

Civil Aviation Safety Regulations 1998

CASA 46/22 — Determination for Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards (No. 2) 2022

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) Amendment Manual of Standards 2022 (No. 1)* (the **Part 149 MOS (No. 1) amendments**), was recently made for the purpose of reincorporating, into the Part 149 MOS, aircraft (including gyroplanes) that had been within the scope of the Part 149 MOS when it was initially issued in 2018. These aircraft were removed from the scope of the Part 149 MOS in amendments made in late 2021, as part of an exercise in which CASA reissued the “95 series” Civil Aviation Orders and other instruments to establish transitional arrangements for the continuance of existing arrangements for sport and recreation aircraft, recreational ballooning activities and parachuting operations. The transitional arrangements were necessary because Parts 91, 103, 105 and 131 commenced on 2 December 2021 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. The making of the Manuals of Standards for Parts 103, 105 and 131 was delayed in each case for further consultation with industry groups). At the time that the 3-pack regulations commenced, the aircraft were still administered by sport aviation bodies that had not yet transitioned to becoming Approved Self-administering Aviation Organisations (**ASAOs**) under Part 149.

The Part 149 MOS (No. 1) amendments made a series of amendments to reincorporate these aircraft to enable 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. This is given effect by a fee waiver decision made by the Director under section 6 of the *Civil Aviation (Fees) Regulations 1995*. The proposed MOS amendment provides for gyroplanes (to which Civil Aviation Order 95.12 or 95.12.1 applies) to be reincorporated within the scope of the Part 149 MOS. The omission of these aircraft from the recent Part 149 MOS (No. 1) amendments was an oversight.

The Part 149 MOS (No. 1) amendments were minor or machinery in nature for reasons mentioned above and set out in the Statement of Reasons for *CASA 44/22 — Determination for Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards 2022 (No. 1)*. For the same reasons, the proposed amendment is also minor or machinery and does not substantially alter existing arrangements.

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.