

Civil Aviation Safety Regulations 1998

CASA 105/21 – Determination – Non-compliance with CASR Subpart 11.J Requirements – Proposed Amendments of Part 135 Manual of Standards

Statement of the reasons for the Determination

Legislation

Subsection 9 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Civil Aviation Safety Authority (*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 in the interests of the safety of air navigation. The relevant regulations are the *Civil Aviation Safety Regulations 1998* (*CASR*).

Under regulation 11.280 of CASR, if CASA intends to issue, or amend, a Manual of Standards (*MOS*), it must publish a notice of its intention to do so on the internet. The purpose of the notice is to facilitate consultation with, and to seek comments from, persons in relation to the draft MOS or MOS amendment. The notice must include the following information about the draft MOS or MOS amendment:

1. its title and a description of its contents;
2. how to obtain a copy of it;
3. the period during which comments on it may be lodged;
4. how the comments are to be made and lodged.

Under regulation 11.285 of CASR, a person may comment on a draft MOS or MOS amendment in the way set out in the notice published, under regulation 11.280, in relation to the draft MOS or MOS amendment.

Under regulation 11.290 of CASR, before issuing a MOS or MOS amendment, CASA must consider any comments received on the draft MOS or MOS amendment and may consult with any person on issues arising from the comments.

Under subregulation 11.295 (1) of CASR, a failure to comply with the procedures in Subpart 11.J of CASR, in relation to a MOS or MOS amendment, does not affect the validity of the MOS or MOS amendment.

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

Under subregulation 11.275 (2), if the Director makes such a determination, CASA must publish it, and a statement of the reasons for it, on the internet within 28 days after it is made.

Background

The *Part 135 Manual of Standards* (the *Part 135 MOS*), which commences immediately after the commencement of the *Civil Aviation Safety Amendment (Part 135) Regulations 2018*, being 2 December 2021, sets out the standards for the operational, procedural and safety risk management standards for the conduct of Australian air transport operations of smaller aeroplanes.

The Part 135 MOS was made under regulation 135.025 of CASR. It consolidates the existing rules and contains new rules to enhance operational flexibility, improve aviation safety and make Australian aviation requirements more closely aligned with the Standards and Recommended Practices of the International Civil Aviation Organization.

The *Part 135 Manual of Standards Amendment Instrument 2021 (No. 1)* (the *instrument*), which commences at the time it is registered, amends the Part 135 MOS. The instrument does the following in relation to the Part 135 MOS:

1. provides additional time for the aviation industry to comply with certain new requirements;
2. corrects editorial errors;
3. clarifies the operation of certain provisions;
4. more accurately states certain requirements to reflect the policy objectives;
5. allows aeroplane operators the option to adopt new technologies to meet certain requirements.

The instrument does not substantially alter the existing arrangements, as provided for by the Part 135 MOS.

Issues

CASA is making the instrument without complying with the consultation requirements stated in regulation 11.280 for the reasons set out below.

The amendments of the Part 135 MOS in Schedule 1 to the instrument are of a minor or machinery nature that do not substantially alter existing arrangements.

The Director has made a determination under paragraph 11.275 (1) (d), in relation to the amendments, on the basis that the amendments are of a minor or machinery nature that do not substantially alter existing arrangements. Accordingly, consultation under regulation 11.280 on the amendments is not considered necessary by CASA.

The abovementioned determination is covered by *CASA 105/21 – Determination – Non-compliance with CASR Subpart 11.J Requirements – Proposed Amendments of Part 135 Manual of Standards* (the *Determination*).

The instrument commences at the time it is registered on the Federal Register of Legislation (the *FRL*).

Legislation Act 2003 (the LA)

The Determination does not alter the law and, therefore, is not a legislative instrument under the LA.

Consultation

In view of the minor or machinery nature of the amendments of the Part 135 MOS in Schedule 1 to the instrument, consultation is not required. There has, nevertheless, been informal consultation with the aviation industry during the drafting of the amendments. Some of the amendments have arisen following feedback given by the industry to CASA, including individual feedback and collective feedback from working groups.

Commencement and making

The Determination commences on the date of signature, and is repealed on the day after the instrument is registered on the FRL.

The Determination is made by the Director under paragraph 11.275 (1) (d).