

Civil Aviation Safety Regulations 1998

CASA 68/23 — Determination for Part 135 Manual of Standards 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 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 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 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 *MOS*s are dealt with in a similar way under subregulations 11.275(3) and (4).

Minor or machinery?

“Minor or machinery” are alternative criteria, not combined or 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 may be 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 may be 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.

The proposed MOS amendment

The *Part 135 Manual of Standards Amendment Instrument 2023 (No. 1)* (the **proposed MOS amendment**) will amend the *Part 135 (Australian Air Transport Operations—Smaller Aeroplanes) Manual of Standards 2020* (the **Part 135 MOS**).

The Part 135 MOS sets out the standards for the operation of smaller aeroplanes for an Australian air transport operation. It was made under regulation 135.025 of Part 135 of CASR. It consolidates the detailed standards and requirements associated with the conduct of Part 135 operations by Australian air transport operators.

Part 135 of CASR prescribes requirements for the conduct of Australian air transport operations in aeroplanes that have a maximum operating passenger seating configuration (**MOPSC**) of not more than 9 and a maximum take-off weight of not more than 8 618 kg. Air transport operations include passenger transport, cargo transport and medical transport that is conducted for hire or

reward. CASA may prescribe other kinds of operations as air transport in the Part 119 Manual of Standards in accordance with paragraph 119.010(e).

The proposed MOS amendment, which commences on 2 December 2023, makes a number of previously publicly consulted amendments on TAWS. These are not minor or machinery as such but have been consulted upon and hence are not further referred to in this Statement.

The other amendments are listed below in general terms:

- multiple provisions require editorial changes to correctly enable the intended outcomes
- multiple provisions mistakenly relate only to Australian registered aeroplanes instead of both Australian and foreign registered aeroplanes
- the definition of *take-off distance available* is not aligned with the Part 139 MOS definition and does not properly describe the distance in circumstances where a clearway is not provided, and it does not allow for foreign runways
- the provision describing when weather radar equipment is inoperative is difficult to interpret and is reworded to be easier for stakeholders
- the provision in relation to supplemental oxygen equipment is clarified to enable supplemental oxygen equipment to be permanently fitted or temporarily carried on board an aeroplane
- provisions are amended concerning the operation of transponders to correct technical terms, and other technical matters related to transponders
- some inappropriate examples of matters are removed.

Why the proposed amendments are minor or machinery

CASA considers that of their nature and effect these proposed amendments are all minor or machinery amendments that do not substantially alter the existing arrangements under the MOS as in effect immediately before 2 December 2023. The Director has, therefore, determined that consultation on them is not required.

There has, nevertheless, been informal consultation with the aviation industry in the course of developing these minor and machinery amendments. There has been industry feedback to CASA via multiple communication channels, either directly from individuals, or from various working groups.

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 and demonstrates how it is of a minor or machinery nature in the context of the Part 135 MOS.

Determination

The Determination, therefore, is a determination by the Director that the proposed non-TAWS related amendments in the proposed MOS amendment, which have not been consulted and which amend the Part 135 MOS, are of a minor or machinery nature that do not substantially alter existing arrangements under the Part 135 MOS or otherwise.

Legislation 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 either for the MOS amendment or the Determination.

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