - CAAP 234-1(2.1) 8.1.4 says “Regulation 220 of CAR does apply to aerial work and charter balloon and hot air airship operations, however, which means that the operator's operations manual must specify the fuel requirements dependent on the circumstances of their operation, including specifying a fixed fuel reserve.” Is the “final reserve fuel” mentioned above the same as the fixed fuel reserve mentioned in the CAAP?

CASA response

Under regulation 220 of CAR, charter and aerial work operators were required to include instructions in their operations manual in relation the computation of quantities of fuel to be carried on a flight, and continuously review the adequacy of these instructions in light of the amount of fuel remaining at the end of every flight. Under the proposed Part 131 MOS, balloon transport operators must incorporate a final reserve fuel of 20 minutes minimum flying time. Balloon transport operators may elect to specify in their exposition that a longer final reserve fuel is required for their operations. CASA is satisfied that the 20 minutes proposed to be required by the Part 131 MOS is appropriate and reasonable.

The fixed fuel reserve term used in CAAP 234-1(2.1) is the same as final reserve fuel used in the Part 131 MOS. Across the new flight operations regulations, all fuel reserve related terminology is being aligned to ICAO standard terms. However, this does not mean that operators must use the specific legislative term in their documentation suite. For example, a balloon transport operator could continue to use the old term *fixed fuel reserve* instead of changing their documentation to the new term used in the legislation.

Policy topic 21 - Use of supplemental oxygen equipment

There was either no response or agreement with this topic.

Policy topic 22 - Equipment

There was either no response or agreement with this topic.

CASA response

CASA has noted that a pilot restraint harness supplied by a UK or Australian manufacturer is approved under BCAR-31, and those from a European manufacturer approved under EASA CS-31HB. As a result, CASA will remove the pilot restraint harness from the list of equipment that do not need to be approved under Part 21 or Part 31 of CASR which is contained in subsection 26.02(3) of the MOS.

Policy topic 23 - Carriage of persons requiring assistance

There was either no response or agreement with this topic.

Policy topic 24 - Passengers - Safety briefings and instructions

There was either no response or agreement with this topic.

Policy topic 25 - Loading weights

There was either no response or agreement with this topic.

Policy topic 26 - Carriage of passengers

There were four comments on this topic:

> ANON-PW16-T53G-H - The ABF requests a review of the cost-sharing limitation with recreational activity to ensure it aligns with any requirements in Part 103, otherwise this limitation should be removed.

ANON-PW16-T53Q-U - I think that it should be an adult over 18, not unaccompanied teenagers.

ANON-PW16-T53Y-3 - 25.03 (c) places a limit of 6 pax for flight training under CAR 5. How does this align with conducting size endorsement training of large balloons carrying >6 passengers?

Is the instructor included as a passenger if conducting a size endorsement training/checking flight?

ANON-PW16-T53T-X - The arbitrary age limit for carriage of a child should be reduced to 10.

CASA is requested to provide the safety case for the age limit proposed.

In the 25 + years of experience in passenger operations of Part 131 aircraft PTB has determined that it is the management of young people in a safe manner that dictates any requirement for being accompanied by an adult - and the ability of a child unaccompanied to understand and be able to follow safety related directions. The age of 10 appears reasonable as a minimum for regulation when in reality young people are usually accompanied by an adult well beyond the proposed minimum.

CASA response

ANON-PW16-T53G-H

There are no cost-sharing arrangements in Part 103. Under Division 3 of Chapter 4 of the proposed Part 103 MOS, the only persons that can be onboard a Part 103 aircraft are a pilot and a single passenger (or 2 pilots if conducting training). CASA has reviewed the effect of paragraph 25.03(b) and determined that this effect is already covered by the legal interrelationships between the definitions of balloon transport operation, passenger transport operation and cost-sharing flight. The purpose of the cost-sharing flight definition is to continue the current private operations alleviation relating to the maximum number of people that can share the costs of the flight without the flight becoming a charter operation. CASA will delete paragraph 25.03 (b) because the definition is in the CASR dictionary.

