

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 60 Manual of Standards Amendment Instrument 2021 (No. 1)

Purpose

The *Part 60 Manual of Standards Amendment Instrument 2021 (No. 1)* (the *instrument*) extends the end-date of a transitional arrangement provided under the *Part 60 Manual of Standards* (the *Part 60 MOS*), by which a stated standard applies for the assessment, during a recurrent evaluation or special evaluation, of an aeroplane qualified flight simulator against its current qualification level if its equipment or software has, since the qualification level was determined, been modified for full stall training. Also, the instrument adds a standard to the existing 2 mentioned standards under which the qualification level was determined and that may be used for the assessment.

Also, the instrument includes minor, or machinery-type, amendments of the Part 60 MOS.

Legislation

Under section 9 of the *Civil Aviation Act 1988* (the *Act*), the Civil Aviation Safety Authority (*CASA*) has the function of conducting the safety regulation of a range of matters including, under paragraph 9 (1) (c), developing and promulgating appropriate, clear and concise aviation safety standards.

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. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 60 of CASR provides for the evaluation, and qualification, of flight simulators.

Subregulation 60.020 (1) of CASR provides for the qualification level of a flight simulator to be determined in accordance with the standards mentioned in the Part 60 MOS.

So far as is relevant, regulation 60.045 of CASR provides for the recurrent evaluation of a qualified flight simulator.

So far as is relevant, regulation 60.070 of CASR provides for the modification of the equipment or software of a qualified flight simulator and the special evaluation of the flight simulator as it is proposed to be modified.

Under subsection 14 (2) of the *Legislation Act 2003* (the *LA*), unless the contrary intention appears, a legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98 (5D) of the Act provides that, despite section 14 of the LA, a legislative instrument made under the Act or regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (the *AIA*), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character

(including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Overview of instrument

Section 5 of the Part 60 MOS has provisions setting out transitional arrangements for aeroplane qualified flight simulators. Under subsection 5 (4), if the qualification level of an aeroplane qualified flight simulator was determined in accordance with one of 2 mentioned standards, and its equipment or software has, since the qualification level was determined, been modified under regulation 60.070 for full stall training, the standard mentioned in subsection 5 (5) applies for the assessment, during a recurrent evaluation or special evaluation, of the flight simulator against its current qualification level. The transitional arrangement applied until the end of 24 March 2021.

Travel restrictions related to, and the economic impact on the airline industry of, the COVID-19 pandemic created barriers for operators of aeroplane qualified flight simulators to take advantage of the full stall training upgrade opportunities provided by the transitional arrangement.

During the period (the *interim period*) from 25 March 2021 to the time of commencement of the instrument, the operator of an aeroplane qualified flight simulator was not able to utilise the transitional arrangement due to the expiry of subsection 5 (4).

During the interim period:

- (a) if the qualification level of an aeroplane qualified flight simulator was determined in accordance with a standard mentioned in subsection 5 (2), the standard for the assessment during a recurrent evaluation of the flight simulator against that qualification level was that mentioned in subsection 5 (1); or
- (b) if CASA had changed the qualification level of the flight simulator after the Part 60 MOS commenced, the standard for the assessment during a recurrent evaluation of the flight simulator against the qualification level, as changed, was the standard mentioned in subsection 5 (3).

In any event, during the interim period:

- (a) CASA was not asked, under subregulation 60.045 (1), to conduct a recurrent evaluation of an aeroplane qualified flight simulator, whose equipment or software has been modified under regulation 60.070 for full stall training; and
- (b) CASA did not conduct, under regulation 60.045, a recurrent evaluation of an aeroplane qualified flight simulator, whose equipment or software has been modified under regulation 60.070 for full stall training.

Under the instrument, the transitional arrangement has been reinstated, with a new expiry date for subsection 5 (4) of 24 March 2023. The operator of an aeroplane qualified flight simulator would have to incur significant upgrade costs to ensure the flight simulator, if its equipment or software is modified, or proposed to be modified, for full stall training, is assessed in accordance with the latest relevant international standards. This amendment allows the operator an extension of time to utilise the transitional arrangement.

Also, when the Part 60 MOS was made, the standard titled *Operational Standards and Requirements — Approved Flight Simulators (FSD-1)* (the **FSD-1 standard**) was not available to determine the qualification level of an aeroplane qualified flight simulator, due to aeroplane type stall data being unavailable. Data for 1 model of aeroplane qualified flight simulator is now available. Under the instrument, the FSD-1 standard is added to the list of standards mentioned in paragraph 5 (4) (a) of the Part 60 MOS. This enables an aeroplane qualified flight simulator, for which the qualification level was determined in accordance with the FSD-1 standard, to be qualified for full stall training.

The instrument also includes:

- (a) consequential amendments of the Part 60 MOS arising from the abovementioned amendments; and
- (b) an amendment that omits an obsolete provision of the Part 60 MOS.

The instrument relies on subsection 33 (3) of the AIA to make the abovementioned amendments.

