



AC 90-1(0)

DECEMBER 2010

EXCLUSIONS AGAINST PROVISIONS IN CASR PART 90

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1. REFERENCES

- Civil Aviation Safety Regulations 1998 (CASR) Part 90 *Additional Airworthiness Requirements*.
- Manual of Standards (MOS) Part 90—*Additional Airworthiness Requirements*.

2. PURPOSE

This Advisory Circular (AC) provides guidance and information to registered operators and maintenance personnel regarding applications for exclusions against the MOS and provisions in CASR Part 90.

3. STATUS OF THIS AC

This is the first version of this AC to be written for CASR Part 90.

Advisory Circulars are intended to provide advice and guidance to illustrate a means, but not necessarily the only means, of complying with the Regulations, or to explain certain regulatory requirements by providing informative, interpretative and explanatory material.

Where an AC is referred to in a 'Note' below the regulation, the AC remains as guidance material.

ACs should always be read in conjunction with the referenced regulations.

4. ACRONYMS

AC	Advisory Circular
AD	Airworthiness Directive
CAR	Civil Aviation Regulations 1988
CASA	Civil Aviation Safety Authority
CASR	Civil Aviation Safety Regulations 1998
MOS	Manual of Standards
NAA	National Airworthiness Authority

5. DEFINITIONS

For the purpose of this AC:

aeronautical product means any part or material that is, or is intended by its manufacturer to be, a part of or used in an aircraft, unless excluded by the regulations.

exclusion means an instrument that excludes a registered operator from the requirements of an airworthiness directive (AD), a provision of CASR Part 90 or the MOS.

National Airworthiness Authority (NAA) means the airworthiness regulatory authority of the country.

State of Design means the State having jurisdiction over the organisation responsible for the type design.

6. BACKGROUND

6.1 CASR Part 90 *Additional Airworthiness Requirements* was issued on 1 December 2010 and prescribes rules that are additional to the original type certification, to which aircraft owners/operators are responsible for ensuring compliance prior to operation. CASR Part 90 is supported by a MOS. The additional airworthiness requirements are generated by leading NAAs such as the Federal Aviation Administration of the United States of America and the European Aviation Safety Agency, and are those requirements found necessary for safe operation of certain aircraft after the issue of the Type Certificate. These requirements are later endorsed/promulgated by International Civil Aviation Organization standards and recommended practices. The Civil Aviation Safety Authority (CASA) has in the past issued these additional airworthiness requirements as separate Australian ADs in the AD/GENERAL series.

6.2 Since the introduction of CASR Part 90, the applicable ADs in the AD/GENERAL series have all been cancelled. However, many operators in the past had been issued exclusions against these applicable ADs. These exclusions were granted if the aircraft design could not physically meet the standard prescribed in the ADs and justification was provided to ensure an unsafe condition could not exist. CASR 90.015 provides for continuation of the conditions in these exclusions against the provisions in CASR Part 90 that replace these ADs.

6.3 However, for an aircraft or aeronautical product that physically cannot meet the requirements of a provision in CASR Part 90 or the MOS, an operator can apply for an exclusion against the operation of a provision provided an acceptable level of safety can be maintained. The exclusion process has been designed to be the same as, or similar to, the exclusion process employed in relation to CASR Part 39 ADs

7. EXCLUSIONS AGAINST THE PROVISIONS OF CASR PART 90

7.1 Some existing aircraft designs entering the Australian register may not physically comply with certain standards applicable to a provision in CASR Part 90. On such occasions, it is possible for the registered operator to apply for an exclusion against the standards of the provision in CASR Part 90. Under CASR 90.010(1), a person may submit an application to seek an exclusion from the operation of a provision in CASR Part 90, on the basis that it is not possible to meet the provision and an acceptable safety justification has been provided.

7.2 For CASA to consider an exclusion, the registered operator must submit an application in writing using Form 955, which is available from the CASA Operations Office or on the CASA website:

http://casa.gov.au/wcmswr/_assets/main/lib100044/form955.pdf

7.3 Any relevant information supporting the safety justification, such as the NAA or manufacturer's approval or a statement from the manufacturer supporting the engineering justification, should be attached to the form.

7.4 All applications will be charged a fee based on an hourly rate. Upon receiving the application, CASA will estimate the number of hours required to assess the application and prepare a written quotation for the applicant. Once payment has been received, an airworthiness inspector or engineer will assess the application on its merits and make a determination.

7.5 CASA may approve an exclusion provided an equivalent level of safety can be justified. CASA will assess the application and make a determination based on engineering practices to ensure that the airworthiness of the aircraft will not be compromised. To enable approval, the applicant will need to provide engineering justification as to how the proposed exclusion will address the unsafe condition to a level of safety equivalent to the applicable provision in CASR Part 90. To support the application it is recommended the engineering justification should be endorsed by a CAR 35 engineer, the manufacturer or the NAA of the State of Design.

7.6 If an exclusion is granted, CASA will advise the applicant in writing and include the exclusion instrument signed by the delegate. The exclusion will be in force from the time of approval. The exclusion may also detail specific conditions. These conditions must be met by the registered operator for the exclusion to be satisfied otherwise the registered operator will be required to carry out the requirement of the applicable provision in CASR Part 90.

7.7 An exclusion against a provision is no longer valid after the provision has been amended. Therefore for an operator to satisfy the requirements of the amended provision, they can either re-submit an application for an exclusion against the amended provision or comply with the amended provision.

7.8 Where CASA does not approve an application for exclusion, the applicant may seek review by the Administrative Appeals Tribunal.

7.9 All exclusions approved by CASA will be published on the CASA website: <http://www.casa.gov.au/rules/exempt/index.htm>.

8. EXISTING EXCLUSIONS ISSUED UNDER CASR 39.004

8.1 CASR Part 90 regulations are requirements transferred from numerous AD/GENERAL series airworthiness directives. Prior to this transfer, CASR 39.004 exclusions were issued for those prescriptive requirements where the operator elected to comply in another way or, in some cases, were literally unable to comply due to the aircraft's structural or configuration incompatibilities.

8.2 CASR 90.015 permits existing CASR 39.004 exclusions to continue in effect after the AD is cancelled, and apply to the equivalent succeeding CASR Part 90 provision, provided:

- the exclusion was effective immediately before the AD was cancelled; and
- all conditions of the exclusion continue to be complied with.

8.3 The CASR 39.004 exclusion will become void if:

- there is a change to the identity of the registered operator;
- a condition mentioned in the exclusion is breached; or
- in the interest of safety, CASA notifies the operator the exclusion is revoked.

8.4 The effect of this provision means that operators who have existing CASR 39.004 exclusions do not need to apply to CASA for a CASR 90.010 exclusion provided the conditions of the existing exclusion continue to be met and there is no change of circumstances surrounding the CASR 39.004 exclusion.

8.5 Should any of the circumstances change and the CASR Part 90 provision still cannot be complied with, the registered operator will need to apply for an exclusion under CASR 90.010 using the guidance in section 7 of this AC and the procedures detailed in the *CASA Exclusion Procedures Manual*.