



SUMMARY OF CONSULTATION

Proposed changes to the dangerous goods rules – amendment to Part 92 of CASR

Civil Aviation Legislation Amendment (Part 92) Regulation 2019

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Overview

Part 92 – Consignment and Carriage of Dangerous Goods by air – came into effect on 1 January 2004. CASA conducted a Post Implementation Review (PIR) after the introduction of new legislation which concluded in early 2018. The Part 92 Project commenced in October 2018, capturing the work already conducted under the PIR and consolidating additional regulatory change requirements which have been identified since consultation as part of the PIR occurred.

The consultation proposed policy changes that would be captured in an amended Part 92 and sought to address industry issues with the current legislation, comply with the broader government "cutting red tape" initiative and align the regulations with the current ICAO Standards and Recommended Practices (SARPs) contained within Annex 18.

The changes proposed in the public consultation were reviewed by the Part 92 Technical Working Group (TWG) held on 10 October 2019 prior to release for public consultation. The consultation has now closed, and a summary of the feedback is provided below.

Respondents

CASA received responses from seven (7) respondents and a total of seven (7) submissions. Six (6) respondents consented to having their comments published on the CASA consultation hub. The seventh respondent requested anonymity and did not provide any comment to the proposed policy items.

Consultation feedback and CASA responses

Most respondents indicated a strong support for the overarching policies proposed and the subsequent amendments to be made to Part 92.

The feedback provided was reviewed by CASA and the Part 92 TWG on 10 October 2019. The TWG members who were absent from this meeting were consulted via correspondence following the meeting. Some of the comments received from the respondents are summarised below, together with CASA's response.

Theme 1 - Clarification around offences

A respondent requested further clarification about specific offences and exactly who they would apply to (i.e. shipper, passenger, operator or freight forwarder etc.).

CASA response

CASA notes this feedback and will ensure the drafted amendments provide the necessary clarity.

Theme 2 - Certain training or qualifications

Two (2) respondents requested consideration be given to what training or qualifications are required for persons authorised to 'restore' packaging.

CASA response

CASA will place a definition of a 'qualified person' in the drafted legislation amendment to define who are the persons authorised to 'restore' packaging, and what training or qualifications they require to be authorised to conduct this function.

Theme 3 - Limited / experimental category aircraft

One respondent asked CASA to consider limited/experimental category aircraft for inclusion into the provisions for dangerous goods carried by a private operation under CASR 92.175.

Currently, regulation 92.175 does not specify the category of aircraft, only that the aircraft must be engaged in a private (non-commercial) operation. In its current form, regulation 92.175 does include some limited/experimental type aircraft, however limiting the size of the aircraft to those with an approved passenger seat configuration of less than 10 seats. Therefore, this seating limitation excludes certain historical aircraft (e.g. DC3, Caribou, Convair, DC4 etc.) from carrying dangerous goods under this regulation.

CASA response

CASA reviewed the request to include an exclusion for limited/experimental category aircraft within 92.175 and discussed it with the TWG. The carriage of dangerous goods in support of warbird and historical type aircraft travelling to//from air shows or displays (designated in the limited or experimental categories), should be assessed on a case-by-case situation and managed through the issuance of a permission under section 23 of the Civil Aviation Act. The amendment of regulation 92.175 to widen the existing provisions to allow all aircraft within the limited/experimental category, irrespective of size and the ability to carry large numbers of passengers, was deemed not in the interests of safety. The amendment of regulation 92.175 to allow an aircraft with an approved passenger seat configuration of more than 9 seats to carry dangerous goods on a private flight, was also discussed and deemed as not in the interests of safety and inappropriate for the intent of this regulation. The TWG agreed with CASA and took the view that changing the current regulation 92.175 to address the concerns of this respondent, is best managed outside of a regulatory amendment and with a specific permission from CASA granted under section 23 of the Act..

Theme 4 - Mandatory DG challenge for passengers

There was one objection from a respondent regarding the mandatory DG challenge of passengers. This respondent identified as a small commercial operator within the industry.

CASA response

This objection to the proposed policy change was not supported by the TWG and CASA has decided to continue to legal drafting based on the consulted policy.

Theme 5 - Freight forwarder reporting requirements

One respondent raised the issue of reporting requirements for freight forwarders who may handle freight up/down stream of the air transport system.

CASA response

ICAO are in the process of reviewing the reporting requirements of all Freight Forwarders involved in handling freight which may end up in the air transport system. This review is ongoing and unlikely to conclude in the immediate future. A change is required at the international level before CASA can consider incorporating this requirement into Part 92. CASA will include a note in the drafted legislation to clarify the recommended level of reporting for freight forwarders.

Theme 6 - DG training course approval validity period

One respondent suggested that the validity of dangerous goods training course approvals issued by CASA to industry should be extended from 3 years to 5 years.

CASA response

This matter was discussed at the last TWG meeting on 10 October 2019 where CASA explained the current policy underpinning the maximum validity period of 3 years for approvals.

Theme 7 - Management of DG training course failures

Several respondents provided comments on dangerous goods training requirements, in particular, employees being able to re-sit a dangerous goods exam following a fail result. One respondent suggested that an employee should be permanently removed from handling dangerous goods if he or she fails the exam.

CASA response

This suggestion was not supported by the TWG or CASA. Under the current training framework, an employee should be given the opportunity to demonstrate competency, and if unable to demonstrate the level of competency required, the employee should be retrained and given the opportunity to recertify by undertaking an initial dangerous goods training course. A failed result in training will render the employee unable to handle dangerous goods until such time as competency can be demonstrated.

Theme 8 - Management of DG training course failures

Two respondents commented on the validity period for dangerous goods training. One respondent was not supportive of alignment with ICAO's 24-monthly training period, disagreeing with the additional "grace period", being the alignment of the expiry day to the end of the month in which the training expires. The other respondent suggested that the validity of dangerous goods training could be extended out to 5 years, instead of the current 2 yearly recurrency period.

CASA response

Both suggestions were discussed by the TWG, who supported CASA aligning with ICAO's 24-month training period.

Future direction

Noting the specific feedback provided, the respondents expressed strong support for the proposed policies and to see the amendments to Part 92 made. The feedback was reviewed by the Part 92 TWG at the meeting on 10 October 2019.

The next step is for a draft of the legislation to be produced that reflects the proposed changes and those suggested in this summary of consultation.

Once the draft legislation is complete, CASA will consult with the TWG on the draft version of the amendment regulation prior to a second round of public consultation.