Documents incorporated by reference

The instrument incorporates, by an amendment of paragraph 5 (4) (a) of the Part 60 MOS, the FSD-1 standard, which is a CASA publication. The document may be viewed on CASA's website (<https://www.casa.gov.au>).

Under subsection 5 (4), the standard mentioned in subsection 5 (5) applies for the assessment of an aeroplane qualified flight simulator under subsection (4). Under paragraph 5 (5) (a), for subsection (4), the standard is the standard mentioned in paragraph 5 (4) (a) under which the current qualification level of the flight simulator was determined, as existing at the time that qualification level was determined. Accordingly, the abovementioned newly-incorporated standard is incorporated as existing at a particular date, namely the date when the qualification level of the flight simulator was determined.

Content of instrument

Section 1 — Name

Section 1 states the name of the instrument is the *Part 60 Manual of Standards Amendment Instrument 2021 (No. 1)*.

Section 2 — Commencement

Section 2 states the instrument commences on the day after it is registered.

Section 3 — Amendment of Part 60 Manual of Standards

Section 3 states Schedule 1 to the instrument amends the Part 60 MOS.

Schedule 1 — Amendments

Item [1] Paragraph 3 (1) (b) (including the note)

Item [1] omits paragraph 3 (1) (b). The basis for the amendment is that it is an obsolete provision. The standard mentioned in the paragraph has been superseded by the standard mentioned in paragraph 3 (1) (a) of the Part 60 MOS.

Item [2] Subsection 5 (4)

Item [2] replaces the date mentioned in subsection 5 (4) with the date of 24 March 2023. See the *Overview of instrument* section of this Explanatory Statement for the basis for the amendment.

Item [3] Paragraph 5 (4) (a)

Item [3] is a consequential amendment related to the amendment in item [5].

Item [4] Subparagraph 5 (4) (a) (ii)

Item [4] is a consequential amendment related to the amendment in item [5].

Item [5] After subparagraph 5 (4) (a) (ii)

Item [5] adds a standard to the list of standards mentioned in paragraph 5 (4) (a). See the *Overview of instrument* section of this Explanatory Statement for the basis for the amendment.

Legislation Act 2003

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends the Part 60 MOS, which was registered as a legislative instrument. Therefore, the instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Before undertaking the formal consultation process in relation to the instrument, CASA received informal feedback from industry stakeholders indicating that the proposed amendments of the Part 60 MOS were appropriate and welcome.

Before the instrument was issued by CASA, it published a notice of intention to issue the instrument under regulation 11.280 of CASR. The consultation period for the proposed amendments was from 3 June 2021 to 7 July 2021, which period CASA regards as reasonable in the circumstances.

CASA received 1 response during the consultation process. The respondent indicated the respondent supported the proposed amendment that would provide more time for operators to make the upgrades to full stall training capabilities in relation to aeroplane qualified flight simulators. Of note, the respondent indicated that without the proposed amendment, an operator would likely bear significant costs and face other operational impacts. For example,

the respondent highlighted that without the proposed amendment, full stall training would not be able to be integrated into recurrent training, which is undesirable for both CASA and operators, and mandatory training would be outsourced to other countries.

In relation to the proposed addition of the FSD-1 standard as a qualification standard to determine the qualification level of an aeroplane qualified flight simulator, the respondent was also supportive. The respondent noted the significant costs required to meet the latest qualification standard, which for an older aeroplane qualified flight simulator would be prohibitive.

CASA considered these comments when finalising the drafting of the instrument.

CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) that the standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact the standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of the standard on different industry sectors.

The economic and cost impact of the instrument has been determined having regard to the following:

- (a) the identification of individuals and businesses affected by the instrument;
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements;
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements, which valuation is consistent with the principles of best practice regulation of the Australian Government;
- (d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly;
- (e) community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The instrument provides relief to the operator of an aeroplane qualified flight simulator from a cost burden related to older aeroplane qualified flight simulator full stall training upgrades in that it obviates the requirement to upgrade the entire flight simulator to meet current standards. It is estimated in some cases this will represent a cost saving of more than \$1 million for each flight simulator when compared to the cost of upgrading the entire flight simulator.

Also, the time needed for the method of upgrade, which the instrument allows, is significantly less than for the full upgrade that would otherwise be required (2 weeks versus 6 weeks). This time reduction represents a substantial benefit for operators, with disruption to commercial operations being minimised.

Also, the instrument supports the continuous improvements required to ensure that older aeroplane qualified flight simulators used for full stall training in Australia meet internationally-recognised standards and reduce the incidence of negative full stall training. Accordingly, the benefit to the aviation sector is the enhanced training outcomes.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement is not required because the impact of the amendments of the Part 60 MOS made by the instrument is of a minor nature (OBPR id: 44090).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after it is registered, and will be repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Part 60 Manual of Standards Amendment Instrument 2021 (No. 1)

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

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Also, the instrument includes minor, or machinery-type, amendments of the Part 60 MOS.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority