

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 114/21 — Exclusion from the Operation of Airworthiness Directives FAA AD 2021-23-12 and FAA AD 2021-23-13 Instrument 2021

Legislation

Under section 98 of the *Civil Aviation Act 1988* (the *Act*), the Governor-General may make regulations for the purposes of the Act and in the interests of the safety of air navigation.

In accordance with paragraph 39.004 (3) (b) of the *Civil Aviation Safety Regulations 1998* (the *CASR*), CASA may in writing exclude a particular kind of aircraft or aeronautical product from the operation of an airworthiness directive (*AD*) on its own initiative.

Under Annex 8 to the *Convention on International Civil Aviation*, the State of Design has overall responsibility for continuing airworthiness of an aircraft type, and must provide any information necessary to ensure the continuing airworthiness of a type to appropriate States of Registry. ADs (and their equivalents) are the most common form of continuing airworthiness information, and are issued by most International Civil Aviation Organisation Contracting States.

The State of Registry of an individual aircraft is responsible for its continuing airworthiness. Under Annex 8, the State of Registry must develop or adopt requirements to ensure the continuing airworthiness of aircraft.

As of 1 October 2009, when a State of Design issues an AD against a type of aircraft on the Australian Register, Part 39 of the CASR requires compliance with these State of Design ADs. However, as Australia's national airworthiness authority, CASA can exclude a kind of aircraft or aeronautical product from the operation of an AD.

Purpose

The Federal Aviation Administration (*FAA*) as the National Aviation Authority for the United States of America issued ADs 2021-23-12 and 2021-23-13 with an effective date of 4 January 2022. The ADs require the incorporation of a flight manual amendment when the aircraft are operated in the airspace of the United States of America to limit operations of radio altimeter equipment that may be subject to interference from 5G ground station transmitting in nearby frequencies at high power output.

CASA has excluded Australian registered aircraft from the operation of paragraph (g) of FAA ADs 2021-23-12 and 2021-23-13 when the aircraft are operating outside the airspace of the United States of America as there has been no identification of the 5G ground station interference to radio altimeters. Accordingly, the exclusion is made pursuant to regulation 39.004 (3) (b) of the CASR because these ADs only have application in the airspace of the United States of America.

The FAA also propose to issue Notice To Air Missions (*NOTAMs*) for airspace in the United States of America which has been assessed as likely to have interference from 5G ground stations. These NOTAMs must be complied with by all flight crew when operating in the airspace of the United States of America regardless of the state of registry for the aircraft.

However, any NOTAMs issued for airspace of the United States of America will rely on the FAA mandated flight manual amendment, but the FAA NOTAMs and flight manual amendment have no effect in Australian airspace or airspace outside of the of the United States of America.

Subregulation 39.004 (4) of the CASR provides CASA must regard the preservation of a level of aviation safety that is at least acceptable as paramount. CASA considers that in issuing the exclusion a level of aviation safety that is at least acceptable will be preserved because the 5G ground stations in Australia have not been transmitting at the same power levels or as close in frequencies to those in the United States of America.

Legislation Act 2003 (the LA)

The instrument will be repealed when the ADs are cancelled, which may occur after the sunset provisions would have repealed the instrument if they had applied. However, as the instrument relates to aviation safety and is made under the CASR, Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Subregulation 39.004 (3) of CASR 1998 provides that an exclusion issued in accordance with paragraph 39.004 (3) (b) is issued under subsection 98 (5A) of the Act. Subsection 95 (5B) provides that an instrument issued under subsection 98 (5A) of the Act is a legislative instrument.

Therefore, in accordance with subsection 98 (5B) of the Act, an instrument excluding the operation of an AD is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA and therefore parliamentary oversight.

Documents Incorporated by Reference

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the 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. FAA ADs 2021-23-12 and 2021-23-13 are incorporated by reference in the instrument, as in force immediately before the commencement of the instrument. The FAA ADs are publicly available on the FAA's website at the following website addresses at no cost:

- [2021-23-12](#)
- [2021-23-13](#)

Regulation Impact Statement

A Regulation Impact Statement (**RIS**) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for an exemption (OBPR id: 14507). An exclusion is in the nature of an exemption.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1. The instrument is compatible with human rights.

Consultation

CASA has not consulted in relation to the issue of the exclusion as it is providing to aircraft operators an alleviation by not requiring the flight manual amendment in aircraft flight manuals nor do these ADs have application in Australian airspace.

Making and commencement

The instrument commences on 4 January 2022. The instrument was made by a delegate of CASA, in accordance with paragraph 39.004 (3) (b) of the CASR.

Statement of Compatibility with Human Rights

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

Exclusion from the operation of airworthiness directives AD 2021-23-12 and 2021-23-13 Instrument 2021

This 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

The purpose of this legislative instrument is to exclude the operation of paragraph (g) of Airworthiness Directives FAA ADs 2021-23-12 and 2021-23-13 (the **ADs**) pursuant to paragraph 39.004 (3) (b) of the *Civil Aviation Safety Regulations 1998* (the **CASR**).

The Federal Aviation Administration (**FAA**) as the State of Design for United States of America (**USA**) airspace, issued the ADs with an effective date of 4 January 2022. The AD requires the incorporation of a flight manual amendment when the aircraft are operated in the airspace of the United States of America to limit operations of radio altimeter equipment that maybe subject to interference from 5G ground station transmitting in nearby frequencies at high power output.

CASA has decided to exclude the operation of an aspect of the ADs because the FAA propose to issue Notice To Air Missions (**NOTAMs**) for any airspace which has been assessed as likely to have interference from 5G ground stations. These NOTAMs must be followed by all flight crew when operating in the airspace of the United States of America regardless of the state of registry for the aircraft or the information.

Subregulation 39.004 (4) of the CASR provides CASA must regard the preservation of a level of aviation safety that is at least acceptable as paramount. CASA considers that in issuing the exclusion a level of aviation safety that is at least acceptable will be preserved because 5G ground stations in Australia have not been transmitting at the same power levels or as close in frequencies as the 5G ground stations in the USA.

Therefore, the interference issue predicted in the airspace of the USA will be higher and require measures to reduce the risk such as the flight manual amendment and NOTAMs. Australian registered aircraft will need to comply with the requirements stated in any NOTAMs issued for airspace of the USA which will require the flight crew to operate aircraft with the FAA mandated flight manual amendment. These NOTAMs and the flight manual amendment have no application in Australian airspace or airspace outside the USA.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority