

Explanatory Statement

Civil Aviation Safety Regulations 1998

MOS Part 139H Amendment Instrument 2025

Purpose

The *MOS Part 139H Amendment Instrument 2025* (the **instrument**) makes minor, miscellaneous amendments to *MOS Part 139H — Standards Applicable to the Provision of Aerodrome Rescue and Fire Fighting Services* (the **MOS Part 139H**).

The amendments:

- (a) ensure consistency with the aerodrome rescue and firefighting service (**ARFFS**) standards mandated by the International Civil Aviation Organization (**ICAO**) in ICAO Annex 14, Chapter 9.2; and
- (b) incorporate the effect of 7 current instruments, issued by the Civil Aviation Safety Authority (**CASA**), which grant exemptions, under regulation 11.160 of the *Civil Aviation Safety Regulations 1998* (**CASR**), against compliance with various provisions of Subpart 139.H of CASR; and
- (c) enable the use of technology-based solutions to assist in the observation of aircraft approaches, and departures, at an aerodrome.

Legislation

Civil Aviation Act 1988

Under section 9 of the *Civil Aviation Act 1988* (the **Act**), CASA has the function of conducting the safety regulation of a range of matters including, under paragraph 9(1)(c), developing and promulgating appropriate, clear and concise aviation safety standards.

Section 98 of the Act empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR.

Under paragraph 98(5A)(a) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

CASR

Under regulation 201.025 of CASR, for subsection 98(5A), CASA may issue instruments prescribing matters for definitions in the regulations relating to matters mentioned in the subsection.

As far as is relevant, under regulation 139.700 of CASR, Subpart 139.H of CASR sets out the operating and technical standards applicable to an ARFFS.

Under regulation 139.712 of CASR, CASA may issue a Manual of Standards for Subpart 139.H that provides for various matters, including the following:

- (a) standards for facilities and equipment used to provide an ARFFS (paragraph 139.712(1)(c));
- (b) any matter required or permitted by these Regulations to be provided for by the Manual of Standards (paragraph 139.712(1)(e));

- (c) any matter necessary or convenient to be provided for the effective operation of Subpart 139.H (paragraph 139.712(1)(f)).

Under the head of power, CASA has issued the MOS Part 139H.

Subregulation 139.705(1) of CASR includes the following definitions:

ARFFS provider for an aerodrome means the person or organisation that provides an ARFFS for the aerodrome.

category of an aerodrome means its category worked out by the method set out in section 9.2 of Chapter 9 of Annex 14 to the Chicago Convention.

CASA may approve a person as an ARFFS provider, for an aerodrome, under regulation 139.965 of CASR.

The term **applicable standards and requirements** is defined in regulation 139.755 of CASR. For an aerodrome to which subregulation 139.755(2) applies, the term means the standards and requirements for an aerodrome of its category set out in:

- (a) Chapter 9 of Annex 14 to the Chicago Convention; and
- (b) the MOS Part 139H.

Under subregulation 139.715(1) of CASR, if CASA sets out, in the MOS Part 139H, a way of complying with a requirement of Subpart 139.H, an ARFFS provider who uses that way is taken to have complied with the requirement unless the contrary is shown.

As far as is relevant, under subregulation 139.772(1) of CASR, an ARFFS provider for an aerodrome to which subregulation 139.755(2) applies must ensure that the necessary buildings and facilities for the service, including the following, are at the aerodrome:

- (a) communications facilities (paragraph 139.772(1)(b));
- (b) training facilities (paragraph 139.772(1)(d));
- (c) if there is a body of water within 1 000 metres of a runway threshold — a boat ramp and boat launching facilities (paragraph 139.772(1)(f)).

Under subregulation 139.772(2), the ARFFS provider must ensure that those buildings and facilities comply with any applicable requirements (including requirements as to location) stated in the MOS Part 139H.

Under regulation 139.785 of CASR:

- (a) there must be, on the aerodrome, a stock of fire-extinguishing agents of the kind or kinds, and meeting the performance standards, required by the applicable standards and requirements; and
- (b) the fire-extinguishing agents must be held in at least the quantities required by those standards and requirements.

Under subregulation 139.795(1) of CASR, there must be, on the aerodrome, vehicles and equipment for delivering extinguishing agent onto a fire. Under subregulation 139.795(6), the vehicles must be of a colour permitted by the applicable standards and requirements.