ANON-PW16-T53Q-U and ANON-PW16-T53T-X

The age limit of a child is being continued from current policy. The provisions of section 25.06 are specifically outcome based and appropriate to ensure the safety of a child onboard a Part 131 aircraft. A balloon transport operator may specify in their exposition any other requirements in relation to the carriage of children and accompanying adults.

ANON-PW16-T53Y-3

Balloon flying training under Part 5 of CAR means the required training for the CP(B)L. For size endorsements for CP(B)L holders see CAO 40.7 which remains in force.

The instructor is considered a passenger for the purposes of counting the persons on board a training flight. CASA will note this in the MOS.

Policy topic 27 - Flight crew- qualifications and training

There were four comments on this topic:

ANON-PW16-T53G-H - The ABF understand from 27.03(2) that for ALL recreational flights, before commencing the flight, the holder must meet the requirements of a Part 131 ASAO to undertake that flight, even if they hold a Commercial pilot (balloon) licence as per 27.02. Please confirm.

ANON-PW16-T53Q-U - How do they become a nominated person,do they have to have ARN or can be part of company structure

ANON-PW16-T53Y-3 - 27.09 (d) The need for pilots to conduct "in water training" on the use of life jackets is over the top. Surely it would be sufficient to provide training to the pilot in the use of life jackets while on land. Commercial balloon operators are not an airline with access to pools and training systems on the off chance that a flight *might* involve a water crossing.

ANON-PW16-T531-U - 27.05 could do with some more plain English to explain that this really only applies to commercial operations.

On first reading, the indication is that a PPC should comply with the group sizes set out 5.01 which does not align with the ABF PPC ratings of up to 120 and then endorsement for greater than 120.

The reader needs to know that CAR 5 is about CASA issued licences. Reading CAR 5.01 out of context indicates group 1 < 260k cu.ft which may cause some confusion.

Either the ABF needs to align with 5.01 or more context is needed in this area.

CASA response

ANON-PW16-T53G-H

CASA confirms that a CP(B)L holder, when conducting a Part 131 recreational flight, must meet any training and checking requirements of the ASAO. Holding a CP(B)L does not permit the pilot to not comply with the requirements of the ASAO administering Part 131 recreational activities.

CASA will add an additional paragraph to section 27.02 to require CP(B)L holders, when conducting Part 131 recreational activities, to meet any training and checking requirements prescribed by the Part 131 ASAO to conduct the activity.

ANON-PW16-T53Q-U

In relation to the flight crew training and checking for balloon transport operations, a nominated individual is one who satisfies the requirements of paragraph 27.12(2)(c) of the MOS. The civil aviation legislation does not specifically require the person to hold an ARN. How the person fits into the operator's organisational structure is a matter for the operator to determine, noting that the key personnel of a balloon transport operator have specific responsibilities under Subpart 131.B of CASR.

ANON-PW16-T53Y-3

CASA agrees that in-water life jacket training is unnecessary as part of ongoing recurrent training and checking and will amend the MOS to make this clear. However, if a balloon transport operator is going to conduct operations over water, it is reasonable that pilots must have, at least once, conducted in-water life jacket training. This is a requirement for air transport operators and aerial work operators under Parts 133, 135 and 138, in addition to Part 121.

CASA advises that existing crew members will not have to conduct this training as they will be deemed to have conducted initial and conversion training via a forthcoming legislative determination which is empowered by the transitional regulations.

Balloon transport operators are advised that once the MOS is amended, pilots will still need to conduct land-based life jacket training and checking as part of the required recurrent training and checking. Balloon transport operators are also advised that life jacket training does not have to be provided to every pilot. Balloon transport operators can choose to only train certain pilots in relation to the over-water requirements of the MOS, which would then limit the operator to using only those pilots in over water operations.

