



European Aviation Safety Agency  
**Comment-Response Document 2015-05**

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Appendix 2  
to Opinion 04/2017

**RMT.0352**  
**Non-commercial operations of aircraft listed in the Operations Specifications (OpSpecs) by an AOC holder**

**Table of contents**

1. Summary of the outcome of the consultation	2
2. Individual comments (and responses)	8



**1. Summary of the outcome of the consultation**

NPA 2015-05 received 92 comments from 21 commentators, of which 10 competent authorities, 4 air operators, 4 air operator associations, 1 aircraft manufacturer, 1 aircraft delivery company, and Eurocontrol.

The bar chart below shows the number of commentators by category (NAAs, air operators, etc.).

Chart 1: Categories of commentators

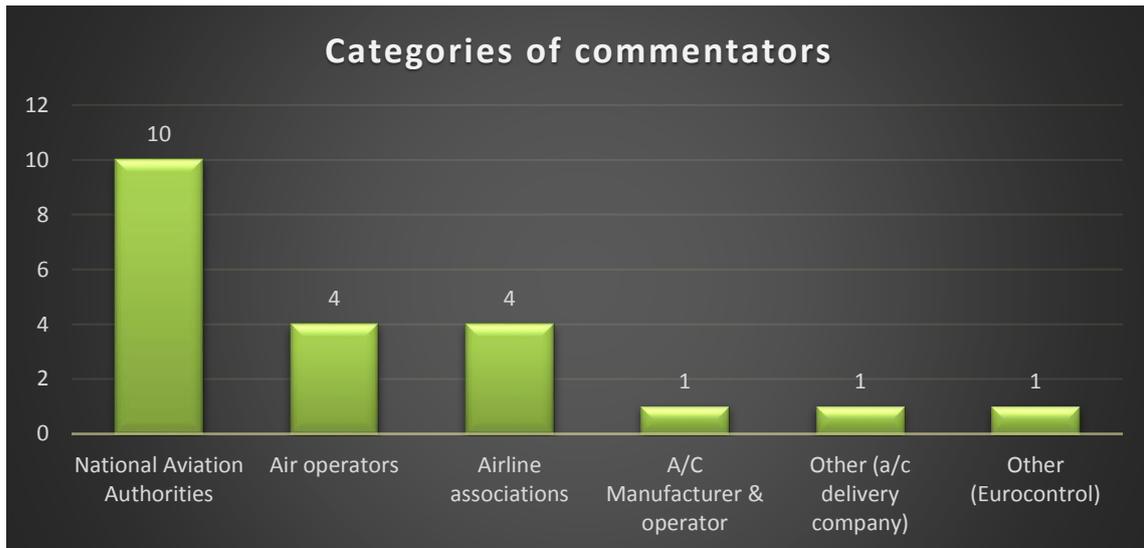
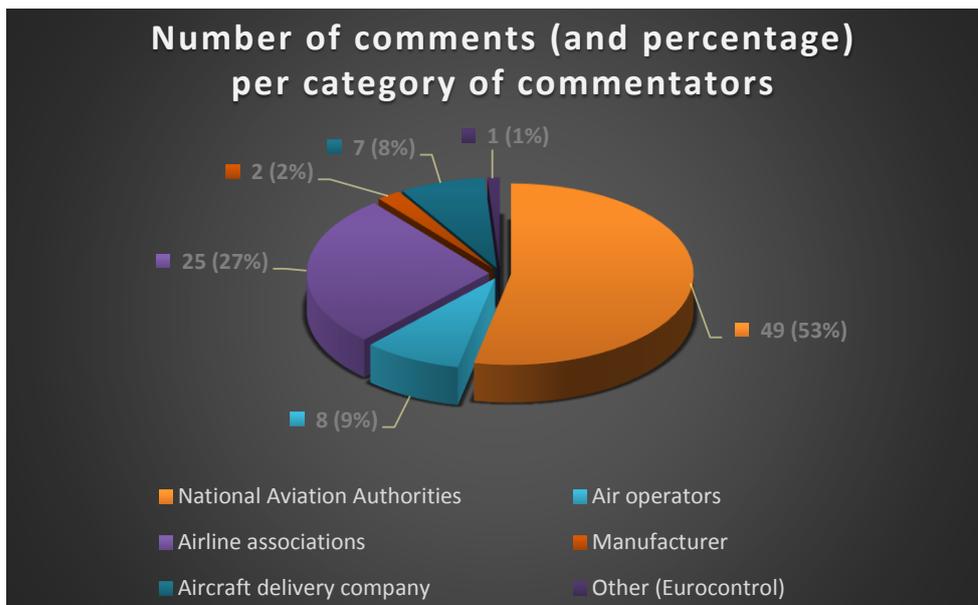


Chart 2 shows the number and proportion of the comments submitted by each category of commentators:

Chart 2: Number and percentage of comments submitted by each category of commentators

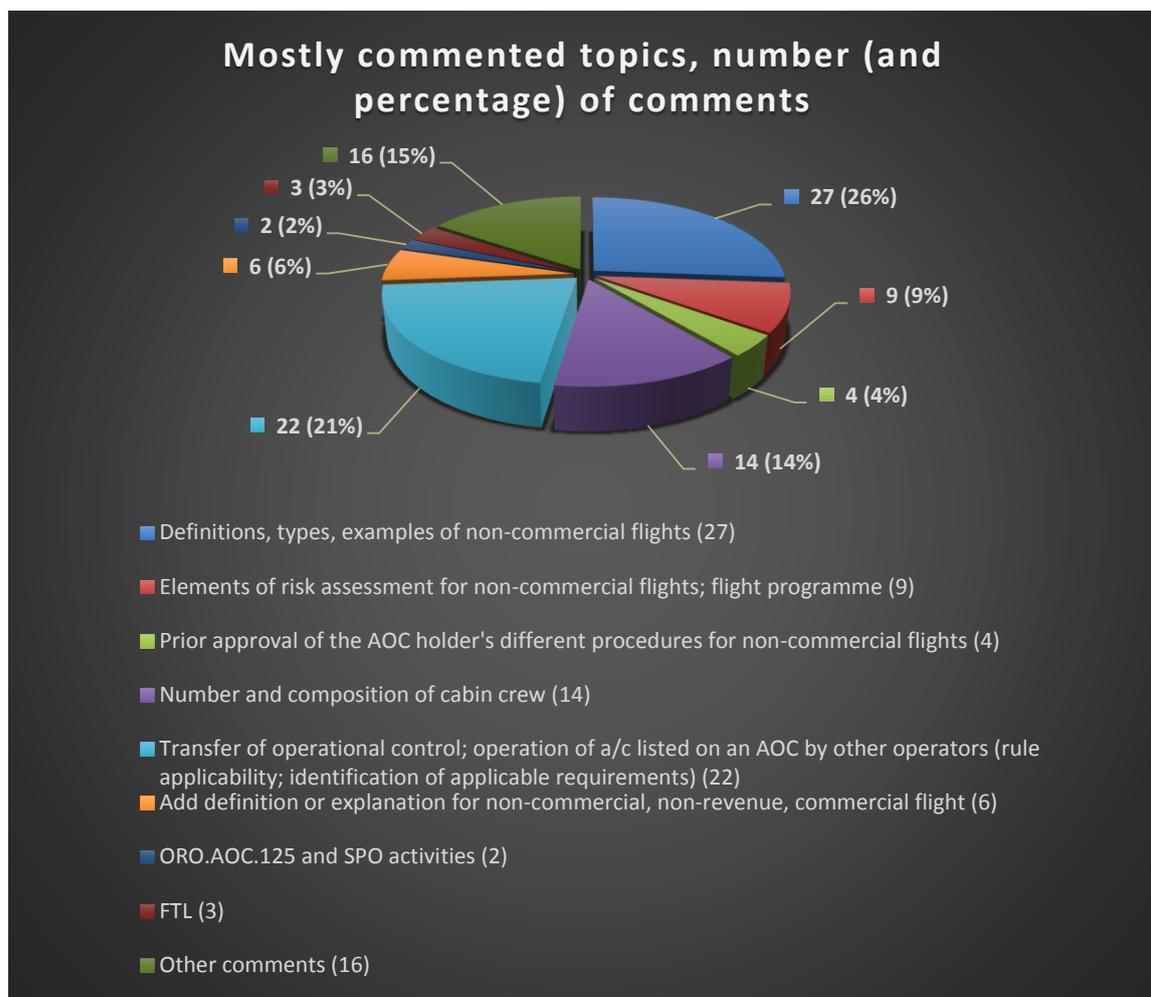


Most comments were submitted by national aviation authorities (49 out of 92, representing 53 % of the total number of comments), followed by industry representatives (airline associations), in a

proportion of 27 % (25 out of 92 comments). The other categories of commentators submitted a smaller number of comments, resulting in a smaller percentage per each category (below 10 %).

The areas/topics which were most commented — and which clearly indicated their relevance for stakeholders — are shown in the chart below.

Chart 3: Number (and percentage) of comments received to the main topics commented by stakeholders



Some comments addressed more than one topic — that is why the sum of comments in this chart is higher than the total number of comments inserted in the CRT (98 comments compared to 92 comments numbered in CRT). 'Other comments' include those that were outside the scope of this RMT, those taking notice of this RMT but requiring no change to the content, those related to other topics addressed in this RMT, which, too, required no change to the proposed text, and those providing statements (comparison with other regulatory systems).

Industry representatives, national authorities and the aircraft delivery company commented to an equal extent on the terminology and classification proposed for the non-commercial flights. The comments, while showing the variety of terms and definitions used by the industry, were useful in offering alternative solutions.

However, in view of the proposed changes included in the draft amendment to the new Basic Regulation (current Regulation (EC) No 216/2008), whereby the definition of commercial operation has

been removed, the entire structure of the rules based on the dichotomy commercial–non-commercial operation will have to be revised and changed. This change, if adopted, will allow future regulatory action based on risks and performance. The opposition commercial–non-commercial will no longer represent a main criterion to determine the performance or the operational risk, but rather one of the elements of the new approach. The specific criteria allowing the competent authorities to establish whether a particular activity is commercial (or non-commercial) will be laid down in the implementing rules. Proposing rules that may no longer be valid in the proposed formula soon after their entry into force should be avoided.

For all these considerations, the publication of the definitions and further classification of the non-commercial flights proposed in NPA 2015-05 (with further improvement suggested by the comments received) will be withdrawn until the new Basic Regulation, currently under discussion between the European Council, the Parliament and the Commission, has been adopted. The comments affected by this decision have been answered with a new formula, specifically introduced for this purpose: **‘Noted and waiting for the new Basic Regulation’**.

As regards the clarification of the terms ‘non-commercial’ versus ‘non-revenue’ (six comments received on this issue), it has been decided to replace the term ‘non-revenue’, which currently is included in AMC3 ORO.MLR.100, in the structure of an OM-A of an AOC holder, with the term ‘non-commercial’. The entire issue will have to be revisited once the revised Basic Regulation will have been adopted and published. In any case, creating regulatory material to clarify accounting matters is beyond the scope of the operational rules.

Although showing different opinions, the topic of aircraft interchange or mixed operations, i.e. the use of aircraft included in an AOC by other operators for other-than-CAT operations was significantly commented by both national aviation authorities and industry representatives (airline associations, operators), which confirmed the need to clarify this situation.

It was stated in NPA 2015-05 that the cases where an aircraft is listed on the AOC but occasionally used by other operators as well as other-than-CAT flights would not be addressed in the context of this RMT. However, it was understood that the rules for this practice were not clear enough and that the process of removing the aircraft from the AOC every time it is used by other operators during a single day is impractical and even impossible due to the administrative procedures entailed by this requirement.

The comments and the frequent questions EASA received, requesting the clarification of this operational regime showed clearly that this is common practice, crucial for certain businesses, which needs a clear and practical regulatory framework. As some commentators stated, ‘the establishment of a practically oriented solution and a legal basis is highly required’ (Austro Control); ‘the ability to flexibly alternate between commercial and non-commercial use of an aircraft is absolutely vital for General Aviation. [...] In many cases the business case for this investment depends entirely on the ability to use the aircraft in both commercial and non-commercial operations. If mixed use of an aircraft is unnecessarily complicated or restricted it will have severe negative consequences for GA and the fleet of aircraft available to GA will shrink considerably.’ (IAOPA).

A few comments state that operational control must remain with the AOC holder as the highest certificate holder at all times, even when the aircraft is operated by another operator, e.g. the owner, as the shift of operational control to other operators represents a high risk and decreases the level of safety while leaving the AOC holder unprotected. The case when the AOC holder is responsible for the



operational control of a flight is covered by the provisions of ORO.AOC.125; the other operator must follow the AOC holder's procedures for non-commercial flights. So this means that the case when the other operator is responsible for the operational control still remains unaddressed.

Therefore, after careful consideration of the comments received and the numerous questions received from national authorities and operators, requesting EASA to set up a regulatory framework for such type of operations, EASA decided to establish minimum regulatory requirements to cover the use of aircraft registered on an AOC by other operators for other-than-CAT operations performed in accordance with Part-NCC, Part-NCO or Part-SPO (new ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104).

Since this part of the rules was developed after the public consultation period closed, a focused consultation with the Review Group for NPA 2015-05 was organised. For the final draft of the rules, a focused consultation with the competent authorities took place at a later stage. The comments received have not been included in this document, as there was no reference to it in the draft text proposed through the NPA; however, responses to said comments have been provided to the commentators. The conclusion of both steps of the consultation was that the proposal was supported by most of the participants. Several issues were raised, with the most important one being the flexibility for the general aviation community for such operations. Other observations raised to EASA requested to clarify the regulatory regime of the transfer of operational control between the operators, the continuing airworthiness aspect, the minimum equipment list (MEL), and the specific approvals (SPA) for such mixed operations. Consequently, the rule was completed by a series of AMC and GM to further detail or just explain the requirements introduced at the implementing rule level.

The comment submitted by Airlink has also been considered when drafting the new rules for the operation of aircraft by other operators.

14 comments were submitted on the proposed alleviation for non-commercial operation of maximum 19 passengers with no cabin crew on board larger aircraft (MOPSC above 19). Most of them suggested adding more clarifications. The text in the NPA was understood as proposing an alleviation which contradicted the STC requirements. This was not the intention and the text in the implementing rules and in the GM has been clarified in this respect.

Alternatively, some stakeholders perceived this alleviation as too risky and the mitigation measures mentioned in the AMC to ORO.CC.100 'too complex to be covered by passengers' (Austro Control), and therefore they did not support the proposal.

The current rules do not require an assigned cabin crew on board an aircraft with an MOPSC below 19 operated commercially with maximum 19 passengers; instead, they do require the presence of at least one cabin crew on board an aircraft — with maximum 19 passengers — but a larger cabin (with an MOPSC above 19). After much consideration and additional consultation, it was decided to keep this alleviation for the operators that wish to use this possibility. It was also considered that the rules should not require a higher level of passenger protection on non-commercial flights on aircraft with an MOPSC above 19 compared to commercial operation on aircraft of an MOPSC below 19 in similar conditions (maximum 19 passengers in both cases).

A few comments proposed additional rule references and more elements in the AMC containing the minimum elements of risk assessment for the non-commercial flights. These comments have been accepted and the additional references have been added to the text. The new



GM2 ORO.AOC.125(a)(2)(ii), proposing the development of a flight programme for the non-commercial flights with an increased level of risk, has been raised to the level of an AMC, as proposed by a comment submitted by DGAC, with the necessary flexibility for the non-applicable items. EASA disagrees with the proposal to develop a predetermined checklist in an AMC, as the elements considered for the risk assessment or for the flight programme may vary considerably from one operator to the other in order to reflect the specificity of their operation.

Four comments were submitted in relation to the prior approval of the different operational procedures for non-commercial operations when different from the CAT operational procedures. Some NAAs highlighted the necessity of keeping the prior approval of the different procedures used by an AOC holder for its non-commercial flights, arguing that the operator may possibly use non-standard operations leading to a change in the management system, which should be subject to prior approval. Others stated that there is no added value even in keeping the requirement to inform the competent authority; since such procedures have to be included in the operations manual, they are visible and can be easily verified during the oversight activities. It has been decided to remove the requirement for a prior approval in this case.