Under subregulation 139.800(1) of CASR, there must be, at the aerodrome, enough vehicles and equipment (other than vehicles and equipment for delivering extinguishing agent onto a fire) to provide the service, in accordance with the

applicable standards and requirements. Under subregulation 139.800(2), the performance of the vehicles and equipment must be in accordance with the applicable standards and requirements.

MOS Part 139H

Section 1.2 states the definitions of terms used in the MOS Part 139H.

Subsection 4.1.1 of the MOS Part 139H states the standards for fire vehicles.

Subsection 7.1.1 of the MOS Part 139H states the standards for fire extinguishing agent performance criteria.

Subsection 7.1.2 of the MOS Part 139H states the standards for fire extinguisher agent performance criteria.

Subsection 7.1.3 of the MOS Part 139H states the standards for the reserve supply of firefighting agents.

Subsection 22.1.2 of the MOS Part 139H states the standards for an aerodrome's ARFFS fire station communication centre (*FSCC*).

Subsection 22.1.6 of the MOS Part 139H states the standards for ARFFS training facilities.

Subsection 22.1.7 of the MOS Part 139H states the standards for inshore rescue boats.

Acts Interpretation Act 1901

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Content of instrument

The instrument amends the MOS Part 139H, to effect the following changes:

- Allow the colour of a fire vehicle to be a single, conspicuous colour, or predominantly of a conspicuous colour, rather than “signal red”.
- Prescribe the discharge rate for a complementary agent.
- Include Performance Level C foam as an extinguishing agent.
- Allow 100% of water to be replaced by a complementary agent for aerodrome categories 1 and 2.
- Allow reserve supplies of foam concentrate, with its associated propellant gas cylinders, to be 100%, instead of 200%.
- Allow the use of technology-based solutions, such as runway view cameras, to assist in the observation of aircraft approaches, and departures, at an aerodrome.
- Allow the remote termination of fire alarms, subject to monitoring by an automatic fire alarm service provider.
- Allow the manner of the housing of inshore rescue boats at an aerodrome to be performance-based.

- Allow a specified ARFFS training facility to be located other than at an aerodrome where the ARFFS is provided.

Legislation Act 2003 (the LA)

Paragraph 10(1)(d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends another legislative instrument. The instrument amends the MOS Part 139H, which is a legislative instrument. Therefore, the instrument is a legislative instrument, which is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instrument, because the instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

In this case, the instrument amends the MOS Part 139H and is almost immediately spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. However, the MOS Part 139H, as amended by the instrument, has enduring effect.

The MOS Part 139H deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

Document incorporated by reference

Under subsection 14(1) of the LA, a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2), unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the Act provides that, despite section 14, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

The instrument incorporates Part 3, *Fire alarm monitoring* of Australian Standard AS 1670.3:2024, titled *Fire detection, warning, control and intercom systems — System design, installation and commissioning*, as existing from time to time. The document is publicly available but subject to copyright, which is held by Standards Australia. It is made available by Standards Australia on a user-pays basis. CASA will, by prior arrangement, make the document available, for in-situ viewing, free of charge, at a CASA office.

Consultation

Consultation on proposed Part 176 of CASR — 13 July 2023

The following policy proposals were consulted on by CASA:

- Amend fire vehicle colour requirements.
- Amend complementary agent, with its associated propellant gas cylinders, reserve supply requirements.
- Remove the requirement for inshore rescue boats to be housed undercover.
- Amend ARFFS FSCC visual surveillance requirements.
- Amend the requirement for aerodrome fire alarms to terminate at the aerodrome's ARFFS FSCC.
- Amend the requirement about the location of ARFFS training facilities.

A significant majority of respondents agreed with each of the proposals.