ANON-PW16-T531-U

CASA agrees that section 27.05 of the MOS is not adequately clear.

CASA will amend the existing paragraph in this section to outline that it does not apply to Part 131 recreational activities.

Policy topic 28 – Ground support personnel

One comment was received on this topic:

> ANON-PW16-T53Q-U - How do they become a nominated person,do they have to have ARN or can be part of company structure.

CASA response

A nominated individual is one who satisfies the requirements of subsection 28.03(2) of the MOS. The civil aviation legislation does not specifically require the person to hold an ARN. How the person fits into the operator's organisational structure is a matter for the operator to determine, noting that the key personnel of a balloon transport operator have specific responsibilities under Subpart 131.B of CASR.

Policy topic 29 - Tethered gas balloons

No comments were received on this topic.

Principle changes and general comments

Comments other than no response and general agreement were:

Pilot restraint harness

> ANON-PW16-T53W-1 - Is there a strong safety case around the mandatory use of pilot restraints for the entire flight? Additionally, how many pilot ejections have there been since they were mandated for partitioned baskets? Flying in a calm area as we do, we believe the decision of when and if to harness up should be left to the operator.
>
> ANON-PW16-T53H-J - The requirement for pilot restraint harnesses for take off in a balloon has me very concerned.
>
> What sort of balloon flight conditions requires commercial balloon pilots to wear a harness for take off?
>
> I can see that safety has gone out the window, as now we just wear our pilot harness during take off & can fly in any conditions. In my 30 years of commerical ballooning on

3 continents, I have never required a harness for take off. If the weather conditions are that bad, I choose not to fly.

Given that CASA is mandating this new law, will CASA then cover any medical injuries, accidents to pilots that are a result of wearing the harness, and exempt the owners of balloon operator companies for any legal or medical expenses?

Has CASA done any research or studies of injuries to pilots wearing harnesses?

Has Work Place & Safety been covered by this new law & have they given their feedback.

I recognise that wearing a pilot harness has its benefits on fast balloon landings, but where is the research & manufacturers data to wearing a pilot in the various different circumstances.

Rights of ABF members

ANON-PW16-T53G-H - The ABF asks for CASA to confirm that our members are not at a disadvantage with the rules for Private Ballooning included in Part 131 instead of Part 103 (“Sport & Recreational Operations”). Without the publication of the Manual of Standards for Part 103, it is not possible for us to make that assessment before the implementation of part 131 on 2nd December 2021.

We have two further comments to make:

1/ Strict Liability concerns.

Whilst it may be true that the rules for private operators have not changed that much, it appears the consequences have with the introduction of strict liability (criminal offence) in the CASR’s. When the MOS is read in conjunction with the Part 149 regulations, it means that private pilots are liable for significant fines (circa $11,000 per breach) with very little or no right of review.

We ask that CASA outline and confirm to our members our understanding that:
• these penalties were applicable in the CAR’s for breach of similar provisions, including that our members could have previously incurred a criminal record for breach of the CAR; and
• a Part 149 ASAO organisation (for example, the ABF) will be responsible for the surveillance and monitoring of compliance to the Part 131 regulations and MOS and implement remedial action with the member to rectify the non-compliance, and should the member accept the remedial/disciplinary action, this will be the end of the matter. However, if the member continues to not comply with the Part 131 regulations (and MOS), the member can be referred to CASA who will be then take responsible for enforcement, issue any fines applicable and recording a criminal record against that member.

2/ Part 131 vs Part 103.

The ABF agreed to CASA including ballooning in Part 131 rather than Part 103 so that the operating rules did not need to be duplicated across both parts. We agreed to this on the basis there would be no disadvantage to private operators. Without the publication of the Part 103 Manual of Standards it is not possible to make this assessment. With Part 131 to come into effect on the 2nd of December and at this late stage, we ask CASA to confirm to our private pilot members that there will be no disadvantage to them by moving forward under Part 131.

