



PURSUANT to Sections 28 and 30 of the Civil Aviation Act 1990

I, CRAIG FOSS, Associate Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This

7th

day of

Dec

2015

by **HON CRAIG FOSS**

A handwritten signature in black ink, appearing to read 'Craig Foss', is written over the printed name.

Associate Minister of Transport

Civil Aviation Rules

Part 137, Amendment 5

Agricultural Aircraft Operations

Docket 8/CAR/1

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Rule objective

The objective of amendment 5 to Part 137 is to introduce new rules to improve New Zealand's aviation safety performance in a way that embeds an effective safety culture in aviation organisations; and to ensure New Zealand meets its international obligations as a signatory to the Convention on International Civil Aviation.

Extent of consultation

This project was originally conceived to have a three stage implementation plan where the safety management provisions would be included in every affected rule. A project working group was formed in 2009 to address stage 1 which included international air operators, their maintainers, international aerodromes, and air traffic control.

Subsequent development shifted the direction to a single stage rule implementation, with 2 different transition times; and the safety management requirements would mostly be contained in a new rule part – Part 100.

As a result, a new policy project developed options for a safety management rule proposal in a risk based regulation environment. This policy was consulted in 2013 and was well received by the industry; and rule development continued as recommended in the policy document.

A Notice of Proposed Rulemaking, NPRM 15-02, containing the proposed new Part 100 and consequential amendments to Parts 19, 115, 119, 121, 125, 135, 137, 139, 141, 145, 146, 148, 149, 171, 172, 173, 174 and 175 was issued for public consultation under Docket 8/CAR/1 on 7 May 2015.

The publication of this NPRM was notified in the Gazette on 7 May 2015. The NPRM was published on the CAA web site and mailed to identified stakeholders including representative organisations who were considered likely to have an interest in the proposal.

A period of 42 days was allowed for comment on the proposed rule.

Summary of submissions

20 written submissions and 60 oral comments were received on the NPRM. These submissions and comments have been considered and as

a result a number of proposed amendments were removed for reasons of standardisation and the submissions influenced the shape of the transitional provisions. One submission related to Part 137, but the rule was not changed as a result of this submission. Refer to *Consultation Details* on page 10.

Examination of submissions

Submissions may be examined by application to the Docket Clerk at the Civil Aviation Authority between 8:30 am and 4:30 pm on weekdays, except statutory holidays.

Insertion of Amendments

The amendments to the rules in this Part are reflected by replacing the affected existing rules with the amended rules.

Effective date of rule

Amendment 5 to Part 137 comes into force on 1 February 2016.

Availability of rules

Civil Aviation Rules are available from–

CAA web site: <http://www.caa.govt.nz/>

Freephone: 0800 GET RULES (0800 438 785)

Subpart D — Commercial Operations – General

Rule 137.153 is revoked and replaced by the following rule:

137.153 Issue of certificate

An applicant is entitled to an agricultural aircraft operator certificate if the Director is satisfied that, in accordance with section 9 of the Act,—

- (1) the applicant has employed, contracted, or otherwise engaged a senior person identified as the chief executive who has the authority to ensure that all activities can be financed and carried out in accordance with this Part; and
- (2) the applicant has employed, contracted, or otherwise engaged a senior person or persons responsible to the chief executive who are responsible for—
 - (i) agricultural operations including flight operations and the supporting ground operations (chief pilot);
 - (ii) the system for safety management required under rule 137.155; and
- (2A) the senior persons referred to in paragraph (2) meet the qualifications, competency and experience requirements specified in Appendix C; and
- (3) the applicant and the senior persons required by paragraphs (1) and (2) are fit and proper persons; and
- (4) the granting of the certificate is not contrary to the interests of aviation safety.

Insert rule 137.155 after rule 137.153:

137.155 Safety management

An applicant for an agricultural aircraft operator certificate must establish, implement, and maintain a system for safety management in accordance with rule 100.3.

Insert Rule 137.160 after rule 137.159:

137.160 Agricultural aircraft operator safety management documentation

(a) An applicant for an agricultural aircraft operator certificate must provide the Director with a document containing—

- (1) the following information relating to the system for safety management required by rule 137.155:
 - (i) all of the documentation required by rule 100.3(b);
 - (ii) for an applicant that is not applying for a renewal of an agricultural aircraft operator certificate, an implementation plan that describes how the system for safety management will be implemented; and
- (2) the title, name, duties, and responsibilities of the senior person responsible for the system for safety management; and
- (3) information that identifies the lines of safety responsibilities within the organisation.

(b) The chief executive of the applicant's organisation must provide the Director with a statement signed by the chief executive on behalf of the organisation confirming that the information provided under paragraph (a)(1)—

- (1) demonstrates the organisation's means and methods for ensuring ongoing compliance with Part 100; and
- (2) is required to comply with Part 100.

Subpart E — Commercial Operations – Operating Requirements

Rule 137.209 is revoked and replaced by the following rule:

137.209 Changes to operations

A holder of an agricultural aircraft operator certificate must—

- (1) notify the Director in writing of any change that affects the currency of any information required by form CAA 24137/01; and
- (2) obtain prior acceptance from the Director before changing—
 - (i) the chief executive or any person referred to in rule 137.153(2);
 - (ii) the system for safety management, if the change is a material change.

