



**WELLINGTON NEW ZEALAND**

**PURSUANT** to Section 28 of the Civil Aviation Act 1990

**I, HARRY JAMES DUYNHOVEN**, Associate Minister of Transport,

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This *4<sup>th</sup>* day of *November* 2003

by **HARRY JAMES DUYNHOVEN**

Associate Minister of Transport

**Civil Aviation Rules**

**Part 1, Amendment 24**

**Definitions and Abbreviations**

*Docket 1/CAR/1358*

## Content

Rule amendment objective .....	3
Extent of consultation.....	3
Summary of comments.....	4
Examination of comments.....	4
Insertion of Amendments .....	5
Effective date of rule.....	5
Availability of rules.....	5
Part 1 amendments .....	6
<b>Consultation Details</b> .....	<b>7</b>
Comments on the NPRM .....	7

### **Rule amendment objective**

The purpose of this amendment is to provide further clarification of the activities considered to be agricultural aircraft operations and therefore to which Part 137 applies.

On occasion the CAA has received complaints regarding agricultural aircraft operations and low flying activities. While considering the New Zealand Agricultural Aircraft Association (NZAAA) petition on rule 137.63 – Operations over non-populous areas, it was proposed that the definition of an agricultural aircraft operation be clarified to enable the Part 137 rules to be more appropriately applied.

Part 1 is amended to clarify which activities are considered to be agricultural aircraft operations and therefore may be conducted below 500 feet AGL (above ground level) in accordance with Part 137.

The amended definition specifies that flights to or from a treatment area that is within 5nm (nautical miles) of the loading area is considered to be a part of the agricultural aircraft operation and therefore the aircraft, with certain conditions, may be flown at a height less than 500 feet AGL. Movement to or from a treatment area that is greater than 5nm from the loading area must be conducted above 500 feet AGL and in accordance with the Part 91 general operating rules.

This amendment to Part 1 also clarifies that reconnaissance flights that may be necessary for agricultural aircraft operations are considered to be part of the agricultural aircraft operation. Previously the ability to conduct reconnaissance flights was contained within the Part 137 rules rather than in the definition.

### **Extent of consultation**

A technical study group (TSG) that comprised of representatives of the CAA and New Zealand Agricultural Aircraft Association (NZAAA) was formed in March 2000 to discuss the rule changes proposed by two petitions. The TSG met on three occasions, being March, June and August 2000, prior to the NZAAA conference in October 2000 where a draft NPRM rule proposal was presented to the attendees of the conference for discussion. A fourth meeting of the TSG was then held in December 2000 to discuss the draft NPRM and any comments resulting from the conference.

There were several informal discussions between CAA and NZAAA from January 2001 to July 2001 with a final TSG meeting being held in August 2001. The main issue that remained unresolved was the wording and perceived application of the rule 137.63(2) for operation over non-congested areas. The NZAAA position on this differed to that of the CAA and therefore it was necessary to seek external legal advice on the issue. The legal advice maintained that the wording of rule 137.63(2) is appropriate and should pose no interpretation problems, and therefore the intent of rule 137.63 has remained substantially unchanged.

A Notice of Proposed Rulemaking, NPRM 03-04, containing the proposed amendments to Part 137 and the consequential amendment to Part 1 was presented to the Ministry of Transport in April 2002, however due to an early government election publication of the NPRM was delayed. NPRM 03-04 was issued for public consultation under Docket 1/CAR/1358 on 12 September 2002.

The publication of this NPRM was notified in the Gazette on 12 September 2002 and advertised in the daily newspapers in the five main provincial centres on 12 September 2002. 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 50 days was allowed for comment on the proposed rule.

### **Summary of comments**

Ten submissions were received on the NPRM. One comment was received regarding amendment to the definition of an agricultural aircraft operation. A detailed summary of comments received and responses by the CAA is contained in the consultation details attached to these rules.

### **Examination of comments**

Comments 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 revocation of the definition of an *agricultural aircraft operation* and the insertion of this new definition of an *agricultural aircraft operation*.

**Effective date of rule**

Amendment 24 to Part 1 comes into force on 12 December 2003.

**Availability of rules**

Civil Aviation Rules are available from–

CAA web site: [www.caa.govt.nz](http://www.caa.govt.nz)

Freephone: 0800 GET RULES (0800 438 785)

## **Part 1 amendments**

### **1.1 General definitions**

*The definition of Agricultural Aircraft Operation is revoked and the following new definition inserted:*

**Agricultural Aircraft Operation** means the operation of an aircraft, on a single flight, or on a series of flights, including transit flights to and from a treatment area that is within 5 nautical miles of the loading area, for the following purposes:

- (1) dispensing an agricultural chemical;
- (2) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control;
- (3) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation;
- (4) dropping farm supplies on farms in rural areas or delivering farm materials to farms in rural areas;
- (5) surveying agricultural, forest, or water areas at a height of less than 500 feet above terrain;
- (6) feeding or transferring livestock on farms in rural areas;
- (7) the reconnaissance of the proposed treatment area for the above types of operation.

## Consultation Details

### Comments on the NPRM

(These statements do not form part of the rules contained in Part 137. They provide details on the consultation undertaken in making the rules.)

The CAA has worked through suggestions and comments made on the NPRM in consultation with representatives of the NZAAA and those who made submission on the NPRM and as a result has amended the rules where appropriate.

#### *1. Definition – Agricultural Aircraft Operation*

One commenter strongly disagreed with the proposed deletion of paragraphs (4), (5) and (6) which include activities such as dropping farm supplies or delivering farm materials; surveying agricultural, forest, or water areas at a height of less than 500 feet above terrain; and feeding or transferring livestock, as being agricultural aircraft operations. He believed that an agricultural pilot is constantly flying at extreme low levels on a regular basis and is more qualified to be doing this kind of work.

**CAA Comment:** The CAA has reviewed what at first appeared to be a straight forward amendment and realignment of the requirements for these particular aviation activities. The deletion of paragraphs (4), (5) and (6) from the definition of agricultural aircraft operations would mean that they could continue to be conducted privately (i.e. not for hire and reward), or would need to be conducted by helicopter under Part 133, or by the holder of Part 135 air operator certificate using either an aeroplane or helicopter.

- Not all Part 137 agricultural aircraft operators are Part 135 certificated and therefore could potentially lose revenue. This was the concern of the commenter.
- These activities could be undertaken by helicopter operators under Part 133 without the need for certification and the associated costs of this. However aeroplane operators would need to be Part 135

certificated. This creates disparity between fixed wing and rotary wing operators.

The CAA agreed to retain these activities in the definition of agricultural aircraft operations pending a review of the issue in conjunction with others relating to certification, training and management of agricultural aircraft operations in a separate rule development project.

The descriptor in paragraph (4) and (5) of the definition of agricultural aircraft operation requires further qualification to reflect that the additional rules and exceptions in Part 137 are applicable for these activities only when they are conducted in rural areas. For example the transferring of livestock from Auckland to Melbourne is not intended to be an Agricultural Aircraft Operation conducted under Part 137 but rather a commercial freight operation.

The definition in Part 1 and rule 137.3 has been amended for clarification.