

## Civil Aviation Safety Regulations 1998

### CASA 24/24 — Determination for the Part 101 Manual of Standards (Miscellaneous Fixes) Amendment Instrument 2024

#### 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 Fixes) Amendment Instrument 2024* (the **proposed 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.

The proposed MOS amendment is consequential on the *Part 101 Manual of Standards (Chief Remote Pilot Licence Instructor and Other Matters) Amendment Instrument 2024* (the **first MOS amendment**) that commenced on 6 April 2024.

The relevant purpose of the first MOS amendment was to require organisations training individuals to operate remotely piloted aircraft (**RePL training organisations**) to have a Chief Remote Pilot Licence Instructor (a **Chief RePL Instructor** or **CRI**) to safely manage the conduct of remote pilot licence (**RePL**) training courses run by the organisation.

These amendments were expressed to commence on the day after they were registered (6 April 2024) but to only take legal effect on and from 10 July 2024. However, compiled in the MOS as amended, this delayed effect was not immediately apparent to readers who would otherwise have to refer to Notes at the back of the compilation of the principal MOS.

The MOS amendment, therefore, amends the relevant provisions to expressly state that they take effect on and from 10 July 2024.

In doing so, the MOS amendment does not change the effect of any relevant provision, but merely expressly declares for readers the already legislated date of effect. Such declaratory provisions are clearly minor or machinery in nature and do not substantially alter existing arrangements.

The opportunity is also being taken to make some other minor or machinery amendments to the principal MOS, to rectify a miscitation of an amendment in the first MOS amendment, and to correct some typographical errors in the interests of stylist consistency in the MOS.

### **Explanatory Statement**

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

### **Determination**

The Determination, therefore, is a determination, by the Director, that the amendments in the proposed MOS amendment are of a minor or machinery nature that do 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.

### **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.