



# Australian Government

## Civil Aviation Safety Authority

Instrument number CASA EX39/21

I, GRAEME MILLS CRAWFORD, Acting Director of Aviation Safety, on behalf of CASA, make this instrument under regulations 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*.

A handwritten signature in black ink, appearing to read 'G. M. Crawford'.

Graeme M. Crawford  
Acting Director of Aviation Safety

01 April 2021

### CASA EX39/21 — Dangerous Goods (2-yearly Training Requirement) Exemption 2021

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#### 1 Name

This instrument is *CASA EX39/21 — Dangerous Goods (2-yearly Training Requirement) Exemption 2021*.

#### 2 Duration

This instrument:

- (a) commences on the day after it is registered; and
- (b) is repealed at the end of 31 March 2024.

#### 3 Definitions

*Note 1* In this instrument, certain terms and expressions have the same meaning as they have in CASR.

*Note 2* In this instrument, any reference to a regulation, subregulation or paragraph beginning with the prefix **92.** is a reference to a provision in Part 92 of CASR.

In this instrument:

***Australian aircraft operator*** has the meaning given by subregulation 92.010 (1).

***Australian freight forwarder*** means a freight forwarder carrying on business in Australia on behalf of an Australian aircraft operator.

***Australian ground handling agent*** means a ground handling agent carrying on business in Australia on behalf of an Australian aircraft operator.

***freight forwarder*** has the meaning given by subregulation 92.010 (1).

***ground handling agent*** has the meaning given by subregulation 92.010 (1).

***screening authority*** has the meaning given by subregulation 1.03 of the *Aviation Transport Security Regulations 2005*.

***shipper of dangerous goods*** has the meaning given by subregulation 92.010 (1).

*Technical Instructions* has the meaning given by subregulation 92.010 (1).  
*training every 2 years* has the extended meaning given by regulation 92.090.

#### 4 Application

This instrument applies to:

- (a) an Australian aircraft operator; and
- (b) an Australian ground handling agent; and
- (c) an Australian freight forwarder; and
- (d) a screening authority; and
- (e) a shipper of dangerous goods.

#### 5 Exemption

Subject to section 6, a person to whom this exemption applies (*an exempt person*) is exempt from compliance with whichever of the following provisions is applicable:

- (a) paragraph 92.095 (2) (b);
- (b) paragraph 92.100 (1) (b);
- (c) paragraph 92.105 (1) (b);
- (d) paragraph 92.115 (2) (b);
- (e) paragraph 92.120 (1) (b).

#### 6 Conditions

- (1) The exempt person must ensure that the employee undertakes the recurrent training within the period commencing at the end of the month in which they last undertook their training, whether initial or recurrent, and ending after 24 months (the *extended validity period*).
- (2) Subsection (1) is subject to subsection (3).
- (3) If an employee undertakes a course of recurrent training within the final 3 months of an extended validity period (the *final quarter*), then the subsequent extended validity period does not commence until 24 months after the end of the previous extended validity period.

*Note* Subsections (1), (2) and (3) give effect to ICAO provision Part 1;4.2.3, in the Technical Instructions, as referred to in the explanatory note in section 1.5.0.3 of the IATA Dangerous Goods Regulations.

*Note* Examples of use of, or failure to use, an extended validity period.

- If an employee successfully completes their initial training course on 14 April 2021, their training validity would normally expire on 14 April 2023, under this exemption the expiry becomes the end of April 2023.
- If recurrent training of an employee is required before the end of April 2023 and the training is completed between 1 February 2023 and the end of April 2023 (within the final quarter), the end of the next *extended validity period* occurs at the end of April 2025.
- If recurrent training of an employee is required before the end of April 2023 but that training is completed more than 3 months before the end of April 2023 (before the final quarter), the new expiry date is the end of the month, including the second anniversary of the day they completed that training. For instance, if the extended validity period is due to expire at the end of April 2023 but they complete recurrent training on 31 January 2023, their next training validity expiry is the end of January 2025.

