

Civil Aviation Safety Regulations 1998

CASA 109/21 — Determination for Part 91 MOS Amendment Instrument 2021 (No. 2)

Statement of reasons for making the Determination

Legislation

Subsection 9 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that CASA has the function of conducting the safety regulation, in accordance with the Act and the regulations, of civil air operations in Australian territory and of the operation of Australian aircraft outside Australian territory. Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under regulation 11.280 in Subpart 11.J of the *Civil Aviation Safety Regulations 1998 (CASR)*, if CASA intends to issue a Manual of Standards (a *MOS*) CASA must publish a notice of its intention to do so on the internet. This requirement also applies to an amendment of a MOS.

The purpose of such publication is to facilitate consultation with, and seek comments from, interested parties. The notice must describe the draft MOS or MOS amendment, how it may be obtained, how comments on it may be made and lodged, and the time frame within which such comments may be lodged (to be not less than 28 days from posting on the internet unless subregulation 11.280 (4) of CASR applies). Under regulation 11.290 of CASR, before issuing the final MOS, CASA must consider any comments received, and may consult with any person on issues arising from those comments. Under subregulation 11.295 (1) of CASR, a failure to comply with the procedures in Subpart 11.J of CASR does not affect the validity of the MOS in question.

However, under paragraph 11.275 (1) (d) of CASR, CASA is not obliged to comply with the publication requirements of regulation 11.280 before issuing a MOS or a MOS amendment if the Director of Aviation Safety (the *Director*) determines that the MOS is of a minor or machinery nature that does not substantially alter existing arrangements.

Under subregulation 11.275 (2) of CASR, if the Director does make such a Determination (the *Determination*), CASA must publish the Determination, and a statement of reasons for it, on the internet within 28 days after making the Determination.

Why the proposed MOS amendment is of a minor or machinery nature

The *Part 91 MOS Amendment Instrument 2021 (No. 2)* (the *proposed MOS amendment*) amends the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020* (the *MOS*).

The MOS, which commenced on 2 December 2021, sets out the standards for “the rules of the air” for all pilots, and the general operating rules for pilots who are not operating under an Air Operator’s Certificate or other certificate, and is the foundation for all aviation operations. The MOS was made under regulation 91.040 of Part 91 of CASR. It consolidates the existing rules of the air and contains some new rules to enhance operational flexibility, improve aviation safety, and bring Australian requirements more in line with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO).

The proposed MOS amendment, which commences on the day it is registered, is necessary to remedy an inadvertent omission in relation to requirements for the fitment of cockpit voice recorders (*CVR*) and flight data recorders (*FDR*) in certain aircraft.

It had been intended that the effect of paragraph 6.1A of Civil Aviation Order (CAO) 20.18 should be continued and reflected in the MOS. The CAO paragraph provided, in effect, that otherwise prescribed CVR and FDR equipment requirements would not apply to an aircraft for which there was in force an airworthiness certificate (that is, in effect, type certification) in the agricultural category or the restricted category.

It had been intended that this exclusionary provision would be included in the *Part 91 MOS Amendment Instrument 2021 (No. 1)* that was registered on 11 November 2021 to commence on 2 December 2021 (the *previous MOS amendment*). That previous MOS amendment contained over 140 miscellaneous minor and machinery amendments provisions making a range of corrections and updates to the MOS, and this matter should also have been included there but was overlooked.

The proposed MOS amendment does not in practice substantially alter the pre-2 December 2021 arrangements which were meant to continue to apply on and post-2 December 2021.

It ensures the intended policy outcomes for CVRs and FDRs, in the context of type certificated aircraft in the agricultural and restricted categories, are realised, by remedying an inadvertent omission. It is determined, therefore, that the proposed MOS amendment is of a minor or machinery nature for the purposes of paragraph 11.275 (1) (d) of CASR.

The Explanatory Statement, which accompanies the proposed MOS amendment, can be found on the Federal Register of Legislation, and contains further information about the amendment.

Determination

The Determination, therefore, is a determination by the Director that the proposed MOS amendment is of a minor or machinery nature that does not substantially alter existing arrangements.

Legislative Instruments Act 2003

The Determination is not a legislative instrument.

Consultation

In view of the minor or machinery nature of the proposed MOS amendment, consultation is not required.

There has, nevertheless, been informal consultation with the aviation industry in the course of preparation of the amendment. Feedback was received from multiple sources identifying that the CVR and FDR provisions of the MOS had overlooked the exclusionary effect of the former paragraph 6.1A of CAO 20.18.

Commencement and making

The Determination commences on the date of signature.

The Determination has been made by the Director of Aviation Safety in accordance with paragraph 11.275 (1) (d) of CASR.

The Determination and this Statement of Reasons for making the Determination are published on the CASA website within 28 days after the Determination is made in accordance with subregulation 11.275 (2) of CASR.