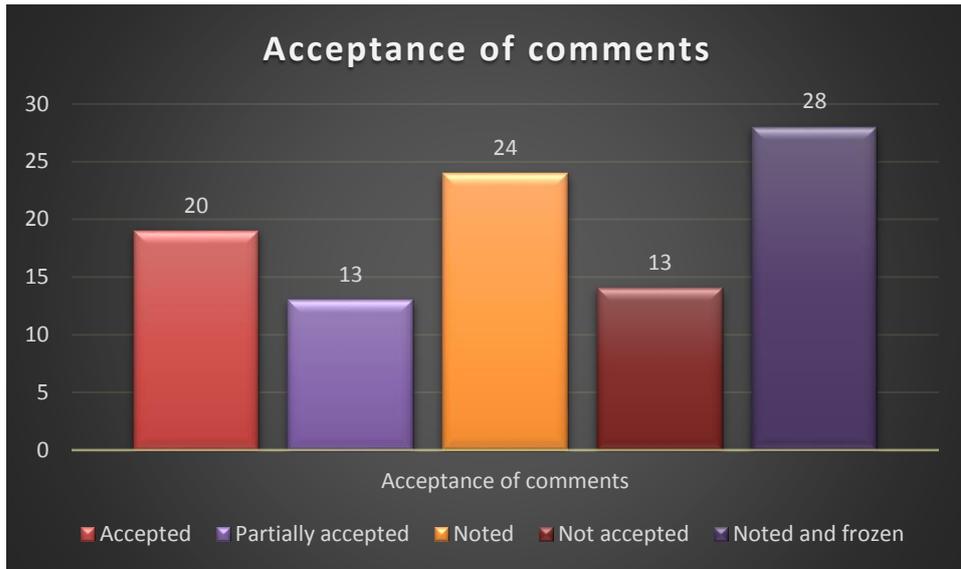
The inclusion of SPO activities under the remit of ORO.AOC.125, similar with the NCC operations when performed by an AOC holder — by eliminating the requirement to submit a declaration — was less commented. The DGAC comment on this topic requested a consistent approach for the SPO activities of an AOC holder under ORO.AOC.125 as the one applicable to the AOC holder's NCC operations. The other comment received was in favour of keeping the current rules with no change. EASA further analysed this option in order to simplify the procedure for an AOC holder that may perform SPO activities. After considering the benefits and drawbacks of this proposal, the conclusion was that by removing the requirement to submit a declaration when conducting SPO flights, the current rules will not be simplified; on the contrary, this would add more layers of complexity. If there were no declaration, another form or document should preserve the relevant information (the registration marks of the aircraft used for SPO operations and the related specific approvals). Further analysis of this option led to the proposal to create an integrated AOC, which would have altered both the format and the concept of the operations specifications — and this was not the initial intention of the proposal. Therefore, it was decided to not change the current rules in this respect. At the same time, the new rule ORO.GEN.310 will enable an AOC holder wishing to perform SPO operations to do so.

A few comments (3) referred to the FTL requirements, which had already been included in the proposed AMC2 ORO.AOC.125.

The chart below shows the statistics of comment acceptance. For the comments that referred to several issues (on the same topic or on different topics), with different degrees of acceptance, the general status has been set as 'partially accepted'. The comment received from Austro Control was the only one in which each topic was counted separately (thus having 7 answers), due to the significant number of topics addressed in a single comment in CRT. Thus, the total number of comments shown in the chart is 98, to which the answers were distributed as shown below:

Chart 4: Acceptance of comments





The individual comments on the NPA and the associated responses are provided below.

## 2. Individual comments and responses

In responding to comments, a standard terminology has been applied to attest EASA's position. This terminology is as follows:

- (a) **Accepted** — EASA agrees with the comment and any proposed amendment is wholly transferred to the revised text.
- (b) **Partially accepted** — EASA either agrees partially with the comment, or agrees with it but the proposed amendment is only partially transferred to the revised text.
- (c) **Noted** — EASA acknowledges the comment but no change to the existing text is considered necessary.
- (d) **Not accepted** — The comment or proposed amendment is not shared by EASA.

### IMPORTANT NOTE:

For the CRD to NPA 2015-05, a special type of answer has been introduced: **“Noted and waiting for the new Basic Regulation”**. This specific entry was necessary and has been utilised for those comments addressing a part of the RMT.0352 which was not further developed and published with the related Opinion. EASA has decided to withdraw the publication of the definitions and further classification of the non-commercial flights proposed in NPA 2015-05 (with further improvement suggested by the comments received) because the proposed removal of the definition of ‘commercial operation’ put forward in the draft amendment to the new Basic Regulation (currently under revision by the Council, the Parliament and the Commission), is likely to cause further and deeper changes to the entire approach. See also the explanations in Chapter 1 above.

### (General Comments)

-

comment

23

comment by: *Austro Control*

Due to many open questions raised by national authorities and operators regarding “non-commercial operations of aircraft listed in the OpSpecs by an AOC holder” Austro Control GmbH explicitly appreciates the change of the rule and the development of AMC/GM of ORO.AOC.125, as further explanations are indeed necessary for practical reasons und legal certainty.

#### Page 6/ 2.1 Overview:

General important comment and proposal for further rulemaking:

As mentioned in the NPA itself, this rulemaking process is not addressing the cases where an aircraft is listed on the AOC, but occasionally used by another operator, for example the owner (*Remark: who could also be part of the AOC-holder staff and therefore no additional requirements would have to be fulfilled*). A lease agreement would be required for that change of operation.

Generally, the aircraft should be removed from the AOC for the time during which it is not



flown by the AOC holder and leased to a third party. However, for example if the aircraft is leased to a foreign ATO or another third party (no AOC-holder) quite frequently, the amendment (“registering/de-registering” of OpSpecs) is an undue administrative burden with possible high costs (depending on the relevant national fee schedule).

Although in cases when there is an interchange of aircraft it might be sufficient that the operations manual mentions which aircraft and by whom it is flown in this case, the above situation remains unsolved. Therefore, the establishment of a practically oriented solution and a legal basis is highly required. The former Austrian rules e.g. provided, when AOC-aircraft were used by third parties that a technical release to service had to be issued or a special (Authority approved) procedure in the CAME had been established in those cases before the aircraft returned into the AOC-holder’s environment.

With such a request the responsibility to take appropriate actions rests with the operator without permanent issuance/removal of OpSpecs. This procedure would be a simplified administrative way and would not have a negative impact on safety.

**Proposal:** Close legal gap for non-commercial operations of AOC-aircraft used by third parties on European level

→ Possible New Rulemaking task? Or at least further explanation/clarification in the AMC of this process (especially if removal from AOC is really required)!

**Justification:** Legal certainty and a complete regulatory framework is necessary for all stakeholders

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Page 9/ (b) “Non-revenue” versus “non-commercial”:

From an operational point of view the terms “non-revenue flights” and “non-commercial flights” are treated as synonyms (refer to section *Terminology issues*). However, for the purpose of a comprehensive clarification it should be defined, from an accounting point of view (especially in regard to question related to the kerosene fuel taxes issue), what kind of operation are meant by these flights. From a practical point of view a clarification in this context would be highly appreciated.

**Proposal:** Description and clarification of that subject.

**Justification:** Legal certainty

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Page 10/ Stakeholders opinion:

Regarding the invitation to comment on the requirement for a submission of declaration for SPO operation, the option “no change” is supported.

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Page 21/ ORO.CC.100 (d):

The wording „...shall take into account the relevant data included in the certification approval of the aircraft cabin configuration used by the operator” is unclear in regard to GM1 ORO.CC.100(d) (see Page 28).

**Proposal:** The relevant data as mentioned shall be taken into account in any case.

**Justification:** In the TC until now the CC minimum is mentioned only in very exceptional



cases (B787), in the STC you can find it occasionally.

If the STC holder/ TC holder/ holder of the change defines a minimum cabin crew this must be obeyed and may not be negated by an operator.

There is also a discrepancy between ORO.CC.100 (a) of Reg. (EU) No 965/2012 and ORO.CC.100 (d) of NPA 2015-05.

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Page 22/ GM1 ORO.AOC.125(a)(2) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC:

#### RELOCATION FLIGHTS

(b) 'Delivery flight': a flight to transfer the aircraft from the acceptance location (**e.g.** manufacturer, refurbishment location, previous owner, lessor/lessee, long-term storage) to the operator's base.

Comment regarding the wording: "e.g." should be added to make sure that the list is not an exhaustive one.

General comment: Usually, a delivery flight from the manufacturer or the previous owner takes place **before the aircraft is listed on the AOC** (e.g. an airline purchases a new aircraft and transfers it to home base for final inspection and authority approval). There is no provision covering a flight by an AOC holder before the aircraft is listed on the AOC.

In theory this would require the AOC holder to file a declaration acc. to part NCC for such a flight?

With other words: If an operator doesn't want to apply ORO.AOC.125 but generally performs a delivery flight, does that mean that he has to submit a declaration or does ORO.AOC.125 automatically apply? Would it be sufficient to cover these cases by a description in the operations manual?

The same applies e.g. for demonstration flights (conducted before the OpSpecs are issued).

**Proposal:** Clarification of this subject is absolutely necessary for all stakeholders. -> add an explanation to this GM or eventually new AMC/GM to ORO.AOC.125(b). Specify whether or not a declaration has to be submitted in those cases (considering that the operator itself is already conducting these flights before OpSpecs issuance).

**Justification:** Legal certainty and requested answers for the raised opened questions

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Page 23/ TRAINING FLIGHTS:

**Proposal:** The term "training flights" with sub-terms (a) "licensing training" and (b) "operating training" should be extended; to each term the wording "and checking" should be added.

**Justification:** the definition/term should clarify that the aircraft may also be used for checking.

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Page 27/ AMC1 ORO.CC.100 (d):



**Proposal:** (a) Non-operating crew members – definition should be extended to:

“...and who are trained on the specific type of A/C (e.g. door operation, location of equipment, use of equipment) and the operator's normal and emergency procedures.

**Justification:** Equipment (doors, slides, location, use) differs on various A/C types.

**Proposal:** (b) In any case where passengers according to (b) are on board a **minimum of one** CC shall be assigned per cabin deck (considering B747, A380).

**Justification:** The mitigation measures mentioned in (b) - e.g. briefings, surveillance, seating, communication with flight crew - are too complex to be covered by passengers and briefing by flight crew is too much time consuming.

For example use and possible failures of equipment (e.g. automatic functioning of slides), the various location and operation of equipment, the handling of the cockpit door, interphone communication on larger aircraft, securing of cabin and galleys and accessibility of exits, who is accomplishing the direct view criteria?

response

Thank you for your extensive feedback and comments.

Page 6/ 2.1 Overview:

Accepted.

The proposal has been included in the new ORO.GEN.310 and NCO.GEN.104. New AMC and GM related to these rules have been developed.

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Page 9/ (b) ‘Non-revenue’ versus ‘non-commercial’:

Partially accepted.

EASA agrees that there is a need to clarify the meaning of the two concepts. However, creating regulatory tools to prevent accounting deviations is beyond the scope of the Air Operations Regulation. EASA considers that issues such as fuel tax should rather be monitored and prevented by proper authority control.

The term ‘non-revenue flights’ has been replaced by ‘non-commercial operations’ in Chapter 8.7 of the OM-A template for AOC holders.

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Page 10/ Stakeholders opinion on adding the SPO activities under ORO.AOC.125:

Noted.

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Page 21/ ORO.CC.100 (d):

Accepted.

Both the text of ORO.CC.100(d) and the text of GM1 ORO.CC.100(d) have been changed to clarify that the alleviation is allowed only if this does not contradict the data provided in the STC.

However, it has to be kept in mind that the data on the minimum number of cabin crew



specified in the STC have been established through an evacuation test with the maximum number of passengers on board for the given MOPSC number. At the same time, the certification requirements refer to the operational requirements. This alleviation would be allowed only if an operator proves that it can ensure an appropriate level of protection to the maximum 19 passengers on board by developing adequate measures to mitigate the risk of such an operation.

'There is also a discrepancy between ORO.CC.100 (a) of Reg. (EU) No 965/2012 and ORO.CC.100 (d) of NPA 2015-05.'

Accepted.

ORO.CC.100 (a) and (d) have been amended to solve the discrepancy.

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Page 22/ GM1 ORO.AOC.125(a)(2) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC:

**General answer: partially accepted.**

*RELOCATION FLIGHTS, (b) Delivery flights*

**Partial answer: Noted and waiting for the new Basic Regulation.**

*General comment on non-commercial flights (e.g. delivery flight, demonstration flight) before the aircraft is registered on the AOC:*

**Partial answer: partially accepted.**

ORO.AOC.125 does not apply to operations with aircraft that are not included in an AOC.

In principle, when there is no European rule to cover a certain case, this gap is to be covered by the legislation of each Member State.

EASA acknowledges that the current EU rules do not currently cover these flights, as the principles of the declaration system were not meant to accommodate this type of operation. Regulation (EU) 2017/363 now specifies in Article 6(3) that such flights, when performed by operators which are not AOC holders, shall be operated in accordance with the national rules.

In any case, apart from the administrative procedures to be applied when an aircraft is not covered by the AOC, there should always be a risk assessment defining the risk profile of such flights and adequate operational procedures applied to them. Moreover, the continuing airworthiness regime of an aircraft not covered by an AOC also changes and, consequently, the applicable requirements must be observed.

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Page 23/ TRAINING FLIGHTS:

**Noted and waiting for the new Basic Regulation.**

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Page 27/ AMC1 ORO.CC.100 (d):

**General answer: partially accepted.**

*Paragraph (a) Non-operating crew members – definition should be extended as proposed.*



**Partial answer: accepted.**

Paragraph (b) “In any case where passengers according to (b) are on board **a minimum of one CC shall be assigned per cabin deck (considering B747, A380)**”

**Partial answer: not accepted.**

The operator should perform a risk assessment of such flights before establishing the adequate mitigation procedures. If afterwards the operator decides to use the alleviation offered by ORO.CC.100(d) and develops the overhead mitigations required, it may use the alleviation.

EASA agrees that the additional conditions may be considered too complex or too time consuming; however, the verb ‘may’ in ORO.CC.100(d) enhances the idea that this means granting of a permission; it is not a mandatory requirement. An operator may decide, at all times, not to use the alleviation but rather to comply with ORO.CC.100(a) and assign one cabin crew on board.

comment

24

comment by: UK CAA

Thank you for the opportunity to comment on NPA 2015-05 Non-commercial Operations of Aircraft listed in the Operations Specifications (OPSSpecs) of an AOC Holder.

Please be advised that there are no comments from the UK Civil Aviation Authority.

response

Noted.

comment

25

comment by: Luftfahrt-Bundesamt

The LBA has no comments on NPA 2015-05.

response

Noted.

comment

38

comment by: Swedish Transport Agency, Civil Aviation Department  
(Transportstyrelsen, Luftfartsavdelningen)

Swedish Transport Agency (STA) supports the Agency initiative to clarify the terminology and the rules (the intent of paragraph ORO.AOC.125) regarding Non-commercial operations of aircraft listed in the Operations Specifications (OpSpecs) by an AOC holder.

Even though the proposed change of ORO.AOC.125 does not apply when the operational control is transferred from an AOC holder to an NCC/NCO operator, STA can see a need for common European provisions for the transfer of responsibilities between such operators (especially from an airworthiness perspective).



response Thank you for your comment. Accepted.

The new ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 and the related AMC and GM have been developed as a minimum set of requirements to ensure the safety of operation when the aircraft included in an AOC is used by the AOC holder itself (when not already covered by ORO.AOC.125) or by other operators for other-than-CAT operations performed in accordance with Part-NCC, Part-NCO or Part-SPO.

comment 53

comment by: *FNAM (French Aviation Industry Federation)*

FNAM (Fédération Nationale de l'Aviation Marchande) is the French National Professional Union / Trade Association for Air Transport, grouping as full-members:

- CSTA: French Airlines Professional Union (incl. Air France)
- GIPAG: French General Aviation Operators Professional Union
- SNEH: French Helicopters Operators Professional Union
- CSAE: French Handling Operators Professional Union
- GPMA: French Ground Operations Operators Professional Union
- EBAA France: French Business Airlines Professional Union

And as associated member:

- UAF: French Airports Professional Union

The NPA 2015-05 introduces changes in comparison with:

- The Commission Regulation (EC) No 965/2012;
- The Decision No 2014/017/R;

The comments hereafter shall be considered as an identification of some of the major issues the FNAM asks EASA to discuss with third-parties before any publication of the proposed regulation.