CASA response

Pilot restraint harness

The MOS only mandates the wearing of a pilot restraint harness during take-off and the landing phase. The MOS recommends that the pilot operating the controls of the balloon, whether the pilot in command or the pilot in command under supervision, should wear the pilot restraint harness throughout the flight but this is not mandatory.

One reason for requiring a restraint harness to be worn on take-off is in case of a sudden system failure or emergency shortly after take-off. For example, the complete pilot light failure that happened on a full passenger balloon flight in Kenya. The pilot was ejected when the balloon hit the ground hard and suffered fatal injuries.

While a complete system failure may be unlikely, a pilot operating close to the ground after take-off, or when conducting low-level flight or landing, will have little time to react to unexpected threats or errors. Collision with terrain including trees or buildings can cause the pilot to be ejected and several cases have been reported.

The wearing of a pilot harness for take-off has nothing to do with a pilot's assessment of the weather conditions.

Rights of ABF members

CASA understands the concerns of the ABF and wishes to reassure its members that they will be at no disadvantage compared to pilots and organisations operating under Part 103 of CASR.

The question highlights the need for CASA to carefully consider the enforcement rules of any ASAO applicant and for CASA's Litigation, Investigations and Enforcement Branch to assist in that review. CASA notes that similar concerns were raised by the APF and RAAus and CASA's Litigation, Investigations and Enforcement Branch has worked with these organisations to ensure that their procedures meet the requirements of Part 149 of CASR. CASA will work with the ABF in the same way.

In answer to the question on penalties, CASA notes that the same strict liability and penalty provisions currently apply but are less visible. For example, most pre-Part 131 existing recreational ballooning rules were contained in a previous version of CAO 95.54. That CAO was empowered by regulation 308 (exemption power that predated Part 11 of CASR) and regulation 11.160 of CASR (also relates to exemptions). Under subregulation 308(3A), not complying with a condition of an exemption was a 50 penalty unit strict liability offence. Under regulation 11.210, not complying with a condition of an exemption (issued under Part 11 of CASR which includes regulation 11.160 of CASR) is a 50 penalty unit strict liability offence.

Additional comments from CASA

Some additional comments were made by CASA officers including the following:

Question

Why is there a mention of Class B airspace?

CASA response

CASA acknowledges there is currently no Class B airspace in Australia but for future proofing reasons, references to Class B airspace have been added into all the new flight operations rules.

Question

Should the carriage of electronic documents be subject to electronic flight bag (EFB) requirements?

CASA response

CASA's assessment is that the use of EFB on Part 131 aircraft, whether operated commercially or recreationally, does not require the same level of regulated safety as that which is in place for the commercial operation of aeroplanes and rotorcraft. Regulations 91.170 and 91.175 of CASR, which place requirements on crew members regarding the operation of portable electronic devices, apply to the operation of Part 131 aircraft and will be included in the Part 131 of CASR plain English guide.

Future direction

CASA discussed the proposed amendments, and additional changes that arose from separate feedback with the Part 131 TWG. Corresponding changes were also incorporated into the draft Part 131 plain English guide.

Following the final advice provided from the Part 131 TWG to the Aviation Safety Advisory Panel (ASAP), the ASAP recommended to the DAS that the Part 131 MOS not be made prior to the commencement of Part 131 on 2 December 2021.

This advice was accepted by the DAS and CASA issued new versions of Civil Aviation Order 95.53 and 95.54 prior to 2 December 2021 to provide interim legislative arrangements until the next steps in relation to the Part 131 MOS can be discussed with the ASAP. This interim legislative structure, and which rules apply to which kinds of Part 131 operators, is outlined in an updated version of Advisory Circular (AC) 131-03 - Transitioning to Part 131 - A guide for commercial balloon operators which was published by CASA on 13 December 2021.