

Civil Aviation Safety Regulations 1998

CASA 21/23 — Determination for the Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (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. Under regulation 11.267, 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 actual draft MOS or MOS amendment itself, how a copy of it may be obtained, how comments on it may be made and lodged, and the period within which such comments may be lodged (to be not less than 28 days from posting on the internet; or not less than 14 days if subregulation 11.280(4) of CASR applies, that is, where the MOS amendment is of a minor or machinery nature).

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.

“Minor or machinery” are alternative criteria, not cumulative. The content and effect of that which is of a minor nature differs from the content and effect of that which is of a machinery nature.

A “substantial alteration” is taken to be one that involves the imposition of both a new and a significant regulatory obligation of compliance with or without an associated burden of cost. Conversely, an amendment does *not alter existing arrangements* if it does not involve the imposition of both a new and significant regulatory obligation of compliance with or without an associated burden of cost.

“Existing arrangements” are not confined to those provided for by the principal MOS and can include regulatory and other arrangements under the civil aviation legislation as applied or understood, including in transitional or consequential legislation or other instruments.

There are many categories of minor MOS amendments. For example, MOS amendments are minor if they:

- amount to no more than small or incremental changes to existing procedures, requirements or obligations
- introduce new procedures, requirements or obligations that improve aviation safety or aviation safety administration, without having any relatively material impact on the pre-existing arrangements
- correct provisions which are demonstrably at variance with what had previously been agreed through consultative processes
- introduce new provisions or arrangements to implement what had previously been agreed through consultative processes and been inadvertently overlooked.

This is merely a guide and not an exhaustive list.

MOS amendments are machinery if, for example, they amount to no more than:

- corrections of typographical, spelling, citation, or other errors
- corrections of misstatements
- improvements to confused or unclear drafting
- modifications to obligations to rationalise them and avoid duplication or redundancy
- deletion of expired provisions or obligations
- updating of references or requirements that have been altered through mechanisms unrelated to the MOS amendments
- insertion or deletion of procedural steps that facilitate the application and operation of the procedural requirements as a whole.

This is merely a guide and not an exhaustive list.

Under subregulation 11.275(2) of CASR, if the Director does make 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.

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

Under subregulation 11.295(2), if CASA issues a MOS other than under paragraph 11.275(1)(a) of CASR (an urgent issue in the interests of aviation safety), CASA must, within 28 days after issuing the MOS, publish a notice of consultation in relation to the MOS as if it were a notice under regulation 11.280, and regulations 11.285 and 11.290 are taken to apply (comments may be received, and must be considered).

Urgent issue MOSs are dealt with in a similar way under subregulations 11.275(3) and (4).

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

The proposed *Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 1)* (the **MOS amendment**) will amend the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (the **principal MOS**).

The principal MOS prescribed a range of miscellaneous matters in relation to the safety and regulatory oversight of remotely piloted aircraft (**RPA**), including training and competency standards for remote pilot licences.

A post-implementation review of the principal MOS identified the need to simplify or correct a miscellaneous range of matters in the MOS. The MOS amendment will be the third in a series of

amendments designed, in the light of 3 years of practical CASA and industry experience with the MOS, to make technical updates and improvements that do not substantially alter existing requirements but improve and clarify the way they operate.

The MOS amendment will contain over 160 individual disparate amendments but the following may give some idea of the range of those amendments and show that, of their nature, they are clearly minor or machinery matters. The MOS amendment will:

- add, clarify, correct, or delete, some definitions
- correct typographical errors
- remove gendered language
- add or clarify some Notes
- add transitional provisions
- clarify the distinction between provisions dealing with the initial issue of a remote pilot licence (*RePL*) and an upgrade of such a licence
- update some language to better accommodate communications technology
- clarify significant change processes
- re-express some provisions in clearer language
- recast some provisions to remove some unnecessary procedural and operational requirements
- delete some unnecessary administrative requirements about record keeping
- remove some unnecessary training prescriptions from the aeronautical knowledge units and the practical competency units of a RePL training course.

CASA considers that these amendments are of a minor or machinery nature because clearly they are not of such significance, impact or novelty as to substantially change existing civil aviation legislation arrangements as currently applied or understood.

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

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, within the meanings of these terms as described above.

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 on the actual MOS amendment instrument is not required.

Although CASA considered that the MOS amendment would be of a minor or machinery nature, CASA decided nevertheless to carry out consultation on the amendment proposals before attempting to draft a final MOS amendment.

Public consultation on proposed amendments to Part 101 CASR and MOS – Unmanned aircraft and rockets – (PP 2107US) opened 15 December 2021 and closed 21 February 2022.

Additional consultation between CASA, Airservices Australia, the Department of Defence and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, has also taken place.

All representations and comments made by those responding to the consultation process were considered by CASA in formulating its final set of MOS amendments. There was general agreement across the board to the minor or machinery changes that CASA proposed to make to the principal MOS.

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.