In consequence, the comments hereafter shall not be considered:

- As a recognition of the third-parties consultation process carried out by the European Parliament and of the Council;
- As an acceptance or an acknowledgement of the proposed regulation, as a whole or of any part of it;
- As exhaustive: the fact that some articles (or any part of them) are not commented does not mean FNAM has (or may have) no comments about them, neither FNAM accepts or acknowledges them. All the following comments are thus limited to our understanding of the effectively published proposed regulation, notwithstanding their consistency with any other pieces of regulation.

Generally speaking, FNAM supports the initiative of EASA to clarify Non-commercial operations of aircraft listed in the Opspecs by an AOC holder.

These changes can have an expectation of beneficial effect on safety level. The FNAM



	welcomes these proposed amendments, which will ensure a harmonised improvement of safety by specification of the minimum requirements for non-commercial operations by AOC holders and by a clarification of the current rules. The harmonisation of the Regulation will imply a strengthening of the harmonisation and the Level Playing Field within the European States.
response	Noted.
comment	71 <span style="float: right;">comment by: EUROCONTROL</span> The EUROCONTROL Agency does not have comments on NPA 2015-05.
response	Noted.
comment	84 <span style="float: right;">comment by: Carl Norgren, Swiss Int Air Lines</span> We have taken note of NPA 2015-05 and support it without further comments.
response	Noted.
comment	90 <span style="float: right;">comment by: Southern Cross International</span> <p>The proposal as laid down in NPA 2015-05 addresses non-commercial operations performed by Air Operator Certificate (AOC) holders with aircraft listed in the Operations Specifications (OpSpecs). Although GM1 ORO.AOC.125 (rule applicability) suggests that the operational control of a non-commercial flight can be transferred from the AOC holder to another operator, ORO.AOC.125 itself does not address this possibility. This would however be a very useful provision, since some (smaller) operators may not have sufficient (recent) experience to perform certain non-commercial flights, such as maintenance check flights or acceptance flights. It would give them the possibility to outsource such flights to specialised third parties, including the OEM. The third party has to comply with Part-NCC or Part-SPO and has to submit a declaration in accordance with ORO.DEC.100.</p> <p>Mixed crew operation is not addressed in the proposal. It is not uncommon that acceptance flights or flights performed before the transfer of ownership or at the end of a leasing period are carried out with a combined crew representing lessor/lessee or seller/buyer. Several paragraphs from Part-ORO and Part-CAT are affected, e.g. ORO.FC.120 (Operator conversion training) and ORO.FC.145 (Provision of training).</p>
response	Thank you for the comment. Accepted. The transfer of operational control is now addressed in the new ORO.GEN.310 and



NCO.GEN.104 and the related AMC and GM.

Mixed crew operation has been included in AMC1 ORO.AOC.125(a)(1)(ii), as an element for the risk assessment of non-commercial flights. Crew training is also mentioned in the same point. The intention of the new AMC/GM to ORO.AOC.125 is to add relevant guidance to operators while keeping the rules flexible and adaptable to specific types of operation. The risk assessment performed by the operator should determine the profile of every non-commercial flight that it performs.

## 2. Explanatory Note — 2.1. Overview of the issues to be addressed

p. 5-6

comment

5

comment by: *Stephan Eder, FOCA*

The explanatory note states:

"This rulemaking task is not addressing the cases where an aircraft is listed on the AOC but occasionally used by another operator which is not an AOC holder, for example the owner"

Why is this - rather common - case excluded. Especially such "mixed" operations needs some guidelines!

Furthermore:

"In such a case, the two operators have to clearly identify and distinguish their responsibility and operational control "

It shall be made clear, that the responsibility shall remain with ONE entity: the "main" operator - being the one with the higher certificate, in this case the AOC-holder.

He must ensure that the minimum standards according this NPA are adhered to, as described in "his" OM-system.

He shall remain ultimately responsible for the operation with this aircraft listed on his AOC.

response

Thank you for your comment. Partially accepted.

The 'mixed' operations, i.e., the operation of aircraft included in an AOC by other operators for other-than-CAT operations in accordance with Part-NCC, Part-NCO or Part-SPO, are now covered by the new ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 and the related AMC and GM.

For the second part of the comment, when considering the definition of operational control provided in Annex I to the Air OPS Regulation, the AOC holder should not be responsible for the operational control of the aircraft while it is being operated by another operator.

Instead, if there are clear rules that enable easy identification of the operator that is responsible for the operational control of any other-than-CAT flight, it is also possible to transfer the operational control from the AOC holder to the other operator without



diminishing the level of safety appropriate to each type of operation.

For example, the new proposed requirements state that the operators must have a procedure which should clearly identify which entity is responsible for the operational control of every other-than-CAT operation performed with the aircraft included in an AOC by other operators, detail the way in which operational control is transferred between the operators, add information of relevant personnel, complete the aircraft technical log system, comply with the occurrence reporting system, report any technical malfunction of the aircraft, etc.

As this is considered to be a complex type of operation, it has been proposed that the procedure developed by the AOC holder regarding the use of the aircraft included in an AOC by other operators shall be submitted to the competent authority for prior approval.

The rule proposal is that the CAMO of the AOC holder must remain responsible for the continuing airworthiness of the aircraft for all the operations performed by the other operators and that the other operators using the aircraft must have a contract with the CAMO of the AOC holder. The requirement that all operators using the aircraft included in an AOC shall have a contract with the same CAMO will be mirrored in the requirements related to the continuing airworthiness responsibility of the operator/owner, included in Part-M. The other operator must ensure it follows the procedure that enables the AOC holder to have updated information about the serviceability status of the aircraft at all times.

comment 18

comment by: IAOPA Europe

IAOPA appreciates the effort to clarify the requirements for non-commercial operations by an AOC holder. With some minor but important adjustments, we support the proposed changes which are generally performance based and more flexible. However, we do not accept the underlying principle that this regulation is of no relevance for GA, and the conclusion of the Risk Assessment that it does not affect General Aviation. For the same reason we also believe that GA should have been part of the rulemaking process.

The ability to flexibly alternate between commercial and non-commercial use of an aircraft is absolutely vital for General Aviation. An aircraft, specially one that could be of relevance for an AOC holder, is a considerable investment. In many cases the business case for this investment depends entirely on the ability to use the aircraft in both commercial and non-commercial operations. If mixed use of an aircraft is unnecessarily complicated or restricted it will have severe negative consequences for GA and the fleet of aircraft available to GA will shrink considerably.

In the NPA it is stated that:

"This rulemaking task is not addressing cases where an aircraft is listed on the AOC but occasionally used by another operator which is not an AOC holder, for example the owner. In such a case, the two operators have to clearly identify and distinguish their responsibility and operational control with regard to those particular flights. Each operator will have to comply with the applicable rules for the operation conducted."

The mentioned ability to transfer operational control on an occasional basis to another



operator which is not an AOC holder is extremely important for GA, and should be more clearly allowed for in the regulation, since it is not uniformly accepted by all competent authorities. For instance it should be made clear that nothing prevents an NCC operator from submitting a declaration involving an aircraft that is at the same time registered under an AOC, as long as the AOC holder and the NCC operator has clearly defined who has operational control at any given time. This could be added as guidance material to the NCC declaration.

The other important case for GA of mixed commercial/non-commercial use of an aircraft is operations taking place under ORO.AOC.125, i.e. operations where the AOC holder remains the operator. This would typically be the case where an aircraft owner (non-AOC holder) hires an AOC holder to manage his aircraft, i.e. enters an operational management contract with an AOC holder. In this case the aircraft management company/AOC holder is still the operator when flying for the owner of the aircraft, and in order to get more utility out of the aircraft the AOC holder will typically use the same aircraft for commercial operations when not flying for the owner. This situation is the direct target of the NPA and it is certainly of very great importance for GA and the ability to make efficient use of GA aircraft.

In summary, the proposal certainly affects non-commercial General Aviation since it affects the investment in and availability of aircraft that can be used for either commercial or non-commercial operations.

response Thank you for your comment. Accepted.

The operation of aircraft included in an AOC by other operators for other-than-CAT operations in accordance with Part-NCC, Part-NCO or Part-SPO is now covered by the new ORO.GEN.310, NCC.GEN.101 and NCO.GEN.104 and related AMC and GM.

comment 26

comment by: FAA

### General Comments

EASA's proposal focuses on developing risk analysis and unique standard operating procedures (SOPs) when non-commercial operations are performed by AOC holders. Air Carriers operating in accordance with Title 14 Code of Federal Regulations (CFR) part 135 generally state in their general operations manual (GOM) that all flights will operate in accordance with part 135 standards. Although they are not required to, they chose to do this in the interest of safety. Some of the areas EASA is recommending for unique SOP development are currently conducted under an air carrier environment today. In the event a maintenance functional check requires special action, the flight should be operated normally and as the system would normally be used. If not, it could be assumed that the corrective action would have considerations that the crew would follow during the check.

One concern noted is the use of non-standard language between the two regulating agencies, FAA and EASA. By regulation, the FAA requires pilots to record 'other commercial flying', which may not consist of flight hours accrued operating under part 135 rules. It could consist of flight instruction hours provided under 14 CFR part 61, but this is still commercial flying; non-commercial flying could be as narrowly limited to a pilot flying him or herself



only. Flights conducted using an aircraft on an AOC may also be considered 'other commercial flying, such as flying the owner of the aircraft (when that airplane is not the exclusive use aircraft), maintenance flights, repositioning flights and ferry flights. In these cases, the aircraft may be operated in accordance with 14 CFR part 91 operating rules, but to the pilot it is still a commercial operation, requiring an FAA commercial pilot certificate and appropriate FAA medical certificate.

FAA regulations already identify those commercial operations that are not subject to holding an AOC issued in accordance with 14 CFR part 119. Part 119.1(e)(1 through 10) list the exceptions of the types of commercial operations that do not require an AOC. A flight where compensation is involved requires a commercial pilot certificate (and appropriate medical certificate) in order to perform crewmember duties, which include the exceptions contained in part 119.

### Safety Management Systems (SMS)

FAA regulations do not require part 135 AOCs to implement an SMS. Part 121 operators must develop and maintain an SMS program; however, many part 135 operators voluntarily adopt and use risk assessments prior to conducting flights. Some part 135 operators are in the process of developing full SMS programs voluntarily. Flying is inherently risky, but to maintain the high safety record currently enjoyed by our AOCs, they mitigate risks through several means, such as those mentioned above.

This report highlights risks associated with maintenance flights, ferry flights, training flights etc. Not all maintenance performed on aircraft requires functional checks, and for those that do, it is reasonable for the crewmembers to know the nature of the malfunction and the work that was performed to correct the malfunction prior to conducting the flight.

See 14 CFR §§ 135.265,.267,.269., & 135.271

response

Thank you for your comments. Noted.

On the general comments:

The Air OPS Regulation requires all operators to which Annex III (Part-ORO) applies to have an SMS. This includes non-commercial operators with complex motor-powered aircraft.

The initiative of changing the terms in order to adopt the same terminology should be initiated at a horizontal level, in all aviation domains, throughout all regulations. Among the difficulties expected, the following ones may be the most relevant:

- If a new terminology is adopted, it would have to be incorporated step by step in all the existing and applicable regulations in order to avoid confusion and duplication of terms. This is a lengthy process.
- Educating the stakeholders to use new and sometimes unfamiliar vocabulary can take place only gradually and in a long period.
- At the same time, EASA has to consider the aspect of translating the regulation into the languages spoken in the European Union, therefore the terminology used should be clear, precise and easy to translate.

On SMS:

The current European regulation requires all operators to have an SMS proportionate to the nature, size and complexity of their operation. If a Part 135 operator should move its place of



residence or conduct its operations from a European Member State, then an SMS is required. It is a condition for the European operator and a voluntary action for the one operating in the US.

comment

32

comment by: *Mario Tortorici*

The statement "this rulemaking task is not addressing the cases where an aircraft is listed on the AOC but occasionally used by another operator which is not an AOC holder, for example the owner. In such case, the two operators have to clearly identify and distinguish their responsibility and operational control with regard to those particular flights" is misleading for the following two reasons:

1) even if it is stated that the RMT is not addressing such cases in reality they are addressed, both in this paragraph and in new proposed GM1 ORO.AOC.125

2) ENAC strongly disagrees about the possibility that one specific aircraft could be listed in the Ops Spec of the holder of an AOC and at the same time being operated and under the operational control by a different operator; in this way EASA is introducing the concept that an AOC holder is a different entity than an aircraft operator and that aircraft listed in one Ops Spec are not necessarily operated by the AOC holder. This concept could not be found in basic regulation and in current Reg. 965/2012 and could cause a disruption in oversight of operations of CAT operators, with safety, insurance, custom consequences. The concept that aircraft listed in one Ops Spec shall be at all time operated, i.e. under the operational control, of the specific AOC holder is clearly supported by current requirement in ARO.OPS.110 (d)(2 ) (*in case of dry lease out the aircraft is timely removed from the operator's AOC*). Moreover, it does not seem logical that if an operator operates an aircraft listed in its own Ops Spec for non-commercial operations there is the need for actions required in ORO.AOC.125 while if the operational control is transferred to another operator, while the aircraft is kept in the Ops Spec of the previous operator, there is no need of any action, specific procedure or notification to the CA.

A further and very critical issue is continuing airworthiness of the aircraft, if we will allow change of operator for aircraft listed in the Ops Spec of a CAT operator without removal of those aircraft from the AOC it will become unclear the status of the aircraft, considering that in Part M, MA.201 requires specific provisions for aircraft used/operated in CAT and that ATL, maintenance program (including reliability program when applicable) and MEL shall be specific for each operator.

On the side of the NAAs if there will be no more any certainty that aircraft listed in one Ops Spec are under the responsibility and the operational control of the AOC holder there will be an impact on the effectiveness of the continuous oversight process by the CA and of ramp inspections performed by all other NAAs. **Therefore ENAC proposes to delete the above statement and add a GM about the issue to confirm that when the aircraft operational control is given to an operator different for the AOC holder the aircraft has to be timely removed from the AOC of the former operator.**

response

Thank you for your comments. Not accepted.

1): The quoted statement is from the Explanatory Note and it stated that no new



requirements would be developed on this topic. GM1 ORO.AOC.125 in the NPA explained how the ORO.AOC.125 requirements should be read; no new information was included.

However, EASA considered the significant number of comments and the numerous questions received from national authorities and operators on this topic, and decided to develop regulatory material to cover the use of aircraft included in an AOC by other operators for other-than-CAT flights performed in accordance with Part-NCC, Part-NCO and Part-SPO.

2): The new ORO.GEN.310, NCC.GEN.101 and NCO.GEN.104 establish a practical framework through a minimum set of rules to cover the use of aircraft included in an AOC by other operators for other-than-CAT operations performed according to Part-NCC, Part-NCO or Part-SPO, or by the same legal person as the one holding the AOC, but when acting as a declared operator (Part-SPO) or a flight training organisation, distinct from the AOC holder.

The aim is to create regulations that are efficient and proportionate, easy to adapt to the new business environment while keeping a high level of safety. Regulations have to keep up with the fast development of the industry demands. A rigid regulatory structure would only obstruct some business models, which may lead operators to find ways to avoid regulatory compliance in search of more flexibility to help them save their business.

The purpose of this flexible requirement is to acknowledge a type of operation that is common practice, and create a safe regulatory framework for it.

Amending the AOC every time an aircraft is used by another operator for other-than-CAT flights is an administrative burden for both the operator and the competent authority. A mixed operation — where the aircraft performs, e.g. a CAT segment, followed by an NCC segment, then by an SPO segment — each operated by a different operator, to return the next day to the AOC holder for another CAT flight — is impossible to be conducted; the removal of the aircraft from the AOC requires advanced planning and an additional administrative layer — often costly — involving the competent authority and the operator due to the change in the AOC. An ad hoc request of such a mixed operation can never be accommodated due to the requirement to remove the aircraft from the AOC. This administrative burden can be overcome if specific conditions are put in place to ensure safety and easy verification of the operator that holds the operational control every time a particular aircraft registered on the AOC is operated by another operator.