## **7 Direction**

- (1) An exempt person who chooses to avail themselves of an extended validity period is directed to provide details of the training given to their employees, including dates of commencement and completion, if requested to do so by a CASA officer.
  - (2) This direction is repealed at the end of 31 March 2024.
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## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX39/21 — Dangerous Goods (2-yearly Training Requirement) Exemption 2021

##### Purpose

The purpose of *CASA EX39/21 — Dangerous Goods (2-yearly Training Requirement) Exemption 2021* (the **instrument**) is to allow persons to use the 24-month period adopted by the International Civil Aviation Organization (**ICAO**) and the International Air Transport Association (**IATA**) for determining when employees have to undertake recurrent training in the safe transport of dangerous goods and the period for which such training remains current (the **period of currency**) when undertaken by an employee.

The instrument contains conditions in the interest of the safety of air navigation.

##### Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and the safety of air navigation. Section 23 of the Act defines **dangerous goods** as explosive substances, and things which:

- by reason of their nature are liable to endanger the safety of an aircraft or persons on board an aircraft; or
- the regulations declare to be dangerous goods.

Section 23B of the Act states, in subsection (1), that the regulations may require persons handling, or involved in handling, cargo in the course of the cargo being carried or consigned for carriage on an aircraft to undertake specified training relating to dangerous goods.

The instrument deals with the provision of training in accordance with Subpart 92.C of the *Civil Aviation Safety Regulations 1998* (**CASR**). References in the instrument or this statement to a regulation, subregulation or paragraph that begins with the prefix **92.** are a reference to the provision in Part 92 that begins with that prefix.

Subpart 92.C contains training provisions for the employees of a person engaged in the carriage, or consignment for carriage, of dangerous goods, being one of the following:

- (a) an Australian aircraft operator;
- (b) a ground handling agent;
- (c) a freight forwarder;
- (d) a screening authority;
- (e) a shipper of dangerous goods.

Regulation 92.095 applies to Australian aircraft operators in relation to their group A, B, C, D or E employees in Australia, and Group C or D employees outside Australia, except in relation to an employee engaged only in operations referred to in paragraphs 92.095 (1) (a) to (e).

Group A, B, C, D and E employees are separately defined in subregulation 92.085 (1).

Subregulation 92.095 (2) requires an Australian aircraft operator to ensure that each employee to whom the regulation applies undertakes training in accordance with regulation 92.110 before first undertaking the relevant duties and every 2 years while continuing to have those duties.

Regulation 92.100 applies to Australian ground handling agents in relation to their group A, B, C or E employees.

Subregulation 92.100 (2) requires an Australian ground handling agent to ensure that each employee to whom the regulation applies undertakes training in accordance with regulation 92.110 before first undertaking the relevant duties and every 2 years while continuing to have those duties.

Regulation 92.105 applies to Australian freight forwarders in relation to their group A, B or E employees.

Subregulation 92.105 (2) requires an Australian freight forwarder to ensure that each employee to whom the regulation applies undertakes training in accordance with regulation 92.110 before first undertaking the relevant duties and every 2 years while continuing to have those duties.

Regulation 92.110 sets out the requirements for the training of groups of employees to whom regulation 92.095, 92.100 or 92.105 applies, being a training course that meets the requirements of regulation 92.135 and is approved by the Civil Aviation Safety Authority (*CASA*) as appropriate for that group of employees.

Regulation 92.115 applies to employees in Australia of a screening authority, if the employee's duties include handling, or supervising anyone who handles, checked baggage or carry-on baggage.

Subregulation 92.115 (2) requires a screening authority to ensure that each employee to whom the regulation applies undertakes training in accordance with subregulation (4) before first undertaking the relevant duties and every 2 years while continuing to have those duties. Subregulation (4) requires the training course to be appropriate for such employees and to meet the requirements of regulation 92.135.

Regulation 92.120 applies to Group F employees of a person who ships dangerous goods (a *shipper of dangerous goods*), except a person who consigns dangerous goods within Australian territory for his or her own private non-commercial purposes.

