Civil Aviation Safety Regulations 1998

CASA 34/20 – Determination – Non-compliance with CASR Subpart 11.J
Requirements – Proposed Amendments of Part 66 Manual of Standards

Statement of the reasons for 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 in the interests of the safety of air navigation. The relevant regulations are the Civil Aviation Safety Regulations 1998 (CASR).

Under regulation 11.280 of CASR, if CASA intends to issue, or amend, a Manual of Standards (MOS), it must publish a notice of its intention to do so on the Internet. The purpose of the notice is to facilitate consultation with, and to seek comments from, persons in relation to the draft MOS or MOS amendment. The notice must include the following information about the draft MOS or MOS amendment:

1. its title and a description of its contents;
2. how to obtain a copy of it;
3. the period during which comments on it may be lodged;
4. how the comments are to be made and lodged.

Under regulation 11.285 of CASR, a person may comment on a draft MOS or MOS amendment in the way set out in the notice published, under regulation 11.280, in relation to the draft MOS or MOS amendment.

Under regulation 11.290 of CASR, before issuing a MOS or MOS amendment, CASA must consider any comments received on the draft MOS or MOS amendment, and may consult with any person on issues arising out of the comments.

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

However, under paragraph 11.275 (1) (a) of CASR, CASA is not obliged to comply with the consultation requirements in regulation 11.280 before issuing a MOS or MOS amendment if the Director of Aviation Safety (the Director) determines it is necessary to issue the MOS or MOS amendment as soon as practicable in the interests of aviation safety.

Also, under paragraph 11.275 (1) (d), CASA is not obliged to comply with the consultation requirements in regulation 11.280 before issuing a MOS or MOS amendment if the Director determines the MOS or MOS amendment is of a minor or machinery nature that does not substantially alter existing arrangements.

Under subregulation 11.275 (2), if the Director makes such a determination, CASA must publish it, and a statement of the reasons for it, on the Internet within 28 days after it is made.
Background
Part 66 of CASR deals with aircraft engineer licences (AELs) and ratings, granted by CASA, for the performance of maintenance certification for maintenance carried out on aircraft.

Under subsection 98 (5A) of the Act, the regulations may empower CASA to issue instruments in relation to the maintenance, or airworthiness, of aircraft. For subsection 98 (5A), regulation 66.015 of CASR empowers CASA to issue a MOS for Part 66 of CASR, prescribing matters required or permitted by CASR to be prescribed by the Part 66 Manual of Standards (the Part 66 MOS). In particular:

1. Paragraph 66.015 (2) (e) provides for the Part 66 MOS to specify that a specified aircraft type is a type rated aircraft type for an AEL.
2. Paragraph 66.015 (2) (j) provides for the Part 66 MOS to specify the required units of competency for an AEL.
3. Paragraph 66.015 (2) (o) provides for the Part 66 MOS to specify that a specified aircraft type, aircraft system or subset of an aircraft system is one for which a Part 145 organisation may provide training and assessment.
4. Paragraph 66.015 (2) (p) provides for the Part 66 MOS to specify that a specified aircraft type is one for which a Part 145 organisation may arrange for the manufacturer of the aircraft or the aircraft engine to provide training and assessment.

Issues
CASA is making the Part 66 Manual of Standards Amendment Instrument 2020 (No. 2) (the instrument) without complying with the consultation requirements in regulation 11.280, for the reasons set out below.

The instrument adds 3 new aircraft type ratings to the list of aircraft specified under the Part 66 MOS as type rated aircraft. Also, the instrument replaces an aircraft type rating, for an aircraft type, with a series of aircraft type ratings for the aircraft type and new variants of the aircraft type also added by the instrument. To support the appropriate and safe operational, and maintenance, requirements of each new aircraft type, CASA will require a relevant AEL to be endorsed with the applicable aircraft type rating, after completion of CASA-approved theory and practical training for the aircraft type.

The addition of each new aircraft type rating is at the request of an aircraft operator or approved maintenance organisation, which has advised CASA of its intention to commence operations, or maintenance, of a relevant new aircraft type in Australia very soon. Accordingly, the operator or organisation has requested the addition of the new aircraft type rating as soon as possible, so as not to delay the operation, or maintenance, of the aircraft type.

The amendments in the instrument that add new aircraft type ratings to the list of aircraft specified under the Part 66 MOS as type rated aircraft are covered by a determination made by the Director under paragraph 11.275 (1) (a), on the basis that it is necessary to make the amendments as soon as practicable in the interests of aviation safety. Each new aircraft type rating is only relevant to an aircraft operator that intends to operate a relevant new aircraft type in Australia, or aircraft engineers employed by an approved maintenance organisation that intends to carry out maintenance in Australia on a relevant new aircraft type. Accordingly, broader consultation under regulation 11.280 on the amendments is not considered necessary by CASA.

Also, the instrument adds aircraft types, and the corresponding series of aircraft type ratings for which training may be delivered, or arranged, by a Part 145 organisation under the Part 66 MOS. Also, the instrument replaces an aircraft type rating, for an aircraft type, with a series of aircraft type ratings for which training may be delivered, or arranged, by a Part 145 organisation under
the Part 66 MOS, and adds new variants of the aircraft type. The Director has made a
determination under paragraph 11.275 (1) (a) in relation to these amendments, on the basis that it
is necessary to make the amendments as soon as practicable in the interests of aviation safety.
These amendments dovetail with the abovementioned amendments in the instrument that add new
aircraft type ratings to the list of aircraft specified under the Part 66 MOS as type rated aircraft.
Similarly, broader consultation under regulation 11.280 on the amendments is not considered
necessary by CASA.

Also, the instrument contains the following minor or machinery-type amendments, which do not
substantially alter existing arrangements:

1. The instrument updates the numbering of a unit of competency mentioned in the table in
   Appendix VIII of the Part 66 MOS.
2. The instrument amends Part 2 of Appendix IX, Table 2 of the Part 66 MOS to correct a
   reference to a Note for an aircraft type rating.

The Director has made a determination under paragraph 11.275 (1) (d), in relation to the
amendments, on the basis that the amendments are of a minor or machinery nature that do not
substantially alter existing arrangements. Accordingly, consultation under regulation 11.280 on
the amendments is not considered necessary by CASA.

The abovementioned determinations are covered by CASA 34/20 – Determination –
Non-compliance with CASR Subpart 11.J Requirements – Proposed Amendments of Part 66
Manual of Standards (the Determination).

The instrument commences on the day after it is registered on the Federal Register of Legislation
(the FRL).

Legislation Act 2003 (the LA)
The Determination does not alter the law and, therefore, is not a legislative instrument under the
LA.

Commencement and making
The Determination commences on the date of signature, and is repealed on the day after the
instrument is registered on the FRL.

The Determination is made by the Director under paragraphs 11.275 (1) (a) and (d).