Civil Aviation Safety Regulations 1998

Determination — for proposed amendment of Part 66 Manual of Standards

Statement of reasons for making the Determination, for publication on the Internet

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. 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).

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 such a determination, CASA must publish the determination, and a statement of reasons for it, on the Internet.

Background

Before 27 June 2011, applications for aircraft maintenance engineer licences and ratings (the predecessor of AELs) were made under regulation 31 of CAR (the CAR 31 framework). On 27 June 2011, CASA introduced Parts 42, 66, 145 and 147 of CASR dealing with continuing airworthiness requirements for aircraft and aeronautical products, aircraft engineer licences and ratings, approval of maintenance organisations, and maintenance training organisations. The introduction of these Parts harmonised Australia’s aircraft maintenance regulatory framework with European regulations. In the current Part 66 regulatory framework, CASA grants AELs under regulation 66.025 and AELs subject to exclusions under regulation 66.026 of CASR. Recognising that some individuals may not meet qualification requirements, or may otherwise opt to continue qualifying for AELs under criteria in the CAR 31 framework, regulation 202.345 of CASR provides for a transitional period to 3 July 2020 during which AEL applicants may be granted AELs under Part 66 of CASR if they qualify under the CAR 31 framework.
Due to the differences between the current Part 66 framework and the former CAR 31 framework for training and practical experience requirements for AELs and the granting of ratings on AELs, exemptions were included in section 66.A.58 of the Part 66 MOS that allowed CAR 31 framework applicants to apply for AELs notwithstanding the differences. Paragraph 66.A.58 (c) provides that these exemptions expire at the end of 26 June 2017, reflecting the maximum duration of an exemption issued under regulation 11.160 of CASR as prescribed in regulation 11.230.

Issues
CASA is making the Part 66 Manual of Standards Amendment Instrument 2017 (No. 1) (No. 1 Amendment) without consultation for the reasons set out below.

The No. 1 Amendment amends the date in paragraph 66.A.58 (c) of the Part 66 MOS to extend the exemptions that benefit CAR 31 framework applicants, for a further 3 years which brings the expiry date of the exemptions closer to the end of the regulation 202.345 transitional period on 3 July 2020. Separately, the No. 1 Amendment also inserts a new aircraft engineer type rating for Boeing 737-7/8/9 aircraft which was specifically requested by an Australian operator pending delivery of new B737 Max aircraft additions to their fleet. The No. 1 Amendment also omits text in the Part 66 MOS that refers to a definition that has already been repealed, meaning that the text is no longer required.

The No. 1 Amendment will come into effect on 26 June 2017. Bearing in mind the fact that the minor amendments are relevant to aircraft engineers, have been specifically requested by maintenance training organisations and aircraft operators, and the importance of having the changes made in a timely manner to afford certainty to maintenance engineers and organisations, CASA considers that consultation on the No. 1 Amendment is not necessary. The contentious amendments are consistent with, and do not affect, existing CASA policy on the above issues.

Therefore, the Director, in accordance with paragraph 11.275 (1) (d) of CASR, has determined that the Part 66 MOS amendment is of a minor and machinery nature that does not substantially alter existing arrangements as already provided for in the Part 66 MOS.

As a result of this determination, there is no requirement to post consultation details of the proposed Part 66 MOS amendment on the Internet and, consequently, no legal requirement to wait 14 days for comments in accordance with subregulation 11.280 (4) of CASR.

Legislation Act 2003
The determination does not alter the law and is not a legislative instrument.

Consultation
In view of the nature of the amendments and the fact that they reflect comments previously raised and discussed with particular members of the aviation industry principally affected by the amendments, CASA considers that appropriate consultations have taken place.

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.