Under subregulation 92.120 (1), a shipper of dangerous goods must ensure that their Group F employees undertake training in accordance with subregulation (4) before first undertaking the relevant duties, and every 2 years while continuing to have those duties. Under subregulation (4), the employees must undertake a training course approved by *CASA* as appropriate and that meets the requirements of regulation 92.135.

Subregulation 11.160 (1) of *CASR* provides that, for subsection 98 (5A) of the Act, *CASA* may grant an exemption from a provision of the regulations, in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2), an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.205 (1) of CASR, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, failure to comply with a condition of an exemption is a strict liability offence.

Under regulation 11.225 of CASR, an exemption must be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245 (2) provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions. Under paragraph 11.250 (a), such a direction ceases to be in force on the day specified in the direction.

### **Background**

The term *every 2 years*, as used in Subpart 92.C to set the period of currency for training, has an extended meaning given by regulation 92.090. Under that regulation if an employee completes a training course within 3 months before the second anniversary of the day on which the employee last completed a similar training course, the employee is taken to have completed the later training course on that second anniversary.

ICAO now uses a 24-month period with the period of currency of the previous training course taken to expire at the end of the month in which the training was received (*see* Part 1;4.2.3, of the Technical Instructions (*TI*), as defined in regulation 92.010). That period of currency has now been adopted in the IATA Dangerous Goods Regulations (*DGR*) as an explanatory note (*see* note in section 1.5.0.3 of the IATA DGR) that aligns with the ICAO provision.

In relation to the references to the IATA DGR, that document is used by industry as a common document for the transport of dangerous goods by air. Note 2 under the regulation 92.010 definition of the term *Technical Instructions* accepts the use of the IATA DGR as an alternate means of compliance with the ICAO *Technical Instructions for the Safe Transport of Dangerous Goods By Air*. This instrument has been issued to allow the use of the 24-month period recognised by ICAO and IATA in order to ensure conformity within the different sets of rules and avoid confusion.

### **Instrument**

Section 1 of the instrument specifies the name by which the instrument may be cited.

Section 2 of the instrument specifies the period during which the instrument is in operation. It commences on the day after registration and is repealed at the end of 29 February 2024.

Section 3 of the instrument contains definitions of terms used in the instrument. Three of those definitions, *Australian freight forwarder*, *Australian ground handling agent* and *screening authority* are new definitions required to clarify the application of the exemption. The other 2 definitions apply existing definitions in subregulation 92.010 (1).

Notes 1 and 2 are included at the top of section 3, as follows.

Note 1 states that in the instrument, certain terms and expressions have the same meaning as they have in CASR.

Note 2 states that in the instrument any reference to a regulation, subregulation or paragraph beginning with the prefix **92.** is a reference to a provision in Part 92 of CASR.

Section 4 of the instrument sets out in paragraphs (a) to (e) the classes of persons to whom the exemption applies.

Section 5 of the instrument exempts the classes of persons to whom the exemption applies from complying with any of the provisions in Part 92 that are mentioned in paragraphs 5 (a) to (e). Those provisions set out for each class of person to whom the exemption applies the requirement to undertake training under regulation 92.135 every 2 years, as opposed to the requirement under the ICAO/IATA provisions to undertake training every 24 months (*recurrent training*).

Section 6 of the instrument sets out the conditions to which the exemptions in section 5 are subject.

Subsection 6 (1) states that, for the exemptions to apply, a person must ensure that an employee undertakes their recurrent training within the period commencing at the end of the month in which they last undertook their training, whether initial or recurrent, and ending after 24 months (the *extended validity period*).

Subsection 6 (2) states that subsection (1) is subject to subsection 6 (3), which applies to training undertaken within the final 3 months of an extended validity period (the *final quarter*).

In accordance with the IATA DGR, subsection 6 (3) states that if the employee undertakes a course of recurrent training within the final quarter, then the subsequent extended validity period does not commence until 24 months after the end of the previous extended validity period rather than 24 months after the end of the month in which they undertook the training.