Consultation on proposed amendments of MOS Part 139H — 20 March 2025

The details of the outcome of CASA's consultation on most of the policy proposals, which underpinned the instrument, are as follows:

- **Fire vehicle colour** A significant majority of respondents agreed for fire trucks to be of a single, conspicuous colour, or predominantly of a conspicuous colour.
- **Performance level C foam** A significant majority of respondents agreed with changes to add performance level C foam to the table specifying fire extinguishing agents in the MOS Part 139H.
- **Replacement of water by a complementary agent** A significant majority of respondents agreed with changes allowing the replacement of water with a complementary agent, for aerodrome categories 1 and 2, which meets the foam performance level A requirements specified in the abovementioned table.
- **Reserve supply of complementary agent** A significant majority of respondents agreed with changes allowing 100%, instead of 200%, as a reserve supply of complementary agent, with its associated propellant gas cylinders.
- **Visual surveillance system** A significant majority of respondents agreed with changes allowing an aerodrome's ARFFS FSCC to use a visual surveillance system to enhance, or provide, a complete view of the aerodrome's runways and "short final" approaches.
- **Remote monitoring of fire alarms** A significant majority of respondents agreed with changes allowing aerodrome fire alarms to terminate, and be monitored, other than at the aerodrome's ARFFS FSCC.
- **Housing inshore rescue boats** A significant majority of respondents agreed with changes allowing inshore rescue boats, which are provided at an aerodrome, to not be housed under cover.

Before the instrument is issued by CASA, it must publish a notice of intention to do so on the internet under regulation 11.280 of CASR. This happened by means of CASA's public consultation on an earlier draft of the instrument. The consultation period was from 20 March 2025 to 17 April 2025.

The earlier draft of the instrument, which was consulted on, did not include item [10] of Schedule 1 to the instrument. However, as mentioned above, the policy proposal given effect to by item [10] was consulted on in 2023. The Director of Aviation Safety (the **Director**) has made a determination under paragraph 11.275(1)(d) of CASR (namely, *CASA 42/25 – Determination – Non-compliance with CASR Subpart 11.J Requirements – MOS Part 139H Amendment Instrument 2025*) in relation to

item [10], on the basis that the amendment in item [10] is of a minor or machinery nature that does not substantially alter existing arrangements.

Before issuing the instrument, CASA must consider any comments it has received on the instrument under regulation 11.290 of CASR. This happened in relation to the earlier draft of the instrument, mentioned above.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for amendments of Manuals of Standards (OIA reference number: OIA23-06250).

The policy proposals that were consulted on by CASA, in 2023, in the context of proposed Part 176 of CASR, were considered by the Office of Best Practice Regulation (*OBPR*). OBPR determined that the proposals were unlikely to have more than a minor regulatory impact. Therefore, the preparation of a Regulation Impact Statement was not required for the proposals (OBPR reference number: OBPR21-01328).

Sector risk, and economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A(3) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses, and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution, and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The instrument incorporates the effect of various current exemptions granted by CASA, under regulation 11.160, from compliance with various provisions of Subpart 139.H to the following entities:

- (a) Airservices Australia, in its capacity as the ARFFS provider for each aerodrome located on the Australian mainland to which subregulation 139.755(2) applies;
- (b) Norfolk Island Regional Council, in its capacity as the ARFFS provider for Norfolk Island International Airport (YSNF).

Therefore, the instrument is only directly relevant to these 2 entities, which will, in effect, continue to have the benefit of the exemptions that the instrument perpetuates.

In these circumstances, CASA has assessed that there will be no significant change to the economic or cost impact on individuals, businesses or the community. This is confirmed by the assessment made by OBPR, mentioned above.

Impact on categories of operations

The instrument does not have any impact on specific categories of aircraft operations.

Impact on regional and remote communities

The instrument does not have any impact that is specific to regional and remote communities.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement

The instrument has been made by the Director, on behalf of CASA, in accordance with subsection 73(2) of the Act.

The instrument commences on the day after it is registered, and will be repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

MOS Part 139H Amendment Instrument 2025

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the instrument

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The amendments:

- (a) ensure consistency with the aerodrome rescue and firefighting service standards mandated by the International Civil Aviation Organization (**ICAO**) in ICAO Annex 14, Chapter 9.2; and
- (b) incorporate the effect of 7 current instruments, issued by CASA, which grant exemptions, under regulation 11.160 of the *Civil Aviation Safety Regulations 1998 (CASR)*, against compliance with various provisions of Subpart 139.H of CASR; and
- (c) enable the use of technology-based solutions, to assist in the observation of aircraft approaches, and departures, at an aerodrome.

Human rights implications

The instrument does not engage any of the applicable rights or freedoms.

Conclusion

This instrument is compatible with human rights, as it does not raise any human rights issues.

Civil Aviation Safety Authority