

Civil Aviation Safety Regulations 1998

CASA 04/23 — Determination for Part 133 Manual of Standards Amendment Instrument 2024 (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 on the internet a notice of its intention to do so. 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.

Despite the foregoing, 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 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.

Under subregulation 11.295 (1), a failure to comply with these 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 (for 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).

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” to “existing arrangements” 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.

The phrase “minor or machinery” is not defined in Subpart 11.J of CASR. However, a usable, practical approach is to consider that “minor” refers to the content of the proposed MOS amendment, and “machinery” refers to structure, drafting, timing or cross-relationships of the MOS amendment.

For example, MOS amendments may 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.

Alterations may be “substantial” if, for example, they may have a demonstrably large, significant or material impact, in terms of costs, delays or administration, on those affected by the change.

The proposed MOS amendment

The *Part 133 Manual of Standards Amendment Instrument 2024 (No. 1)* (the ***MOS amendment***) will amend the *Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020* (the ***Part 133 MOS***).

The Part 133 MOS sets out the standards for the operation of rotorcraft for an Australian air transport operation. It was made under regulation 133.020 of Part 133 of CASR. It consolidates

the detailed standards and requirements associated with the conduct of Part 133 operations by Australian air transport operators.

Part 133 of CASR prescribes requirements for the conduct of Australian air transport operations in rotorcraft. 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 MOS amendment, which commences on the day after it is registered, makes a number of *prima facie* minor or machinery amendments, of a miscellaneous nature, that do not substantially alter existing arrangements for the relevant Australian air transport operations. Some of these rectify unintended consequences arising from the Part 133 MOS, while others modify the wording or structure of some provisions to enhance clarity or readability, or to correct errors.

For example:

- multiple provisions require editorial corrections to make the intended outcomes clear, or to improve readability
- additional flexibility is provided for the delivery of pre-take-off passenger safety briefings, instructions and demonstrations
- provision is made for supplemental oxygen equipment to be fitted or carried on board a rotorcraft
- multiple provisions are corrected which mistakenly related only to Australian-registered rotorcraft instead of both Australian and foreign-registered rotorcraft as was clearly intended, and this is rectified
- provisions about the operation of transponders are adjusted, including to ensure consistent use of the correct technical terms.

The Explanatory Statement, which accompanies the proposed MOS amendment, can be found on the Federal Register of Legislation. The Explanatory Statement provides detailed explanations of each minor or machinery amendment in its context in the Part 133 MOS.

Why the proposed amendments are minor or machinery

CASA considers that, given the criteria set out above, the proposed amendments of their nature and effect are all minor or machinery amendments that do not substantially alter the existing arrangements under the Part 133 MOS as in effect immediately the MOS amendment was made. The Director has, therefore, determined that prior publication of the draft instrument and related consultation is not required.

There has, nevertheless, been informal consultation with the aviation industry in the course of developing many of these minor or machinery amendments. There has been industry feedback to CASA via multiple communication channels, for example, the CASA Guidance Delivery Centre, either directly from individuals, or from various rotorcraft operators and industry working groups, pointing out anomalies and matters requiring correction or clarification.

Determination

The Determination, therefore, is a determination by the Director that the proposed MOS amendments to the Part 133 MOS, are of a minor or machinery nature that do not substantially alter existing arrangements under the Part 133 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 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.