The operator using the aircraft included in an AOC for its other-than-CAT flights must comply with the applicable requirements (i.e., NCC, NCO or SPO). This implies compliance with Part-ORO (for NCC and SPO) for the management system, the operations manual, the MEL, the declaration, the high-risk SPO, the flight crew requirements, etc. The declaration will have to include the registration mark of the aircraft used by an NCC or SPO operator even when it is also registered on the AOC.

## 2. Explanatory Note — 2.1. Overview of the issues to be addressed — Connection with related RMTs

p. 6-7

comment 72

comment by: EBAA



	Please specify the minimum requirements applicable to various non-commercial operations.
response	<p>Noted.</p> <p>The intent of the AMC/GM to ORO.AOC.125 is to propose a performance-based approach and avoid being too prescriptive. The minimum requirements applicable to these operations are Part-NCC, Part-NCO, or Part-SPO, as the case may be (explained in the new GM1 ORO.AOC.125(a)).</p> <p>Further elements to be considered by the operator in the risk assessment of its non-commercial operations are mentioned in AMC1 ORO.AOC.125(a)(1)(ii). The new AMC2 ORO.AOC.125(a)(1)(ii) includes a flight programme for non-commercial flights with an increased level of risk, also to be used depending on the result of the operator's risk assessment of its non-commercial flights.</p>

## 2. Explanatory Note — 2.1. Overview of the issues to be addressed — General context

p. 7-8

comment	<p>73</p> <p>comment by: EBAA</p> <p>Please specify the NAAs that have already developed GMs.</p>
response	<p>Not accepted.</p> <p>An AMC or a GM is not an appropriate place to include such information.</p>
comment	<p>74</p> <p>comment by: EBAA</p> <p>By whom and how! EASA could take into consideration all the existing opinions?</p>
response	<p>Noted.</p> <p>This comment is related to ORO.AOC.125, that requires an AOC holder to include in its operations manual 'a clear identification of any difference between operating procedures used when conducting commercial and non-commercial operations'.</p> <p>The differences in the operating procedures between commercial and non-commercial operations have to be identified by the AOC holder and described in the operations manual.</p>

## 2. Explanatory Note — 2.1. Overview of the issues to be addressed — Terminology issues

p. 8-9



comment	75	comment by: EBAA
	What about Demo Flights?	
response	<b>Noted and waiting for the new Basic Regulation.</b>	

**2. Explanatory Note — 2.1. Overview of the issues to be addressed — Relationship between ORO.AOC.125 and SPO activities**

p. 9-10

comment	50	comment by: IACA International Air Carrier Association
	P10 – Stakeholders are invited to provide their comments and feedback on this approach	
	It is IACA’s understanding that AOC holders do not need a declaration for the listed <i>Non-commercial Flights</i> .	
	IACA agrees with the Performance Based Approach and not to change ORO.AOC.125(b) in this regard.	
response	Noted. Thank you for your comment.	

**2. Explanatory Note — 2.3. Summary of the Regulatory Impact Assessment (RIA) — 2.3.1. Safety risk assessment**

p. 11

comment	27	comment by: FAA
	This paragraph refers to the <i>Perpignan accident</i> , which consisted of a flight at the end of a lease agreement. The paragraph goes on to say <i>this type of flight is likely to be performed occasionally</i> .	
	Leased aircraft are common in the United States, and any aircraft that is on an AOC must be maintained in accordance with applicable FAA requirements, for the part under which it is operated. There is an expectation that an aircraft used in commercial operations receives more scrutiny than one not used in commercial operations. As pointed out in paragraph 2.3.3, the use of leased aircraft is expected to increase, but in the event a lessor/owner wants the aircraft evaluated in flight upon return to the lessor/owner, if the flight is not conducted under part 135 or part 121 operating rules, it is expected to be conducted in accordance with part 91 operating rules. It is not as if the flight is operated haphazardly, without regulatory structure.	



response Thank you for the comment. Noted.

Ferry flights, functional check flights and other flights that may have a higher level of risk do not have a particular operational regime under the current Air OPS Regulation. The AOC holder may choose to conduct these flights either by applying the same procedures as for its CAT operation or under the Part-NCC or Part-NCO rules (depending on the aircraft complexity). The new AMC and GM to ORO.AOC.125 mean to clarify and support the operator in performing a correct risk assessment of such flights before deciding which regulatory regime to follow.

comment 76

comment by: EBAA

The risk matrix is not according with the ICAO Annex 19 nor with any other approved / recognised risk assessment methodology. The numbering used is not consistent and no explanation is given.

response Noted.

The matrix is based on the ICAO Safety Management Manual, Doc 9859 Safety Management Manual, 2<sup>nd</sup> Edition, 2009, and customised to the EASA impact assessment process. The green boxes correspond to low-significance issues, the yellow to medium-significance issues, and the red to high-significance issues.

**2. Explanatory Note — 2.3. Summary of the Regulatory Impact Assessment (RIA) — 2.3.2. Who is affected?**

p. 11

comment 19

comment by: IAOPA Europe

As explained under item 2.1 the proposal certainly affects non-commercial General Aviation since it affects the investment in and availability of aircraft that can be used for either commercial or non-commercial operations.

response Noted.

Please refer to the answer provided to your previous comment (No 18).

comment 33

comment by: Mario Tortorici



In paragraph 2.3.2 the statement "the affected parties are AOC holders conducting both CAT and other-than CAT operations (non-commercial operations) with aircraft listed in the OpSpecs" is confusing. It is not clear in the text if "other-than CAT" and "non-commercial" are synonyms. In our understanding, they are not synonyms since SPO and some type of training flights are other-than CAT but are still commercial operations.

For what concerns SPO in the NPA there is already a paragraph in page 9 of 29 so the content of page 9 and page 11 should be harmonized.

But no indication could be found in the NPA about commercial training flights (i.e. training flights performed in return for remuneration or other valuable consideration, which are available to the public or, when not made available to the public, which are performed under a contract between an operator and a customer, where the latter has no control over the operator, as per Reg 216/2008 definition). In ENAC understanding nothing forbids today to an AOC holder to be also approved in accordance with Reg. 1178/2011 but some interface procedure should be necessary to avoid dangerous confusion about applicable rules and airworthiness status of the aircraft (maintenance programs and MELs for CAT are not always the same as per ATOs).

Please clarify the text and add specific GMs for aircraft used also for SPO and in the framework of an ATO.

response Thank you for the comment. Partially accepted.

Indeed, the text in the first paragraph of 2.3.2 'Who is affected' may be misleading; it should have read 'The affected parties are AOC holders conducting both CAT and non-commercial operations according to Part-NCC or Part-NCO with aircraft listed in the OpSpecs, as well as national aviation authorities'. However, as the text of ORO.AOC.125 is only intended for non-commercial, and not for SPO activities of an AOC holder, there is no intention to publish an updated RIA.

As for the second part of your comment, the commercial training flights and the request to add an interface procedure to clarify which rules apply for each organisation, please find below some clarifications:

A commercial training flight is a commercial operation which may be conducted in accordance with Part-NCC or Part-NCO. This is an alleviation applicable to training organisations, stated in Article 5.5 of the Air OPS Regulation.

EASA is of the opinion that it is less relevant whether these operations are considered commercial (in the sense of the definition in the Basic Regulation) or non-commercial. What is more relevant is that the rules applicable to a training flight performed by a training organisation are clearly specified in the Regulation, that they properly address the level of risk of such operation and are followed accordingly.

Secondly, when an AOC holder is also authorised as an ATO in accordance with Regulation (EU) No 1178/2011, there should be no confusion about the applicable operational or airworthiness rules: the AOC holder and the ATO are two distinct organisations, and each is governed by its own set of rules with which they must comply. The MEL must be specific to the operator and the type of operation, and each MEL must have its own approval.

The continuing airworthiness has to be ensured by the same CAMO of the AOC holder; this requirement is now included in the new rules developed (ORO.GEN.310 and NCO.GEN.104)



and will be also mirrored in Part-M (M.A.201 (k)), under the responsibilities of the operator/owner.

The new ORO.GEN.310 and NCO.GEN.104 provide minimum requirements for the case when an aircraft included in the AOC is used by another operator, to perform other-than-CAT operations in accordance with Part-NCC, Part-NCO or Part-SPO (as the case may be). As for the operational regime, an ATO that uses the aircraft included in the AOC should use that aircraft to perform its training flights in accordance with Part-NCC or Part-NCO.

**2. Explanatory Note — 2.3. Summary of the Regulatory Impact Assessment (RIA) — 2.3.3. How could the issue/problem evolve?** p. 12

comment

28

comment by: FAA

In the second paragraph of **2.3.3**, it states *regulatory change is needed to mitigate the confusion regarding the ‘applicable requirements’*; it goes on to infer that there are different levels of safety, and separate qualifications for crew members. Despite the requirement that commercial operations are expected to operate at the highest degree of safety, acceptable safety standards exist in part 91 as well. Airman certification is also very straightforward. To operate a turbojet airplane in commercial operations requires the same pilot certification to operate it in non-commercial operations. The FAA Aircraft Evaluation Group (AEG) establishes the type rating training requirements that all airman must successfully complete for that specific airplane, regardless of whether the airplane is used in commercial operations or not.

Title 49 USC 44701(d)(1)(a)

response

Thank you for your comment. Noted.

The range of non-commercial flights performed by an AOC holder is rather wide, from flights with a low level of risk to flights with a higher level of risk.

Since an AOC holder may choose to apply to its non-commercial flights either the more demanding CAT rules or the less demanding NCC rules, it is important that the operator first perform a risk assessment for each type of non-commercial flight. Depending on that risk assessment, the operator can then opt for one set of rules or the other, to adequately address the higher or the lower level of risk posed by that flight.

**2. Explanatory Note — 2.3. Summary of the Regulatory Impact Assessment (RIA) — 2.3.4. Policy options** p. 12-13



comment 29

comment by: FAA

**2.3.4 Policy Options**, page 13, discusses ‘appropriate operational requirements’, and that the ‘*accident could have been avoided if the operator had developed appropriate risk mitigations*’, but no examples of risk mitigations were provided.

The FAA relies on voluntary compliance with the regulations by all participants within the national airspace system (NAS). Minimum standards are established by regulations to mitigate risk, but adhering only to the minimum standards provides minimal room for error, therefore there is an expectation that all participants within the NAS will develop company best practices, based on risk, to minimize vulnerabilities.

response Thank you for your comment. Noted.

EASA agrees with this comment. The risk mitigation measures should be developed based on performance. EASA provides the framework to help with identifying the key elements of risk, but it is the operator’s responsibility to develop appropriate mitigation, customised to its operation. The new GM1 ORO.AOC.125(a)(1)(ii) has been developed with examples of different operational procedures applied to an AOC holder’s non-commercial operations, which may be developed into mitigation measures for flights with a higher risk level.

## 2. Explanatory Note — 2.3. Summary of the Regulatory Impact Assessment (RIA) — 2.3.9. General Aviation and proportionality issues

p. 15

comment 20

comment by: IAOPA Europe

As explained under item 2.1 the proposal certainly affects non-commercial General Aviation since it affects the investment in and availability of aircraft that can be used for either commercial or non-commercial operations.

response Noted.

Please see the answer to the comment No 19.

## 2. Explanatory Note — 2.4. Overview of the proposed amendments

p. 16-19

comment 3

comment by: Stephan Eder, FOCA



The text in the explanatory note reads:

"if the operational control of the flight is transferred to another operator"

It is important, that operational control is NOT transferred. The highest certificate holder (here the AOC-holder) must at all times remain responsible for the basic operations of the aircraft: ensuring that the CAMO requirements are adhered to, that defects or other events are reported TO the AOC-organisation etc.

He may accept other ops rules (as described in the NPA), but he shall remain responsible for the ops of this aircraft and must take measures to ensure this - this is called operations control.

The accident in Cork showed very clear, that a split of responsibility leads to unclear situations with uncoordinated oversight responsibility. This shall be avoided!

response Thank you for your comment. Not accepted.

Operational control means (as per Annex I to the Air OPS Regulation) 'the responsibility for the initiation, continuation, termination or diversion of a flight in the interest of safety'.

The proposed new ORO.GEN.310 (and the corresponding NCC.GEN.101 and NCO.GEN.104, each applicable to the operators and organisations required to comply with Part-NCC or Part-NCO), covering the use of aircraft included in the AOC by other operators for other-than-CAT operations, acknowledges a usual type of business frequently encountered in the General Aviation environment. This type of mixed operation with aircraft included in an AOC is likely to increase in frequency with the new European rules for NCC/NCO and SPO. The new rule provides a practical framework with minimum requirements to maintain safety of operation. It includes conditions to clarify which of the operators has the operational control, how the transfer of operational control takes place, how it is communicated to the relevant personnel. It also requires operators to comply with the reporting provisions in order to ensure the visibility of any malfunction of the aircraft and any occurrence that has happened while the aircraft was operated outside the AOC. Moreover, the new rule proposes that the entity responsible to ensure maintenance and continuous airworthiness of the aircraft has to be the CAMO of the AOC holder. The other operator must, on its turn, comply with the applicable requirements, which means that if it is a declared operator, it will have to state in the declaration the registration mark of the aircraft used, even when it is already listed on an AOC.

The new requirements also ensure an easy oversight by proposing that the procedure developed by the AOC holder on the use of aircraft by other operators be submitted to the competent authority for prior approval. Last but not least, it is intended to lower the administrative burden caused by the removal of the aircraft from the AOC.

comment 8

comment by: *Robbie DECOSTER*

"ORO.AOC.125 'Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC' is modified with the removal of the prior approval by the CA, which is stipulated in paragraph (a)(2). The arguments supporting this proposal are as



follows: [...]"

Comment:

When the prior approval is removed, how can it be ensured that the procedures used for non-commercial flights do respect the requirements from the specific approvals held by the operator as mentioned in the OPSPECS? We may assume that the specific approvals held from the OPSPECS are also valid for non-commercial flights.

response

Thank you for your comment. Noted.

Your assumption is correct.

The deletion of the requirement for prior approval from the rule does not affect the requirements of Part-SPA. The specific approvals obtained for the CAT operation are valid also for the non-commercial operations and the operator does not change. Verification of compliance can be done during the audits and inspections.

comment

46

comment by: *Air France*

MCF are not a Functional check flights sub-category. This is not consistent with new definitions proposed in Annex I.

response

Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

comment

51

comment by: *IACA International Air Carrier Association*

P17- Stakeholders (AOC holders) are invited to confirm the classification of flights

The NPA wording is a little bit too complicated; especially the fact that "Lease Flights" are listed twice: under *Demonstration* and also under *Functional Check Flights*.

IACA suggests leaving them under *Demonstration Flight* only.

response

Thank you for your comment. **Noted and waiting for the new Basic Regulation.**



comment 52

comment by: IACA International Air Carrier Association

P17- Stakeholders (AOC holders) are invited to confirm the classification of flights

AOC holders presently use a somewhat different wording:

#### **CHECK FLIGHTS**

Check Flights are post-certification flights carried out to ensure that the aircraft continues to comply with the applicable airworthiness requirements. Check Flights fall into the following categories:

- **Demonstration Flight**

A check flight required by the AOC holder to demonstrate reassurance of the aircraft's performance. These flights are typically required at start or end of lease.

- **Maintenance Check Flight**

A check flight required following maintenance to demonstrate that the aircraft performance is satisfactory, or to establish the correct functioning of an aircraft system that cannot be fully established during ground checks. These flights are typically required following maintenance or defect rectification.

- **Mandated Check Flight**

A check flight as required by the authority primarily associated with the issue of a Certificate of Airworthiness (C of A). These test flights may be required when importing a used aircraft from a non-EU member state (not having an agreement with EASA).

- **Permit to Fly Flights**

Non-revenue ferry flights, operated outside of the provisions of the MEL/CDL, in order to reach a maintenance base to enable repair or rectification.

