

## Civil Aviation Safety Regulations 1998

### CASA 44/22 — Determination for Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards 2022 (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 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018* (the *Part 149 MOS*) was amended in 2021 such that it could operate effectively following the commencement of Parts 91, 103, 105 and 131 without the Manuals of Standards for Parts 103, 105 and 131 (the *3-pack regulations*), to support and fill in the framework of the respective Parts. During 2021, the making of Manuals of Standards for the 3-pack regulations was delayed, in each case, for further consultation with the established industry groups. This necessitated transitional arrangements to enable sport and recreation aircraft, recreational ballooning activities, and parachuting operations to continue under existing arrangements.

At the time of the commencement of Part 103 of CASR, CASA had reissued the “95 series” Civil Aviation Orders that covered the aircraft intended to be regulated under Parts 103 and 131 to exempt them from the operation of provisions in the regulations necessary to allow the aircraft to continue to operate under existing arrangements. Once the legislative framework (including the Manuals of Standards for Parts 103 and 131) is in place, the transitional arrangements as they relate to approved self-administering aviation organisations (*ASAOs*) administering these aircraft would no longer be required. Sport aviation bodies yet to transition to becoming an ASAO under

Part 149 would require equivalent exemptions from regulations in order to continue to operate as currently.

The 2021 amendments to the Part 149 MOS ensured that the aviation administration functions prescribed by the MOS would properly capture the aircraft intended to be captured by Part 103, that were being administered by an ASAO, as well as balloons operated for the purposes of a Part 131 activity. As a temporary measure, the amendments also removed from the scope of the Part 149 MOS outdated references to aircraft, intended to be captured by Part 103, that were still being administered by sport aviation bodies which had not transitioned to becoming ASAOs under Part 149. This was for the reason that it was not necessary to deal with them in the Part 149 MOS immediately, and CASA would prepare further amendments to incorporate the aircraft back into the scheme when it had the opportunity and necessarily by the time the Part 103 Manual of Standards was made.

The amendments in the proposed instrument that reincorporate those aircraft have become necessary to enable the sport aviation bodies that administer them to apply for a Part 149 certificate, in the period of time within which they could take advantage of the fee-free period (which comes to an end on 2 December 2022). The issue of Part 149 ASAO certificates is a regulatory service task under the *Civil Aviation (Fees) Regulations 1995*, that would normally attract a fee for issuing the ASAO authorisation. However, for the purposes of section 6 of those regulations, a fee waiver decision has been made by the Director that is valid until 2 December 2022. For the reasons given above these amendments are minor or machinery and do not substantially alter existing arrangements.

The proposed amendments also add the airworthiness of emergency parachutes to the list of aviation administration functions prescribed by the Part 149 MOS. As sport aviation bodies currently oversight the airworthiness of emergency parachutes, and Part 105 (parachuting from aircraft) provides for the airworthiness of emergency parachutes to be administered by ASAOs, the amendments are minor or machinery and do not substantially alter existing arrangements.

The amendments also make some typographical corrections.

The Explanatory Statement, which accompanies the proposed MOS amendment, can be found on the Federal Register of Legislation. The Explanatory Statement sets out detailed explanations of each 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 considerable consultation, both formal (through the relevant Technical Working Groups) and informal (with industry stakeholders) in the consideration of the administrative requirements that will apply to a Part 103 ASAO or a Part 105 ASAO once the MOS for the relevant Part commences.

**Commencement and making**

The Determination commences on the date of signature.

The Determination has been made by the Director 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.