

Civil Aviation Safety Regulations 1998

CASA 96/21 — Determination for Part 138 MOS Amendment Instrument 2021 (No. 1)

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 138 MOS Amendment Instrument 2021 (No. 1)* (the *MOS amendment*) amends the *Part 138 (Aerial Work Operations) Manual of Standards 2020* (the *Part 138 MOS*).

The Part 138 MOS, which commences on 2 December 2021, sets out the operational, procedural and safety risk management standards for the conduct of aerial work operations in aeroplanes and rotorcraft. This MOS was made under regulation 138.020 of Part 138 of CASR. It consolidates the existing rules 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.

The MOS amendment, which also commences on 2 December 2021, is necessary to make a number of miscellaneous minor or machinery amendments to the MOS. Their purpose is to make a range of clarifications, corrections and updates to the MOS, and to relocate provisions into the MOS that are located in Civil Aviation Orders or other instruments that currently exist and are in force, some of which were previously embodied in the MOS but with errors or omissions.

With at least equivalent safety outcomes, provisions from the following existing, in force, Civil Aviation Orders or other instruments are included within the proposed MOS amendment (not every provisions of an instrument mentioned below is relocated into the MOS):

- CASA 113/09 – Direction – flights over water
- Civil Aviation Order 20.11 (Emergency and life saving equipment and passenger control in emergencies)
- Civil Aviation Order 95.7.3 (Exemption of Certain Helicopters Engaged in Transferring Marine Pilots from Compliance with Subregulation 174B (2) of the Civil Aviation Regulations 1988).

The proposed MOS amendment does not substantially alter the existing arrangements, whether as provided for by the MOS with effect on and from 2 December 2021, or as would be provided for on that date by those other instruments if they continued to exist transitionally and independently of the MOS.

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.

Appendix 2 of the Explanatory Statement, which accompanies the proposed MOS amendment and can be found on the Federal Register of Legislation, sets out a detailed explanation of each amendment and demonstrates how it is of a minor or machinery nature in the context of the Part 138 MOS.

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 considerable informal consultation with the aviation industry in the course of preparation of the amendments. Many of the amendments have arisen due to extensive feedback from the aviation industry to CASA via multiple communication channels, both individual direct feedback, and collective feedback from various working groups.

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 both published on the CASA website within 28 days after the Determination is made in accordance with subregulation 11.275 (2) of CASR.