Nevertheless, IACA has no strong objection to the proposed classification of non-commercial flights, perhaps "*Permit to fly Flight*" i.s.o. "*Ferry Flight*" would make it more clear for all stakeholders that a ferry flight needs a special permit.

response

Thank you for your comment and examples. **Noted and waiting for the new Basic Regulation.**



comment	54	comment by: <i>FNAM (French Aviation Industry Federation)</i>
	Regarding the definition of a functional check flight, FNAM is not sure that this definition should add “maintenance check flight”. “Maintenance check flight” should be a type of flights and not a subcategory.	
response	Thank you for your comment. <b>Noted and waiting for the new Basic Regulation.</b>	

**3. Proposed amendments — 3.1. Draft Regulation (Draft EASA Opinion) — 3.1.1. Annex I ‘Definitions for terms used in Annexes II to VIII’ — Proposed amendments**

p. 20

comment	44	comment by: <i>KLM</i>
	<p>Definition (79) Maintenance check flight:</p> <p>The proposed definition of a maintenance check flight is too wide and should be restricted to (a) and (d) only.</p> <p>Delete subparagraphs (b) and (c).</p> <p>Sub paragraphs (b) and (c) are factors that should be considered in the risk analysis of non-commercial operations performed by AOC holders. It is, based on this risk assessment up to operator to decide whether or not to apply the more restrictive requirements of Annex VIII.</p> <p>Definition (39) demonstration flight:</p> <p>In order to clarify the distinction with a maintenance check flight, the following should be added to the definition of a demonstration:</p> <p>“This may include a flight after maintenance for verification of scheduled maintenance, or a successful defect rectification, if this flight has not been required by the AMM or other maintenance data issued by the design approval holder.”</p>	
response	Thank you for your comments. <b>Noted and waiting for the new Basic Regulation.</b>	

comment	55	comment by: <i>FNAM (French Aviation Industry Federation)</i>
	Regarding the publication of the CRD 2012-08 on Maintenance check flights (MCFs) and this NPA, the EASA has made changed twice the definition of “maintenance check flight” and the	



paragraph ORO.AOC.125 without that today, nothing is published yet.

Knowing that the publication of the decision on the NPA 2012-06 should appear early 2016 opposed to the publication of the decision on the NPA 2015-05 at the end of 2017, FNAM would like to know the link between the NPA 2012-08 and the one that we are asked to comment today. What is the needs of EASA further amended these items already comments?

response Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

An opinion stemming from RMT.0393 on maintenance check flights is due to be published in Q1/2017, at the same time with the opinion stemming from RMT.0352.

Any further development of AMC or GM (initially included in NPA 2015-05) related to the definitions and classification of non-commercial flights of RMT.0352 has been frozen in view of the upcoming revised Basic Regulation, which will no longer include the definition of commercial operation.

comment 58

comment by: *DGAC France*

#### **Annex I**

DGAC France agrees with the need to classify the different types of flights.

However, with two independent entries in the definitions of Annex I (# (53) and (79)), Maintenance Check Flights (MCF) and Functional Check Flights (FCF) appear to be two different categories while according to GM1 ORO.AOC.125 (a)(2), a MCF is a subcategory of a FCF. If it is confirmed that a MCF is a specific kind of FCF, the definition of MCF (79) should be amended as follows:

(79) 'maintenance check flight' means a **type of functional check** flight carried out to provide reassurance of the aircraft's performance or to establish the correct functioning of a system that cannot be fully established during ground checks:

response Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

comment 83

comment by: *Southern Cross International*

3.1.1 (39) it is proposed to change the definition of a 'demonstration flight' into: 'a flight to demonstrate the aircraft's capabilities ~~to persons on board~~'; Note: occasionally an operator may show the aircraft to an audience on the ground during a public event, e.g. an airshow.

3.1.1 (79)(a) 'design approval holder' should be 'type certificate holder'

3.1.1 (106) Every flight is made with the intention to change the aircraft's location, except 'A to A flights'. Therefore it is proposed to change the definition of 'relocation flight' as follows:



'relocation flight' means a non-commercial flight with the purpose of changing the aircraft's location for technical or logistic reasons.

response Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

comment 91

comment by: *DFS*

**Page 20 of NPA: 965/2012 Annex I**

Add definitions for

- - “Operator”
- - “The responsible person or entity for NCC operations” from a legal point of view
- - “Commercial flights” versus “non-commercial flights”

response Thank you for your comment. Not accepted.

‘Operator’ and ‘commercial operation’ are defined in the Basic Regulation (Regulation (EC) No 216/2008) and the definitions should not be duplicated in different regulations.

Legally speaking, the person or entity responsible for an operation is the operator. The operator is the concept used throughout the OPS rules and bears the legal responsibility. This is valid for any type of operation, not only for NCC.

The definition of commercial operation, provided in the Basic Regulation, is difficult to interpret because none of its terms has been further defined or explained. A definition of commercial flight would overlap with the one for commercial operation, leading to more confusion than clarification. The terms ‘commercial flights’ and ‘non-commercial flights’ should rather take into account the flight profile, by using a risk-based approach, and use the applicable rules accordingly, proportionate to the complexity of operation and the risk involved.

**3. Proposed amendments — 3.1. Draft Regulation (Draft EASA Opinion) — 3.1.3. Annex III  
‘Organisation requirements for air operations’ (Part-ORO) — Proposed amendments**

p. 20-21

comment 6

comment by: *Stephan Eder, FOCA*

ORO.AOC.125 (a) (3)

This very special, possibly including non-standard operations leads to a change in the management system which should be subject to prior approval.



	<p>The old text shall be restored:</p> <p>"(3) the operator submits the identified differences between the operating procedures referred to in (a)(2)(ii) to the competent authority for prior approval."</p>
response	<p>Thank you for your comment. Not accepted.</p> <p>The principle of proportionality needs to be preserved: NCC operations do not require a prior approval either. Besides, the AOC holder is an entity already known and trusted by the competent authority.</p> <p>Moreover, the AOC holder has to include its non-commercial operations into its SMS and must perform a risk assessment for the various types of non-commercial flights. The new AMC and GM to ORO.AOC.125 have been developed with the purpose of helping an operator assess the risk of these flights and develop mitigation measures proportionate to the types of its non-commercial flights. The requirement of prior approval was included in the rule to cover the period until further guidance for non-commercial flights would be provided, so in the new context, the prior approval is no longer necessary.</p> <p>The competent authority verifies the operator's compliance with the Part-ORO requirements on the management system; the procedures developed for these non-commercial operations are verified on that occasion. Besides, the different operational procedures for these flights may not go below the minimum requirements of Part-NCC, Part-SPO or Part-NCO, as the case may be.</p>
comment	<p>37 comment by: <i>Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)</i></p> <p><b>ORO.CC.100 Number and composition of cabin crew</b> (...) (d) For non-commercial operations of an AOC holder, a maximum of 19 passengers may be carried without an assigned cabin crew member on board only if specific safety and emergency procedures are established in the operations manual <del>and are approved by the competent authority.</del></p> <p>Swedish Transport Agency (STA) proposes that the approval by the competent authority is deleted.</p> <p>Justification: These operations have to be included in the operator's safety management system according to ORO.GEN.200, so that they are verified by the competent authority in this context.</p>
response	<p>Thank you for your comment. Accepted.</p>



comment 47 comment by: *Air France*

AF:

The following sentence should be added to (d): "This paragraph also applies to commercial air transport (CAT) operations such as positioning flight with cargo or mail when no passenger is transported for remuneration or other valuable consideration."

response

Thank you for your comment. Not accepted.

The definition of a CAT operation is clear: 'an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration'.

A flight carrying cargo or mail for remuneration is a commercial CAT flight.

Proposing an alleviation and changes to the concept of CAT operation is outside the scope of this RMT.

This proposal will be discussed within EASA before any further action is taken.

comment 55 ❖ comment by: *FNAM (French Aviation Industry Federation)*

Regarding the publication of the CRD 2012-08 on Maintenance check flights (MCFs) and this NPA, the EASA has made changed twice the definition of "maintenance check flight" and the paragraph ORO.AOC.125 without that today, nothing is published yet.

Knowing that the publication of the decision on the NPA 2012-06 should appear early 2016 opposed to the publication of the decision on the NPA 2015-05 at the end of 2017, FNAM would like to know the link between the NPA 2012-08 and the one that we are asked to comment today. What is the needs of EASA further amended these items already comments?

response

Comment inserted twice (with the same number), in 2 different segments.

**Noted and waiting for the new Basic Regulation.**

An opinion stemming from RMT.0393 on maintenance check flights is due to be published in Q1/2017, at the same time with the opinion stemming from RMT.0352.

Any further development of AMC or GM (initially included in NPA 2015-05) related to the definitions and classification of non-commercial flights of RMT.0352 has been frozen in view of the upcoming revised Basic Regulation, which will no longer include the definition of commercial operation.

comment 56 comment by: *FNAM (French Aviation Industry Federation)*

Regarding the paragraph ORO.CC.100, FNAM would like to add the following sentence to this



paragraph (d): “This paragraph also applies to commercial air transport (CAT) operations such as positioning flight with cargo or mail when no passenger is transported for remuneration or other valuable consideration.”

response

Thank you for your comment. Not accepted.

The definition of a CAT operation is clear: ‘an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration’.

A flight carrying cargo or mail for remuneration is a commercial CAT flight.

Proposing an alleviation and changes to the concept of CAT operation is outside the scope of this RMT.

The proposal will be discussed within EASA before any further action is taken.

comment

59

comment by: DGAC France

### **ORO.AOC.125 (a)(3)**

With the removal of the prior approval by the authority of the applicable requirements for non-commercial operations by AOC holders, there is no added value in requiring the operator to “notify” the differences.

Indeed these differences will be directly integrated in the OM under ORO.AOC.125 (a)(2)(ii) and subject to general requirements for AOC holders under ORO.MLR.100 (g)(1) and ORO.GEN.130 (c).

response

Accepted.

comment

60

comment by: DGAC France

### **ORO.AOC.125 (b)**

According to EASA rationale, AOC holders would need to submit a declaration when conducting SPO activities (Explanatory Note 2.1 *Relationship between ORO.AOC.125 and SPO activities*).

However, under paragraph ORO.AOC.125 (b), an AOC holder is not required to submit a declaration when “conducting non-commercial operations with the aircraft otherwise used for commercial air transport operations that is listed in its OpSpecs”. This wording implies the following:

- if conducting commercial SPO activities, the operator will have to submit a declaration or obtain an authorisation for high risk activities, regardless if it operates CMPA or non CMPA;
- if conducting non-commercial SPO with CMPA, the operator will not have to submit a



	<p>declaration.</p> <p>Paragraph ORO.AOC.125(b) should be reviewed to be consistent with the chosen approach regarding the need or not for an AOC holder to declare its SPO activities.</p>
response	<p>Thank you for your comment. Not accepted.</p> <p>The first assumption is correct: an operator has to submit a declaration if it conducts commercial SPO, regardless of whether the activity is performed with a CMPA or other-than CMPA.</p> <p>The second assumption is wrong: ORO.DEC.100 is applicable to any ‘operator of <b>complex motor-powered aircraft engaged in non-commercial operations or non-commercial specialised operations</b>, and the commercial specialised operator’. A declaration is required also when a SPO operator performs SPO activities non-commercially with a CMPA.</p> <p>ORO.AOC.125 covers only the non-commercial operations (with CMPA and other-than CMPA) performed in accordance with Part-NCC and Part-NCO. The new GM1 ORO.AOC.125(a) clarifies which the applicable requirements are. Please note, however, that this point may be, in the future, subject to further changes proposed by other rulemaking tasks (e.g. on maintenance check flights).</p> <p>SPO activities are currently not covered by ORO.AOC.125 and will remain as such, as also indicated by the stakeholders’ preference expressed in their comments to NPA 2015-05. EASA performed a further analysis to see whether the inclusion of the SPO activities of an AOC holder under ORO.AOC.125 (commercial and non-commercial SPO with CMPA) would further simplify the rules. The analysis proved that this action would require artificial changes and would generate additional requirements rather than simplifying them. Therefore, the decision was to keep the current status: an AOC holder performing SPO activities (commercial or non-commercial SPO with CMPA) will have to declare its SPO activities. Consequently, an AOC holder performing non-commercial SPO activities with a CMPA will have to submit a declaration. The aircraft — when used for both CAT and SPO flights — does not have to be removed from the AOC and it may be included in both documents (the AOC and the declaration).</p>

comment

61

comment by: DGAC France

**ORO.CC.100 (d)**

The need for the competent authority to approve procedures in case of operations with a maximum of 19 passengers in the cabin without an assigned CC on board is not substantiated.

EASA position is to alleviate the prior approval of the different procedures developed by the AOC holder for its non-commercial operations that is currently required by ORO.AOC.125. This removal of the prior approval is made possible because AMCs and GMs are developed. As far as operations with a maximum of 19 passengers without a CC are concerned, the associated mitigation measures expected from the operator are described in AMC1



ORO.CC.100 (d). They cover seating, briefing and coordination. The procedures will be incorporated in the operations manual, therefore the authority will be informed.

In addition, not requiring an approval for such procedures would remain proportionate since procedures used by AOC holders operating aircraft with a MOPSC with less than 19 are not subject to an approval.

Accordingly, paragraph (e) of **GM3 ORO.GEN.130(b) Changes related to an AOC holder** should be deleted and the terms “approved by the competent authority” should be deleted from the second paragraph of **GM1 ORO.CC.100(d) Number and composition of cabin crew**

response Thank you for the comment. Accepted.

The text of the implementing rule and of the AMC and GM to ORO.CC.100(d) has been amended to clarify the intent of the rule.

comment 77

comment by: EBAA

EASA to develop GM to do so.

response Not accepted.

This comment is related to the point renumbered in NPA 2015-05 as (a)(3) in ORO.AOC.125, stating that the AOC holder shall notify the competent authority on the identified differences between the operating procedures used for its CAT operations and for its NCC/NCO operations.

It is considered that new GM to explain how the operator should submit the different procedures to the competent authority is not necessary.

**3. Proposed amendments — 3.2. Draft Acceptable Means of Compliance and Guidance Material (Draft EASA Decision) — 3.2.1. ED Decision 2014/017/R (AMC and GM to Part-ORO of Regulation (EU) No 965/2012) — Proposed amendments** p. 21-28

comment 1

comment by: Airlin/WUW

Comment to GM1 ORO.AOC.125

In point 2.1 of the NPA, the following is stated:

"This rulemaking task is not addressing the cases where an aircraft is listed on the AOC but occasionally used by another operator which is not an AOC holder, for example the owner. In such a case, the two operators have to clearly identify and distinguish their responsibility and operational control with regard to those particular flights. Each operator will have to comply



with the applicable rules for the operation conducted."

However, you still address the issue in a very general way in the GM1 to ORO.AOC.125:

*If the operational control is transferred from the AOC holder to another operator, then the provisions of ORO.AOC.125 do not apply anymore since the AOC holder is no longer the operator of the aircraft. The new operator has to comply with the appropriate rules, e.g. Part-NCC for non-commercial operations with complex aircraft, Part-SPO for specialised operations, etc., and has to submit a declaration in accordance with ORO.DEC.100.*

Let's look at an example:

- An AOC holder operates a Beechcraft King Air, a complex motor powered aeroplane.
- In addition, the company has an ATO.
- The company also has the national authorisation to rent aeroplanes to pilots.
- The AOC holder is the operator and listed as such in the Aircraft Documents (Registration) and on the OPS SPECS.
- The owner of the aeroplane is a bank, it leases the aeroplane to the operator.

What would constitute an "occasional use by another operator" and transfer of "operational control"?

- The company rents the plane to a pilot
- The company rents the plane to another company, which provides a pilot itself
- The owner, in that case the bank, provides a pilot for its own flights and uses it for its own travel purposes

By definition of the Basic Regulation, the term "operator" is defined as follows:

Article 3

(h) 'operator' shall mean any legal or natural person, operating or proposing to operate one or more aircraft or one or more aerodromes;

By definition of EU R 965/2015, "operational control" is defined as:

91. 'Operational control' means the responsibility for the initiation, continuation, termination or diversion of a flight in the interest of safety.

I see a problem here in the way the term operator is used:

1. The operator of an aircraft is either the owner himself or another entity (person or company) designated by the owner. This entity is then listed in the relevant aircraft documents and OPS SPECS. That is the usual case where a bank owns the aeroplane. Used in that way, the operator is established by a legal act, either by ownership or designation.
2. In the sense of your proposed amendment, the term "operator" has a different meaning: If, as in our example, the company rents the aeroplane to a pilot, the pilot exercises operational control and then the term operator changes to, in my words, "the person or entity who exercises actual operational control for a specific period of



time". Used in that way, the term "operator" becomes dynamic.

An additional consequence, if the GM is followed, for one aircraft, there would exist to sets of documentation simultaneously:

1. The OM of the AOC holder
2. The OM required for the declaration. However, the person or entity declaring its capability to use that aircraft would have no legal claim or authority over that aircraft - it is not the legal operator or owner.