Subpart G — Transition Provisions

Insert rule 137.301 after rule 137.259:

137.301 Transition for agricultural aircraft operator certificate holders and applicants

- (a) This rule applies to each—
 - (1) agricultural aircraft operator certificate holder;
 - (2) agricultural aircraft operator certificate applicant.
- (b) Before 1 February 2021, an organisation to which this rule applies—
 - (1) is not required to comply with—
 - (i) rule 137.153(2)(ii);
 - (ii) rule 137.155;
 - (iii) rule 137.160; but
 - (2) By 30 July 2018 must submit to the Director with the accompanying completed CAA form an implementation plan that—
 - (i) includes a proposed date for implementation of the system for safety management; and

- (ii) outlines how the organisation plans to implement the system for safety management required under rule 137.155.
- (c) The Director will, if acceptable—
 - (1) approve the organisation’s implementation plan; and
 - (2) set the date for implementation of the system for safety management.
- (d) To avoid doubt, the date for implementation is the date the Director approves the system for safety management.
- (e) In setting the date under rule 137.301(c)(2), the Director must have regard to the following:
 - (1) the capability of the organisation:
 - (2) the complexity of the organisation:
 - (3) the risks inherent in the activities of the organisation:
 - (4) the date of any certificate renewal:
 - (5) any resource or scheduling impacts on the organisation or the Authority or both:
 - (6) the date for implementation must not be later than 1 February 2021.
- (f) If the organisation is an applicant for an agricultural aircraft operator certificate it must submit its application for such a certificate together with the plan for implementation of the system for safety management.
- (g) This rule expires on 1 February 2021.

Appendix C

Insert Appendix C after Appendix B:

Table C.1 Senior person responsible for agricultural operations (chief pilot)

Document required	Has held, or holds a current grade 1 agricultural rating. Holds a current chemical rating if applicable.
Experience	Has practical experience acceptable to the Director appropriate for the type of operation being conducted.

Table C.2 Senior person responsible for the system for safety management

Competency	Demonstrate competency relevant to systems of safety management. A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

Consultation Details

(This statement does not form part of the rules contained in Part 137. It provides details of the consultation undertaken in making the rules.)

A Notice of Proposed Rulemaking, NPRM 15-02, Safety Management, containing the proposed rules was issued for public consultation under Docket 8/CAR/1 on 7 May 2015.

20 responses to the NPRM were received. The following submission related to Part 137:

One submitter commented that Part 100 SMS is not fit for purpose in agricultural aviation. The submitter believes that Part 100 does not have any practical benefit for agricultural aviation and may in fact negatively affect safety by focusing attention on process thereby taking precedence over safety. The submitter also notes agricultural aviation is a unique aviation activity that is increasingly burdened by bureaucracy (SMS included); that its safety culture and safety record is improving anyway; and that he would only support the use of a S.M.S. into Ag Aviation if its sole use was to promote Operational Flight Safety.

CAA Response: The CAA acknowledges the submitters comments in as much as SMS will require documentation and the introduction of systematic processes; and a consequential administrative impost, certainly during establishment of the operator's system.

Following agreement by Cabinet in April 2013, the CAA released a consultation document to seek feedback on the proposal to introduce mandatory risk management systems for both domestic and international certificated aviation operations. Consultation confirmed that the majority of respondents were supportive of a move to a risk-based approach to aviation safety management, and did not identify any significant issues. Feedback also identified that there was a desire from operators for New Zealand safety regulation to be consistent across the entire commercial aviation system, and to reflect global best practice by complying with international requirements.

It is worthy of note that, SMS is scalable and the principles can be applied in a number of business contexts with its primary purpose in an aviation context being to proactively manage operational risks.

Two related to the proposed transition requirements as follows:

Transition rules

In regard to the time allowed for transition, most believed that the implementation time allowed was adequate. However, 2 submitters felt that it was too short – both were working in areas that were mainly Part 135 operations, but had a small element of Part 125 operations that would require the shorter transition period. This, they felt was unachievable; and in one case the submitter suggested that Part 125 operations should be allowed the longer transition to match Part 135.

One submitter suggested dropping the transitional rule that requires a transitional plan by a fixed date, as it appears nearly impossible to enforce in a meaningful way. The submitter questioned the CAA's intention if the CAA does not agree with an implementation plan? The submitter was of the view that as long as a plan is submitted, regardless of its content, the rule has been met. The intent of this rule may well be better achieved by other means, such as the anticipated timelines the CAA expects it will take to process an application for an exposition change that includes a SMS.

CAA Response: The CAA has reviewed the proposed transitional provisions and came to the following conclusions:

- *The timing of the proposed implementation stages has been examined and found that 1 year for the first group and 3 years for the second group would be unreasonably short considering the following:*
 - *the number of affected certificates;*
 - *non-validated data on the level of proactive implementation already undertaken by organisations; and*
 - *an untested SMS certification process.*

Therefore, while still under consideration pending further review of information from other States who have already been through this process, the times are expected to be extended.

- *The decision by CAA that organisations submit an implementation plan was informed by current best practice*

and that other States have done likewise. To ensure that the organisation's SMS is properly developed within the required timeframe, some measure of additional oversight is necessary. Therefore, the final rules will be drafted to require that an implementation date is agreed between the organisation and the CAA; and that the implementation plan must be approved.

One of the acknowledged sources of hazards is change in an organisation's operation, and it is one of the reasons that effective change management practices be applied at the outset. Therefore, any changes to the implementation plan and SMS will be documented and submitted to the CAA for approval. If a change is required, the CAA may provide additional guidance to the organisation to ensure that the SMS remains in compliance with the SMS rules and is implemented within the specified period following the effective date of the final rule.

The final draft will also be explicit in requiring that, at the end of the implementation period (i.e. the implementation date), the SMS is acceptable to the Director.