Note 1 after subsection 6 (3) advises people that subsections 6 (1), (2) and (3) give effect to ICAO provision Part 1;4.2.3 in the TI, as referred to in the explanatory note in section 1.5.0.3 of the IATA DGR.

Note 2 after subsection 6 (3) sets out examples of how subsections 6 (1) to (3) apply in different circumstances.

Subsection 7 (1) directs that a person, subject to the instrument, who chooses to avail themselves of an extended validity period must provide details of the training given to their employees, including dates of commencement and completion, if requested to do so by a CASA officer.

Under subsection 7 (2), the direction is repealed at the end of 29 February 2024.

**Legislation Act 2003 (the LA)**

Subsection 98 (5AA) of the Act states that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if it applies to a class of persons or a class of aircraft.

The exemptions in the instrument apply to classes of persons. Therefore, the instrument is a legislative instrument. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

**Documents Incorporated by Reference**

The instrument does not incorporate any documents by reference. Note 1 after subsection 6 (3) refers to ICAO TI and the IATA DGR. The note refers to these documents to provide background for the making of the instrument, but they are not relied upon in their operation in any way and compliance with the instrument does not require a person to have regard to or refer to the documents.

**Consultation**

The inconsistent periods of duration allowed for recurrent training undertaken under ICAO and IATA rules as opposed to regulation 92.090, have caused disconnect and confusion within the dangerous goods training industry resulting in additional costs with no safety benefit.

CASA has consulted with industry within Policy Proposal PP 1902OS on proposed changes to Part 92 of CASR. As an interim solution, pending preparation of those amendments, an instrument permitting an extension of an expiry date for the effectiveness of a course of recurrent training would be beneficial to industry from a financial perspective and for managing training expiry dates. It would also be beneficial in helping industry manage the effects of the COVID-19 pandemic.

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

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

**Office of Best Practice Regulation (OBPR)**

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 exemptions (OBPR id: 14507).

**Making and commencement**

The instrument has been made by the Acting 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 is repealed at the end of 31 March 2024.



## Statement of Compatibility with Human Rights

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

### CASA EX39/21 — Dangerous Goods (2-yearly Training Requirement) Exemption 2021

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

The legislative instrument allows persons to use the 24-month period adopted by the International Civil Aviation Organization and the International Air Transport Association for determining when employees have to undertake recurrent training in the carriage and consignment for carriage of dangerous goods and the period for which such training remains current (the *period of currency*) when undertaken by an employee.

The exemption is issued subject to conditions. The conditions are imposed by the Civil Aviation Safety Authority in the interest of the safety of air navigation.

#### Human rights implications

The legislative instrument engages the right to protection against arbitrary and unlawful interferences with privacy (Article 17 of the International Covenant on Civil and Political Rights (the *ICCPR*)).

The right to protection against arbitrary and unlawful interference with privacy, contained in Article 17 of the ICCPR, provides that no one shall be subjected to arbitrary or unlawful interference with their privacy.

The right to privacy is engaged by section 7 of the exemption, which directs that if a person chooses to avail themselves of an extended validity period they must, if directed to do so by a CASA officer, provide details of the training given to their employees, including the dates of commencement and completion. The protections provided by the *Privacy Act 1988* continue to apply to personal information collected by CASA.

The requirements of section 7 are necessary in order to ensure proper administration and enforcement of Australia's aviation safety system. Any potential limitation on the right to privacy is necessary, reasonable and proportionate in promoting the objective of improving aviation safety.

In addition, subregulation 92.145 (3) states that "A person or organisation to whom or to which this regulation applies must: (a) keep a copy of any certificate issued to an employee on the completion of a course of training required by this Part; and (b) give a copy of any such certificate to CASA if CASA so requests." It is arguable that authority in Part 92 already exists to justify the keeping of records and their provision to CASA.

Apart from the impact on the right to privacy, the exemption in the instrument is beneficial in purpose and content, and does not adversely affect the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Conclusion**

The legislative instrument is compatible with human rights. To the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in order to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

**Civil Aviation Safety Authority**