**I therefore propose a new ORO.AOC.126:**

**ORO.AOC.126 Non-commercial use of aircraft listed in the operations specifications by a person or entity different from the AOC holder**

(1) Non-Complex Motor-Powered Aircraft listed on the operations specifications may not be used by a person or entity different from the AOC holder unless the following requirements are fulfilled:

- the person or entity is familiar with and adheres to the AOC holders aeroplane technical log system
- the person or entity is familiar with and adheres to the AOC holders reporting system
- the person or entity complies with Part NCO and additional parts, as applicable
- the AOC holder performs a "Release to Service" described in its CAME prior using the aeroplane for commercial operations

(2) Complex Motor-Powered Aircraft listed on the operations specifications may not be used by a person or entity different from the AOC holder unless the following requirements are fulfilled:

- the person or entity is familiar with and adheres to the AOC holders OM.
- the AOC holder shall describe any deviations from its OM that apply for this kind of operation. However, as a minimum, the requirements of Part NCC apply. A declaration is not required.

This would ensure that

- there is a simple way to use non-complex aeroplanes outside the scope of an AOC, and
- there is no split in the oversight of a complex aeroplane by creating two operators

I am sure there are better solutions for this topic, and I would urge you to give some more time and thought to this, maybe in another NPA specifically for this problem.

Thank you for your time!

response

Thank you for your extensive comment and suggestions. Partially accepted.

To address the comments on the NPA requesting EASA to consider the case when an aircraft included in an AOC is used by other operators for other-than-CAT operations, the new ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 and related AMC and GM have been developed, incorporating some of your suggestions.

The term used in the Air OPS Regulation is 'operator'. Whether this is a natural or a legal person or entity, it is less relevant for operational purposes, but operational control is always connected to the operator. As the definition of the operator is included in the Basic



Regulation, this is not as simple a change as the one made to an implementing rule.

In fact, it is not the definition of the operator that raises questions here, but rather the responsibility for the operational control, and its transfer from one operator to another, which, if improperly acknowledged and assumed, may generate unsafe operations that may lead to accidents. On the other hand, it is the distinction between a commercial vs non-commercial operation according to the definition provided in the Basic Regulation, which is subject to various interpretations.

The new text has been created in such a way as to provide a practical and minimum regulatory framework for such operations while maintaining a high level of safety.

comment 2

comment by: CAA-NL

Related to the AMC and GM of this proposal we have the following 4 comments:

#### **GM1 ORO.AOC.125**

##### **RULE APPLICABILITY**

If the operator of a particular non-commercial flight is the AOC holder and the aircraft is listed in its AOC, the provisions of ORO.AOC.125 apply.

If the operational control is transferred from the AOC holder to another operator, then the provisions of ORO.AOC.125 do not apply anymore since the AOC holder is no longer the operator of the aircraft.

Can EASA confirm that in general this means that the aircraft itself will be removed from the OPS spec of the AOC holder for the time of the transfer?

#### **GM1 ORO.AOC.125(a)(2)**

##### **OTHER NON-COMMERCIAL FLIGHTS**

Examples (non-exhaustive list):

(a) Private flights or leisure flights,

(b) Charity flights.

These flights are performed at the full cost of the AOC holder or the owner.

For these flights, the operational control remains with the AOC holder.

Can EASA confirm that this means that private flights at the full cost of the owner/lessor but performed by and under the full operational control of the AOC holder are included under this other category?

#### **GM1 ORO.AOC.125(a)(2)(i)**

We have a proposal to simplify the text as follow:

##### **IDENTIFICATION OF THE APPLICABLE REQUIREMENTS**

The provisions of ORO.AOC.125 allow the AOC holder to choose the most appropriate



requirements when performing non-commercial flights which are performed under its operational control. The AOC holder should include these flights into its safety management process.

The AOC holder may choose to apply to these operations the provisions for:

(a) CAT operations, *in this case, the provisions of Part-CAT should apply, and no additional descriptions are required; the same operational procedures as those for its normal CAT operations apply, or*

(b) non-commercial operations (for complex or other-than-complex motor-powered aircraft, as applicable). *In this case, the minimum requirements should be Part-NCC or Part-NCO, depending on the aircraft complexity. For these different operational procedures than those normally applied for its CAT operations the AOC holder should identify the differences and describe the different applicable procedures in its operations manual,*

or

(c) specialised operations for maintenance check flights.

#### **AMC1 ORO.CC.100(d) Number and composition of cabin crew**

ADDITIONAL MITIGATION MEASURES FOR NON-COMMERCIAL OPERATIONS PERFORMED BY AN AOC HOLDER WITH MAXIMUM 19 PASSENGERS AND NO ASSIGNED CABIN CREW

This AMC gives an acceptable mean to mitigate the risks when flying a large transport aircraft that under normal CAT operations would have one or more CC on board with less than 19 passengers during non-commercial operations. This makes perfect sense for a Boeing or an Airbus.

However for aircraft with an MOPSC of 19 or less, a small commuter, ORO.CC.100(a) does not require a CC to be on board during CAT operations. The current wording of this AMC does not differentiate between A/C with a MPOSC of more than 19 or smaller ones. This would mean that operators of small aircraft have to do more for flying a non-commercial operation than in the situation of CAT.

Some additional wording related to the MPOSC may need to be included.  
ADDITIONAL MITIGATION MEASURES FOR NON-COMMERCIAL OPERATIONS PERFORMED BY AN AOC HOLDER WITH MAXIMUM 19 PASSENGERS AND NO ASSIGNED CABIN CREW **WHEN OPERATING AIRCRAFT WITH AN MOPSC OF MORE THAN 19.**

response Thank you for your extensive comments and suggestions. Accepted.

#### **Comment 1: GM1 ORO.AOC.125, RULE APPLICABILITY**

‘Can EASA confirm that in general this means that the aircraft itself will be removed from the OPS spec of the AOC holder for the time of the transfer?’

Answer: When an aircraft listed in the Operations Specifications (OpSpecs) of an AOC holder is used by another AOC holder, the leasing requirements in ORO.AOC.110 apply. The aircraft has to be removed from the AOC of the lessor and registered on the AOC of the lessee. The operational responsibility is transferred from the lessor to the lessee. When another operator is involved, and there is a dry lease-out agreement, the provisions of ARO.OPS.110(d) apply: “‘When asked for the prior approval of a dry-lease out agreement in accordance with ORO.AOC.110(e), the competent authority shall ensure (...) (2) that the aircraft is timely removed from the operator’s AOC.’

The rules are not clear about the regulatory regime that applies for the occasional use of the



aircraft on an AOC by another operator.

With the new rules, ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104, when an aircraft listed in the OpSpecs of an AOC holder is used by an operator (natural or legal person) for other-than-CAT operations performed in accordance with Part-NCC, Part-NCO or Part-SPO, the aircraft does not have to be removed from the AOC.

**Comment 2: GM1 ORO.AOC.125(a)(2), OTHER NON-COMMERCIAL FLIGHTS**

‘Can EASA confirm that this means that private flights at the full cost of the owner/lessor but performed by and under the full operational control of the AOC holder are included under this other category?’

Answer: An operator must always assess its non-commercial flights according to the criteria included in the definition of ‘commercial operation’ in Article 3 of Regulation (EC) No 216/2008. If it is indeed a non-commercial operation and these flights are conducted under the operational control of the AOC holder, then ORO.AOC.125 applies.

**Comment 3: GM1 ORO.AOC.125(a)(2)(i), IDENTIFICATION OF THE APPLICABLE REQUIREMENTS**

This GM has been reworded to include the former AMC1 ORO.AOC.125(a)(2)(i). Please see the new GM1 ORO.AOC.125(a).

**Comment 4: AMC1 ORO.CC.100(d), ADDITIONAL MITIGATION MEASURES FOR NON-COMMERCIAL OPERATIONS PERFORMED BY AN AOC HOLDER WITH MAXIMUM 19 PASSENGERS AND NO ASSIGNED CABIN CREW**

The text of AMC1 ORO.CC.100(d) has also been changed as proposed in your comment.

comment 4

comment by: *Stephan Eder, FOCA*

GM1 ORO.AOC.125

The text in the GM reads:

"If the operational control is transferred from the AOC holder to another operator"

It is important, that operational control is NOT transferred.

The AOC-holder remains the "operator of the aircraft". He must assure, that the other operator reports to him all important information (e.g. downgradings in airworthiness, adding of eng-oil, flight times and landings, etc. etc.).

The highest certificate holder (here the AOC-holder) must at all times remain responsible for the basic operations of the aircraft: ensuring that the CAMO requirements are adhered to, that defects or other events are reported TO the AOC-organisation etc.

He may accept other ops rules (as described in the NPA) by the other operator, but he shall remain the main operator and remain responsible for the ops of this aircraft and must take measures to ensure this - this is called operations control.

The accident in Cork showed very clear, that a split of responsibility leads to unclear situations with uncoordinated oversight responsibility. This shall be avoided!



response

Thank you for the comment. Partially accepted.

The new rules ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 establish a set of requirements for the other operators using an aircraft registered on an AOC for their own other-than-CAT operation so that they may take over the operational control over those flights without the aircraft being removed from the AOC.

The procedure of the AOC holder that covers the use of aircraft by other operators must be submitted to the competent authority for prior approval. This ensures an additional layer of verification in order to increase the safety of such complex operations, as well as good visibility over these operations.

Within the new rules, the continuing airworthiness responsibility remains with the CAMO of the AOC holder (the same CAMO for all operations, for all operators using the aircraft included in the AOC) and the other operators must ensure that they follow the reporting system of the AOC holder and other measures to ensure that the AOC holder has full visibility of the status of the aircraft at all times.

Please see the answer to comments Nos 3 and 5 and also the new rules ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 and the related AMC and GM.

comment

7

comment by: *Stephan Eder, FOCA*

"other non-commercial flights"

...

(a) private flights or leisure flights

For clarity these two types of flights shall not be mentioned on the same point.

These are very different. The proposed text however suggests, that private flights are leisure flights what is very often not the case.

Private flights for the owner of the aircraft are very often flights for business (corporate aviation) and rarely leisure flights.

The two type of flights shall be separated.

response

Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment

9

comment by: *Robbie DECOSTER*

"GM1 ORO.AOC.125 Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC

RULE APPLICABILITY



If the operator of a particular non-commercial flight is the AOC holder and the aircraft is listed in its AOC, the provisions of ORO.AOC.125 apply.

If the operational control is transferred from the AOC holder to another operator, then the provisions of ORO.AOC.125 do not apply anymore since the AOC holder is no longer the operator of the aircraft. The new operator has to comply with the appropriate rules, e.g. Part-NCC for non-commercial operations with complex aircraft, Part-SPO for specialised operations, etc., and has to submit a declaration in accordance with ORO.DEC.100."

Comment:

"If the operational control is transferred from the AOC holder to another operator, then the provisions..." in this case we speak about a dry-lease but this is not clear in the actual text.

Proposal:

"If the operational control is transferred from the AOC holder to another operator, this is considered a dry-lease out and then the provisions..."

response Thank you for your comment. Partially accepted.

The provisions of ARO.OPS.110(d) require that in the case of a dry lease-out agreement, the aircraft must be removed from the AOC. This renders mixed operations impossible to perform due to the administrative burden of removing the aircraft from the AOC on an ad hoc basis. A simpler solution than the dry lease-out had to be identified, which would, at the same time, ensure the high level of safety of operations.

As already confirmed by the industry and competent authorities, the use of aircraft included in an AOC by an operator for other-than-CAT operations is a common practice. The current provisions covering such operational cases require more clarity. The intention of the new rules (ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104) is to establish flexible, performance-based requirements, under which the aircraft registered on an AOC may be used by other operators (non-AOC holders) without removing it from the AOC. For this reason, non-application of the leasing requirement of removing the aircraft from the AOC in this case has been clearly expressed in the new rule ORO.GEN.310.

comment 10

comment by: *Robbie DECOSTER*

"RELOCATION FLIGHTS (a) 'Ferry flight': a flight to a location for maintenance purposes. The aircraft may not be fully serviceable."

Comment:

"The aircraft may not be fully serviceable." With this wording a ferry flight can only be conducted with an aircraft that is not fully serviceable.

Proposal:

"The aircraft may be not fully serviceable." This wording allows a ferry flight to a location for maintenance purposes when the aircraft is fully serviceable.



response Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment 11 comment by: *Robbie DECOSTER*

"TRAINING FLIGHTS

(a) 'Licensing training': a flight with the purpose of obtaining or maintaining the aircrew licence. Refer to Article 5.5 of the Air Ops Regulation.

(b) 'Operating training': a flight performed by the operator with the purpose of training, checking and/or familiarising a crew member with the operator's procedures linked to the aircraft being operated. A training flight is usually conducted using the procedures detailed in OM D for CAT operators."

Comment:

Concerning "operating training" it should be clear that "line training flights" are not part of this definition as they take place during CAT flights.

Proposal:

(b) 'Operating training': a flight performed by the operator with the purpose of training, checking and/or familiarising a crew member with the operator's procedures linked to the aircraft being operated. A training flight is usually conducted using the procedures detailed in OM D for CAT operators. Line training flights are not considered as "operating training" for the purpose of ORO.AOC.125.

response Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment 12 comment by: *Robbie DECOSTER*

OTHER NON-COMMERCIAL FLIGHTS

Examples (non-exhaustive list):

(a) Private flights or leisure flights,

(b) Charity flights.

These flights are performed at the full cost of the AOC holder or the owner. For these flights, the operational control remains with the AOC holder.

Comment:

I suppose we speak about the owner of the aircraft and not the owner of the AOC.

Proposal:

"These flights are performed at the full cost of the AOC holder or the aircraft owner."



response Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

comment 13

comment by: *Robbie DECOSTER*

AMC1 ORO.AOC.125(a)(2)(i) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC

#### IDENTIFICATION OF THE APPLICABLE REQUIREMENTS

If the operator develops for its non-commercial operations different procedures from the ones used for CAT operations, the provisions of Annex VI (Part-NCC), Annex VII (Part-NCO) or Annex VIII (Part-SPO), as appropriate, should be used as the minimum requirements to demonstrate compliance with this rule.

For any non-commercial flight, the operator should mention the applicable category in its flight-related documents (OFP, loadsheet, etc.) prior to the flight.

Comment:

Annex III (Part-ORO) is missing although it also contains requirements for NCC operators

Proposal:

If the operator develops for its non-commercial operations different procedures from the ones used for CAT operations, the provisions of Annex III (Part-ORO), Annex VI (Part-NCC), Annex VII (Part-NCO) or Annex VIII (Part-SPO), as appropriate, should be used as the minimum requirements to demonstrate compliance with this rule.

response Thank you for the comment. Partially accepted.

The text has been reworded and is now included in the new GM1 ORO.AOC.125(a).

comment 14

comment by: *Robbie DECOSTER*

GM1 ORO.AOC.125(a)(2)(i) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC

#### IDENTIFICATION OF THE APPLICABLE REQUIREMENTS

The provisions of ORO.AOC.125 allow the AOC holder to choose the most appropriate requirements when performing non-commercial flights which are performed under its operational control. The AOC holder should include these flights into its safety management process.

The AOC holder may choose to apply to these operations the provisions for:

(a) CAT operations, or

(b) non-commercial operations (for complex or other-than-complex motor-powered



	<p>aircraft, as applicable). To its non-commercial operations, the AOC holder may decide to apply either:</p> <ol style="list-style-type: none"> <li>(1) the same operational procedures as those applied for its normal CAT operations. In this case, the provisions of Part-CAT should apply, and no additional descriptions are required; or</li> <li>(2) different operational procedures than those normally applied for its CAT operations. In this case, the minimum requirements should be Part-NCC or Part-NCO, depending on the aircraft complexity. For these, the AOC holder should identify the differences and describe the different applicable procedures in its operations manual;</li> </ol> <p>Comment 1: It seems that (b)(1) says the same as (a).</p> <p>Proposal 1: Remove "(a) CAT operations, or"</p> <p>Comment 2: Part-ORO is missing under item (b)(2)</p> <p>Proposal 2: add: "In this case, the minimum requirements should be Part-ORO &amp; Part-NCC or Part-NCO, depending on the aircraft complexity. "</p>
Response	<p>Thank you for your comment. Partially accepted.</p> <p>The new text is now in GM1 ORO.AOC.125(a).</p>

comment

15

comment by: *Robbie DECOSTER*

AMC1 ORO.AOC.125(a)(2)(ii) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC

**MINIMUM ELEMENTS OF RISK ASSESSMENT**

When developing different operating procedures for its non-commercial flights, the operator should identify hazards and assess and mitigate the risks associated with its specific operation, as part of its safety risk management process.

This process should consider at least the following elements:

- (a) Flight profile (including manoeuvres to be performed, any simulated abnormal situations in flight, duties and responsibilities of the crew members);
- (b) Levels of functional equipment and systems (MEL, CDL);
- (c) Operating procedures, minima, and dispatch criteria;
- (d) Flight and duty time limitations and rest requirements, cumulative and transient fatigue;



	<p>(e) Selection, composition, and training of flight and cabin crew; and</p> <p>(f) Categories of passengers on board.</p> <p>Comment:</p> <p>The operator should also consider the specific approvals held for the particular type of aircraft as well as the requirements from Part-ORO related to Flight Crew (ORO.FC.1xx serie of requirements)</p> <p>Proposal:</p> <p>add:</p> <p><u>(g) specific approvals held</u></p> <p><u>(h) Part-ORO requirements</u></p>
response	<p>Thank you for the comment. Partially accepted.</p> <p>SPA has been added to the list of elements, although it is mandatory when applicable, regardless of the type of operation.</p> <p>Operators of NCC flights must comply with Part-ORO anyway. Point (h) is not accepted.</p> <p>Training has been included.</p>
comment	<p>16 <span style="float: right;">comment by: <i>Robbie DECOSTER</i></span></p> <p>GM1 ORO.AOC.125(a)(2)(ii) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC</p> <p>EXAMPLES OF DIFFERENCES IN OPERATIONAL PROCEDURES APPLIED TO NON-COMMERCIAL OPERATIONS</p> <p>Below is a non-exhaustive list of elements that an AOC holder may identify and describe as being different in its operating procedures for non-commercial operations and for which the provisions of Part-NCC/ Part-NCO or Part-SPO may apply as minimum requirements to ensure compliance with the rule:....</p> <p>Comment:</p> <p>reference to the provisions of Part-ORO is missing (eg: ORO.FC.1xx)</p> <p>Proposal:</p> <p>"Below is a non-exhaustive list of elements that an AOC holder may identify and describe as being different in its operating procedures for non-commercial operations and for which the provisions of Part-ORO, Part-NCC/ Part-NCO or Part-SPO may apply as minimum requirements to ensure compliance with the rule:....</p>
response	<p>Thank you for the comment. Accepted and renumbered as GM1 ORO.AOC.125(a)(1)(ii).</p>





comment 17

comment by: *Robbie DECOSTER*

GM2 ORO.AOC.125(a)(2)(ii) Non-commercial operations of aircraft listed in the operations specifications by the holder of an AOC

#### FLIGHT PROGRAMME

An AOC holder may establish flight programmes for flights with an increased level of risk. Such programmes could include:

- (a) manoeuvres to be performed in flight;
- (b) special operating procedures;
- (c) crew briefing;
- (d) duties and responsibilities of the crew members involved, task sharing;
- (e) operational limitations;
- (f) potential risks and contingency plans;
- (g) adequate available airspace and coordination with the Air Traffic Control (ATC).

Comment:

In some cases additional/specific training may be required.

Proposal:

add:

*"(h) crew training"*

response Thank you for the comment. Accepted.

This GM has been reworded and raised at AMC level, in the new AMC2 ORO.AOC.125(a)(1)(ii).

comment 21

comment by: *IAOPA Europe*

In GM1 ORO.AOC.125(a)(2)

The list of non-commercial operations under "Other non-commercial flights" mentions private flights or leisure flights as well as charity flight. We suggest to add two items:

- "Internal corporate flights", where the AOC holder uses the aircraft for internal business purposes

and

- "Managed flights", where the AOC holder is acting as an aircraft management organisation and flying on behalf of for instance the aircraft owner.



response Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment 22 comment by: *IAOPA Europe*

GM1 ORO.AOC.125(a)(2)(ii) item (g) Categories of passengers on board:

It is stated that "Officials or representatives of the media, operator's, employees, operator's guests or any other persons who are not knowledgeable about procedures in normal operations and in abnormal and/or emergency situations. These passengers are entitled to an equivalent level of protection as for any passenger on a CAT flight."

It is suggested to replace the phrase:

"These passengers are entitled to an equivalent level of protection as for any passenger on a CAT flight."

with

"These passengers should be subject to a higher level of protection commensurate with the scope of the operation"

The original wording could be seen to imply that CAT rules or equivalent must be applied whenever such passengers are carried. That would be completely disproportionate and a barrier to many non-commercial operations of an AOC holder. When for instance an AOC holder is carrying out non-commercial flights under an aircraft management contract for an aircraft owner, it must be possible to follow the non-commercial rules, so that the AOC holder can offer the same services as an aircraft management company that does not hold an AOC.

response Thank you for your comment. Partially accepted.

It was considered that the text on the categories of passengers from GM1 ORO.AOC.125(a)(2)(ii) in the NPA was repeating the information already contained in AMC1 ORO.CC.100(d); therefore it has been removed from the GM. The idea proposed in this comment has been taken over in the reworded AMC1 ORO.CC.100(d).

comment 30 comment by: *FAA*

This page has a list of non-commercial operations per EASA; demonstration flights, functional check flights, relocation flights (ferry flights), delivery flights, positioning flights, and recovery flights. These flights may be considered as other commercial flying to the FAA, if not AOC operations. The flight time associated with these must be factored into the pilot's AOC duty and flight time limitation if the operations are conducted for compensation and hire, requiring a commercial pilot certificate.

response Thank you for the comment. Noted.



According to the European FTL requirements, a crew member operating a CAT flight for an AOC holder must comply with the FTL requirements, which means factoring in the flight and duty time periods recorded when undertaking duties or being engaged in other than CAT flights. Some of the flights mentioned on the list may become commercial flights if the criteria mentioned in the definition of 'commercial operation' in Regulation (EC) No 216/2008 are met.

comment

31

comment by: FAA

GM1 ORO.AOC.125(a)(2)(ii). EASA's list represents items that are standard operational control items to be checked before accepting a flight or series of flights, per operations. Page 26 continues by addressing non-operating crew members. The FAA defines a *Crewmember* as a person assigned to perform duty in an aircraft during flight time.

Lastly, the FAA requires each certificate holder operating under part 135 to establish for a period of not less than six months, an exclusive use aircraft. 14 CFR 135.25 requires:

*(b) Each certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation. However, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than operations under this part and does not require the certificate holder to have exclusive use of all aircraft that the certificate holder uses.*

*(c) For the purposes of paragraph (b) of this section, a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.*

By this rule being place, it helps ensure aircraft are not listed on multiple AOC Operations Specifications, that the aircraft is flown by pilots trained by the AOC, and that all maintenance is accomplished in accordance with applicable part 135 requirements.

14 CFR part 1

response

Thank you for your valuable comment. Noted.

The current European OPS rules specify that when an aircraft is being used by another AOC holder, the dry-leasing requirements shall apply, which means that the lessor must remove the aircraft from its AOC. The concept of exclusive use of an aircraft does not exist in the European OPS rules, perhaps the closest equivalent to this would be the use of aircraft under an AOC by an AOC holder. As the current rules state, only the AOC holder may use the aircraft on its AOC with full operational control.

The aim of the newly developed ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 is to introduce more flexibility for other-than-CAT operations performed by other operators. Thus, a minimum set of rules is created for the use of an aircraft registered on an AOC by



other operators for operations performed in accordance with Part-NCC/Part-NCO or Part-SPO. So it appears likely that these minimum requirements will be merely the vanguard of the combined operations of an AOC holder and other operators, with the aircraft listed on an AOC. With the new NCC and SPO rules being now applicable, we can foresee an increasing use of the aircraft of an AOC holder by other operators. Consequently, the rules may be further developed and adapted to cater for these new business models, when necessary.

comment

34

comment by: *Mario Tortorici*

ENAC proposes to clarify in proposed GM1 ORO.AOC.125 that the rule is applicable also when registration marks of aircraft are listed only in OM, as per remark # 6 in appendix II to Annex II.

response

Thank you for the comment. Accepted.

The clarification has been added in the text of ORO.AOC.125 and the associated AMC and GM and in the new ORO.GEN.310 and NCO.GEN.104 and the related AMC and GM.

comment

35

comment by: *Mario Tortorici*

Since the proposed text of GM1 ORO.AOC.125(a)(2) includes “(route) proving flights to demonstrate compliance with operational requirements to the CA as per ARO.GEN.310(a)”, ENAC proposes to mention also “flights to demonstrate compliance with continuing airworthiness requirements as per M.A. 901( h) and (i) and M.B.704 (c)”; at the same time ENAC propose to mention also “in flight verifications by Airworthiness Review Staff not belonging to the CA, as per M.A. 710 (b) and AMC M.A. 710 (b) (2)

response

Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment

36

comment by: *Mario Tortorici*

In proposed GM1 ORO.AOC.125(a)(2) training flights are listed as “non-commercial flights” but in some occasions they are performed in return for remuneration or other valuable consideration, are available to the public or, when not made available to the public, are performed under a contract between an operator and a customer, where the latter has no control over the operator, as per Reg 216/2008 definition, and therefore are to be considered as commercial flights. Clarification is needed to avoid confusion, also considering that classification as commercial or non-commercial flight has continuing airworthiness implications as per Reg. 1321/2014. See also ENAC comment to para 2.3.2

response

Thank you for your comment. Noted.



Please see the answer to comment No 33.

comment

39

comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

**GM1 ORO.AOC.125(a)(2) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC**

....

FUNCTIONAL CHECK FLIGHTS

(b) ....The operational framework as well as crew qualification and training requirements are detailed in **CRD 2012-08 on 'MCFs'**.

Swedish Transport Agency (STA) assumes that the reference will be changed as soon as the MCFs rules are published.

response

Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

The Opinion on MCF will be published more or less at the same time with the opinion stemming from this RMT. This Opinion can only propose changes to a published regulation, not to texts which have not been published yet at least as Opinions.

In any case, EASA will ensure that the changes to ORO.AOC.125 and the related AMC/GM proposed by the two RMTs are adequately aligned before the Opinions proposing the amendments to the regulations are published.

comment

40

comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

**GM1 ORO.AOC.125(a)(2) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC**

....

RELOCATION FLIGHTS

....

(d) 'Recovery flight': a flight to position a serviceable aircraft from its current location to an adequately secure location for various reasons (to remove it from a hazardous area, **or to recover it from the previous operator whose operator licence may be no longer valid**).

Swedish Transport Agency (STA) proposes that the example regarding the – *recover an aircraft from the previous operator whose operator licence may be no longer valid* – is deleted.

Justification: Normally such an aircraft is "between" AOCs and therefore ORO.AOC.125 is not applicable.

response

Thank you for your comment. **Noted and waiting for the new Basic Regulation.**



comment

42

comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

**AMC1 ORO.AOC.125(a)(2)(ii) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC**

**MINIMUM ELEMENTS OF RISK ASSESSMENT**

When developing different operating procedures for its non-commercial flights, the operator should identify hazards and assess and mitigate the risks associated with its specific operation, as part of its safety risk management process.

This process should consider at least the following elements:....

Swedish Transport Agency (STA) proposes that relevant airworthiness criteria should be added to the list that needs to be considered in the safety risk management process.

response

Thank you for your comment. Accepted. The AMC has been renamed and renumbered as AMC1 ORO.AOC.125(a)(1)(ii) ELEMENTS OF RISK ASSESSMENT OF DIFFERENT OPERATING PROCEDURES FOR NON-COMMERCIAL OPERATIONS

comment

43

comment by: *Swedish Transport Agency, Civil Aviation Department (Transportstyrelsen, Luftfartsavdelningen)*

**AMC2 ORO.AOC.125(a)(2)(ii) Non-commercial operations with aircraft listed in the operations specifications by the holder of an AOC**

**FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS FOR MIXED OPERATIONS**

When conducting a mixed operation of CAT and NCC/NCO flights, the operator should:

(a) comply with the provisions of ORO.FTL.210 'Flight times and duty periods' at any time, to ensure compliance with Subpart FTL for any CAT flight.....

For clarity Swedish Transport Agency (STA) proposes that a reference to Council Regulation (EEC) No 3922/91 (EU-OPS, Subpart Q) should be included in the AMC.

Justification: Some CAT operators will continue to apply FTL provisions in accordance with Council Regulation (EEC) No 3922/91 (EU-OPS, Subpart Q) and national provisions after 18 February 2016.

response

Thank you for the comment. Accepted.

The AMC has been renumbered as AMC1 ORO.AOC.125(a).

comment

45

comment by: *KLM*

In GM1 ORO.AOC.125(a)(2) in chapter "functional check flights" a definition of acceptance flight is given in (a).

In (b) of this same chapter of the GM1 acceptance flight is also mentioned, but here with a meaning that differs from the definition in (a).

In chapter "relocation flights" under (c) the definition of a "positioning flight" is given. Please delete from this definition "from which a further flight will be performed", in order to (exactly) match the definition of "relocation flight" as mentioned in Annex I of 965/2012.

response Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

comment 48 comment by: *Air France*

MCF are not a Functional check flights sub-category. This is not consistent with new definitions proposed in Annex I.

response Thank you for your comment. **Noted and waiting for the new Basic Regulation.**

comment 49 comment by: *Air France*

So far, TCDS does not specify any minimum number of cabin crew.

TCDS is not specific to an operation category.

This **GM1 ORO.CC.100(d) Number and composition of cabin crew**

CERTIFICATION APPROVAL ASPECTS

would have difficulties to solve the problems that would raise the addition of a minimum cabin crew in the TCDS.

response Thank you for your comment. Noted.  
Please see the answer to comment No 57.



comment	<p>57 <span style="float: right;">comment by: <i>FNAM (French Aviation Industry Federation)</i></span></p> <p>Regarding the paragraph GM1 ORO.CC.100(d) Number and composition of cabin crew, the number of cabin crew is not described in all Type Certificate Data Sheet and that document is not specific to operation. FNAM thinks that this GM is not relevant and does not answer to IR.</p>
response	<p>Thank you for your comment. Not accepted.</p> <p>This GM has been added to explain that the alleviation proposed in the rule (ORO.CC.100(d)) is not contradicting the certification requirements. It is to give an example that even when an STC specifies the minimum number of cabin crew required for the operation of that aircraft, an operator may still use the alleviation provided in ORO.CC.100(d) if appropriate mitigations are put in place, without meaning that this contradicts the data in the STC. The number of cabin crew indicated in the STC is the number of cabin crew used by the manufacturer for the evacuation exercise with maximum number of passengers for the certificated MOPSC of that aircraft cabin.</p> <p>So, in most of the cases, when the operational requirements stipulate that mitigation measures must be put in place in order to be allowed to operate a non-commercial flight with no cabin crew for maximum 19 passengers on board an aircraft with MOPSC above 19, they do not contradict the STC data.</p>

comment	<p>62 <span style="float: right;">comment by: <i>DGAC France</i></span></p> <p><b>GM1 ORO.AOC.125(a)(2)</b></p> <p>This GM provides additional information to the terms defined in Annex I and proposes new definitions.</p> <ol style="list-style-type: none"> <li>1. Typo error in item (d) of FUNCTIONAL CHECK FLIGHTS: “Flighs” instead of “Flights”</li> <li>2. A Maintenance Check Flight (MCF) is presented as a subcategory of Functional Check Flights (FCF). There are two different entries in the new definitions proposed in Annex I: (53) and (79). This can create confusion.</li> <li>3. An “acceptance flight” is listed as an example of term used for a MCF whereas an acceptance flight is said to be a different subcategory of Functional Check Flight. This can create confusion.</li> <li>4. Definitions of “TRAINING FLIGHTS” could be included in Annex I definitions.</li> <li>5. “TRAINING FLIGHTS”: Suggested change: add “flight”: (a) ‘Licensing training flight’: a flight... (b) ‘Operating training flight’: a flight...</li> <li>6. “Ferry flights”: suggested change: “ The aircraft may not be fully serviceable at dispatch”</li> <li>7. “TRAINING FLIGHTS”: In (b) ‘Operating training’: the term “usually” should be deleted. Training flights in the frame</li> </ol>
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of an “operating training” (i.e. not performed by an ATO in the frame of Aircrew but by an AOC holder) shall be conducted in accordance with OM D, even though procedures might not be detailed in OM D.

#### 8. OTHER NON-COMMERCIAL FLIGHTS

The statement “For these flights, the operational control remains with the AOC holder” is applicable to all non-commercial flights, and not limited to the category “OTHER NON-COMMERCIAL FLIGHTS”. This condition is recalled in GM1 ORO.AOC. 125 RULE APPLICABILITY. It is suggested to delete this sentence from this paragraph and insert it at the beginning of the GM.

response Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment 63 comment by: DGAC France

#### **GM1 ORO.AOC.125 (a)(2)(i)**

Paragraphs (a) and (b)(1) seem to be redundant. Moreover the ORO.AOC.125 (a)(2)(i) is not applicable to Maintenance Check Flights since it states “for all other flights” (than maintenance check flights).

It is suggested to delete (a) and (c) and renumber the following:

“The AOC holder may choose to apply to these operations:

- a) the same operational procedures as those applied for its normal CAT operations. In this case, the provisions of Part-CAT should apply, and no additional descriptions are required; or
- b) different operational procedures than those normally applied for its CAT operations. In this case, the minimum requirements should be Part-NCC or Part-NCO, depending on the aircraft complexity. For these, the AOC holder should identify the differences and describe the different applicable procedures in its operations manual.”

response Thank you for the comment. Partially accepted.  
The text has been reworted and it is in the new GM1 ORO.AOC.125(a).

comment 64 comment by: DGAC France

#### **AMC2 ORO.AOC.125(a)(2)(ii)**

The terms “mixed operation of CAT and NCC/NCO flights” should be replaced by “mixed operation of CAT and non-commercial flights”

response Thank you for the comment. Partially accepted. The text has been reworted and is now in AMC1 ORO.AOC.125(a).



comment	<p data-bbox="352 309 395 344">65</p> <p data-bbox="1150 309 1493 344" style="text-align: right;">comment by: <i>DGAC France</i></p> <p data-bbox="352 398 699 434"><b>GM1 ORO.AOC.125(a)(2)(ii)</b></p> <p data-bbox="352 452 1493 564">If the AOC holder is required to operate with two pilots in accordance with ORO.FC.200, procedures in its OM-B are written considering a task sharing between a commander and a co-pilot.</p> <p data-bbox="352 577 1299 613">If not adapted, the OM-B may not be usable in case of Single Pilot Operations.</p> <p data-bbox="352 631 1493 743">Therefore it is suggested to add a provision to ensure that the AOC holder develop procedures if the crew composition is different from its CAT operations. Those procedures can refer to the aircraft flight manual.</p>
response	<p data-bbox="352 801 794 837">Thank you for the comment. Noted.</p> <p data-bbox="352 855 1493 922">The requirement in ORO.AOC.125 requires the AOC holder to state the differences in the procedures in its operations manual.</p> <p data-bbox="352 940 1493 1052">The crew composition is an element in the list provided in AMC1 ORO.AOC.125(a)(1)(ii), which the AOC holder should consider when establishing its different procedures for its non-commercial flights (if any).</p>
comment	<p data-bbox="352 1182 395 1218">66</p> <p data-bbox="1150 1182 1493 1218" style="text-align: right;">comment by: <i>DGAC France</i></p> <p data-bbox="352 1272 699 1308"><b>GM1 ORO.AOC.125(a)(2)(ii)</b></p> <p data-bbox="352 1326 1493 1393">It is suggested to replace “This category of passengers should be able to ensure their own protection” by “This category of passengers <b>may</b> be able to ensure their own protection”.</p> <p data-bbox="352 1411 1493 1478">Indeed, if they are not qualified on the aircraft type, the non-operating crew members might also need safety information.</p>
response	<p data-bbox="352 1527 880 1563">Thank you for the comment. Not accepted.</p> <p data-bbox="352 1581 1493 1648">The points under point (g) of GM1 ORO.AOC.125(a)(2)(ii) have been deleted and incorporated into AMC1 ORO.CC.100.</p>
comment	<p data-bbox="352 1774 395 1809">67</p> <p data-bbox="1150 1774 1493 1809" style="text-align: right;">comment by: <i>DGAC France</i></p> <p data-bbox="352 1863 699 1899"><b>GM2 ORO.AOC.125(a)(2)(ii)</b></p> <p data-bbox="352 1917 1493 1984">The proposed provision would be more relevant at an AMC level. If accepted the first sentence could be rephrased:</p> <p data-bbox="352 2002 1493 2054">“For flights with an increased level of risk, the AOC holder should establish a flight</p>



	programme including the following: ...”	
response	Thank you for the comment. Accepted. The text has been moved to AMC2 ORO.AOC.125(a)(1)(ii).	
comment	68	comment by: <i>DGAC France</i>
	<b>AMC1 ORO.CC.100(d)</b> It is suggested to replace “Non-operating crew members (flight crew, cabin crew, technical crew) who are familiar ...” by “Non-operating crew members (flight crew, cabin crew, technical crew) who <b>may be</b> familiar” in a). Indeed, if they are not qualified on the aircraft type, the non-operating crew members might also need safety information.	
response	Thank you for the comment. Accepted. The text has been modified to enhance clarification.	
comment	69	comment by: <i>DGAC France</i>
	<b>AMC1 ORO.CC.100(d)</b> It is suggested to remove (ii) for simplification and modify (i) as follows: “Such procedures should describe how appropriate surveillance, coordination and communication with the passenger compartment is ensured for the duration of the flight.”	
response	Thank you for the comment. Accepted. AMC1 ORO.CC.100(d) has been reworded.	
comment	70	comment by: <i>DGAC France</i>
	<b>GM1 ORO.CC.100(d)</b> DGAC France supports the approach proposed in this paragraph. However it doesn’t seem in line with the statement made in the explanatory note (p.19) that the proposed alleviation cannot overrule certification requirements.	
response	Thank you for the comment. Accepted.	



The text of the implementing rule and of the related GM have been amended to clarify the aspect that the certification requirements cannot be overruled by this rule. This alleviation may be applied only when the operator takes appropriate measures (operational procedures) to ensure passenger protection. So, this alleviation does not contradict the certification requirements if appropriate safety measures are ensured through the operational requirements.

Please see also the answer to the comment No 57.

comment

78

comment by: EBAA

Please clarify where in the context and the new definitions the owner fits...

or

Add definition for the “owner of a business aviation aircraft”

(Non-revenue flights; Level of protection different)

response

**Noted and waiting for the new Basic Regulation.**

comment

79

comment by: EBAA

Owner shall equal aircraft owner or beneficiary owner!

Please explain leisure flights considering or not the owner presence...

response

**Noted and waiting for the new Basic Regulation.**

comment

80

comment by: EBAA

The rest reqs shall be followed but the rules for Flight duty periods less restrictive in case of business aviation non-comm flights.

response

Thank you for the comment. Noted.

Please note that a point specifying the minimum requirements for flight and duty time limitations has been developed in the new AMC1 ORO.AOC.125(a). As per Article 8 of the Air OPS Regulation, the FTL requirements in ORO.FTL apply to CAT operations. Non-commercial operations with complex motor-powered aeroplanes and helicopters will continue to apply the national legislation on flight time limitations until the related European rules are adopted and applicable. However, according to the European FTL requirements, a crew member operating a CAT flight for an AOC holder must comply with the FTL requirements, which means factoring in the flight and duty time periods recorded when undertaking duties or



being engaged in other than CAT flights.

comment

81

comment by: EBAA

All references to NCC/NCO shall be removed and replaced by the term Non-comm ops, In this particular case, the landing safety factor is removed for non-comm ops. Please also link with the RMT.0296 work on aircraft performance...

response

Thank you for your comment. Not accepted.

This comment is linked to the content of many pages in the NPA (21 to 28) and a more accurate reference to the text could not be established.

Therefore, since the distinction between NCC/NCO and non-commercial SPO operation has to be maintained throughout the proposed AMC and GM, the proposal in your comment was not accepted.

comment

82

comment by: EBAA

Following conditions grant a release for a non-commercial flight with an AOC aeroplane:

- Need for un-factored landing performances having been reasonably judged by the operator and the aircraft commander.
- Need for a deviation from Traffic rights, not applying to non-commercial operations.
- Avoiding specific delays in obtaining Permits, thereby reducing operational efficiency for the private operator.
- Need for deviation in the FTL regulations of OM Part A, Section 7, applicable to the flight duty period. The following applies:
  - For all long haul flights, crews get 3 days OFF after return of the mission.
  - Before and after a non-commercial flight legal rest times will be respected as they would be for commercial operations
- In case of single pilot operations, the only pilot on board will perform all tasks as specified as PF and PM.
- Pets in cabin are allowed as long as:
  - They do not interfere with the safety of the flight
  - They are not positioned in front of an emergency exit
  - They are kept on a leash/harness and secured by the passenger seat belt or they are kept in a bench/suitable bag
- Need for a reduction of the firefighting category by 1 on commander's discretion. The FOM may, in exceptional cases, grant a further reduction of 1 category. In this case the



customer needs to be informed.

- Need for deviations from the OM Part D when considering crewmembers to fly under non-commercial operations. These crewmembers consist of:
  - Pilots who fly single pilot
  - Pilots above 65, except for single pilot operations
  - Pilots who have a 3rd type rating
  - Freelance pilots

response Thank you for your comment. Noted.

Such a list resembles a checklist or a procedure used by an AOC holder for a non-commercial flight. The AMC and GM developed for ORO.AOC.125 propose rather a set of elements to help an operator to perform an accurate risk assessment for various types of non-commercial flights. It is up to the operator to define, under its managements system and risk assessment, which mitigations and different operating procedures should be applied to its non-commercial flights. EASA considers that rules should remain flexible and based on performance. Therefore, a prescriptive template that may not fit all the types of non-commercial operation, consequently generating many AltMoCs, should be avoided.

comment 85

comment by: *Southern Cross International*

GM1 ORO.AOC.125 (rule applicability) suggests that the operational control of a non-commercial flight can be transferred from the AOC holder to another operator. In that case the provisions of ORO.AOC.125 do not apply anymore since the AOC holder is no longer the operator of the aircraft and the new operator has to comply with e.g. Part-NCC or Part-SPO and has to submit a declaration in accordance with ORO.DEC.100. This would be a very useful provision, since some (smaller) operators may not have sufficient recent experience to perform certain non-commercial flights, such as maintenance check flights or acceptance flights. It would give them the possibility to outsource such flights to specialised third parties, including the OEM.

Although GM1 to ORO.AOC.125 is very clear, ORO.AOC.125 itself does not address the possibility to transfer operational control to another operator.

response Thank you for your comment. Accepted.

The operation of aircraft included in an AOC by other operators for other-than-CAT operations in accordance with Part-NCC, Part-NCO or Part-SPO, are now covered by the new ORO.GEN.310, NCC.GEN.101, and NCO.GEN.104 and related AMC and GM.



comment	<p>86</p> <p style="text-align: right;">comment by: <i>Southern Cross International</i></p> <p>GM1 ORO.AOC.125(a)(2) LIST OF NON-COMMERCIAL FLIGHTS PERFORMED BY AN AOC HOLDER</p> <p>It is proposed to change the definition of (route) proving flights as follows: (route) proving flight: a flight to demonstrate <u>the operator's procedures and aircraft's flying characteristics and systems</u> to the competent authority, for verification of compliance with the operational requirements, as per ARO.GEN.310(a).</p>
response	<p>Thank you for your comment. <b>Noted and waiting for the new Basic Regulation.</b></p>

comment	<p>87</p> <p style="text-align: right;">comment by: <i>Southern Cross International</i></p> <p>GM1 ORO.AOC.125(a)(2) LIST OF NON-COMMERCIAL FLIGHTS PERFORMED BY AN AOC HOLDER</p> <p>The examples of terms used for a Maintenance Check Flight (technical flight, engineering flight, acceptance flight) may create confusion and shall be deleted from the text.</p>
response	<p>Thank you for your comment. <b>Noted and waiting for the new Basic Regulation.</b></p>

comment	<p>88</p> <p style="text-align: right;">comment by: <i>Southern Cross International</i></p> <p>GM1 ORO.AOC.125(a)(2) LIST OF NON-COMMERCIAL FLIGHTS PERFORMED BY AN AOC HOLDER</p> <p>item (d) 'Flights performed before the transfer of ownership or at the end of a leasing period.' is already covered by item (a) and shall be deleted to avoid confusion.</p> <p>It is proposed to rewrite the definition of Acceptance flights as follows: <u>Acceptance flight: a flight performed before the transfer of ownership or at the end of a leasing period</u> for the purpose of demonstrating to customers (lessee, buyer) the actual compliance of the aircraft with the contractual specifications. It involves serviceability aspects.</p>
response	<p>Thank you for your comment. <b>Noted and waiting for the new Basic Regulation.</b></p>



comment 89

comment by: *Southern Cross International*

GM1 ORO.AOC.125(a)(2)

LIST OF NON-COMMERCIAL FLIGHTS PERFORMED BY AN AOC HOLDER

The number of different 'relocation flights' shall be limited. In general, the term ferry flight is industry-wide used for flights to/from an MRO, delivery flights and recovery flights. In fact the term 'relocation flight' is very uncommon. In addition, the serviceability of an aircraft should not determine the type of 'relocation flight'. In the current proposal 'recovery flights' are defined to be flights with a serviceable aircraft, but if an aircraft is recovered from its previous operator whose operator licence is no longer valid, the aircraft is no longer maintained by an approved maintenance programme and a Permit to Fly must be issued, i.e. the aircraft is not fully serviceable.

It is proposed to change the paragraph RELOCATION FLIGHTS as follows:

(a) 'Ferry flight': a flight to a location for maintenance purposes or a flight to transfer the aircraft from the acceptance location (manufacturer, refurbishment location, previous owner, lessor/lessee, long-term storage) to the operator's base or a flight to position an ~~serviceable~~ aircraft from its current location to an adequately secure location for various reasons (to remove it from a hazardous area, or to recover it from the previous operator whose operator licence may be no longer valid).

(b) 'Positioning flight': a flight to position the aircraft and its crew members to a location from which a further commercial flight will be performed.

response

Thank you for the comment. **Noted and waiting for the new Basic Regulation.**

comment 92

comment by: *DFS***NPA page 26: AMC ORO.MLR.100**

For an operator performing both CAT and NCC operations (with different aircraft but some pilots do both), is it allowed to use the same operations manual for both types of operations?

If it is, could this possibility be included in one of the AMC?

Indeed,

- OMA will be 95 % identical in our case (we will confirm in the future but consider to operate NCC and CAT aircraft in the same manner except for FTL).
- OMB would be identical except for the MEL. The CAT aircraft versus NCC aircraft could be identified in a different color to facilitate the identification of CAT versus NCC for the authorities.
- OMC would be identical.
- OMD: there will be differences and this part might have to be specific.

Duplicating the manuals would not only create unnecessary work but will necessarily lead to



errors when updating the manuals.

In addition, our pilots might be confused about which document to use since they fly both CAT and NCC operations.

We would prefer to only highlight the difference for them.

**AMC1 ORO.GEN.200 (b) Management system**

Why does this AMC mix the complexity of the operator and therefore the complexity of its management system with the SPA approval?

With the current definition, an operator with 3 persons and no operation relevant from part SPA will define himself as non-complex and develop its management system as such.

Just by adding LVTO operations, he would become complex and have to rethink completely his management system, while he already had to demonstrate compliance to part SPA.

Part b(2) (i) and b(2)(ii) being already addressed by specific SPA requirements, should they not be removed from the “complexity criteria”?

There would be complex & non-complex operators, with or without SPA or SPO approvals and the additional requirements for operators performing the SPA operations would simply be identified in part SPA.

This would prevent differences of interpretations.

response

Thank you for your comments. Not accepted.

**AMC3 ORO.MLR.100:**

The provisions of ORO.MLR.100 are flexible. They allow operators to arrange their operations manuals any way they want in order to address their needs better. One single OM for both CAT and NCC/NCO operations may include procedures for both types of operation on the condition that it is clear when each of the two different sets of procedures should apply.

**AMC1 ORO.GEN.200(b):**

This comment refers to a topic which is outside the scope of this RMT. Changes/updates to Part-ORO are covered by RMT.0516.

