



**PURSUANT** to Sections 28 and 30 of the Civil Aviation Act 1990

**I, CRAIG FOSS**, Associate Minister of Transport,

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This 7<sup>th</sup> day of Dec 2015

by **HON CRAIG FOSS**

A handwritten signature in black ink, appearing to read 'Craig Foss', is written over the printed name.

Associate Minister of Transport

**Civil Aviation Rules**

**Part 115, Amendment 3**

**Adventure Aviation – Certification and Operations**

*Docket 8/CAR/1*

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## **Rule objective**

The objective of amendment 3 to Part 115 is to introduce new rules to improve New Zealand's aviation safety performance in a way that embeds an effective safety culture in aviation organisations; and to ensure New Zealand meets its international obligations as a signatory to the Convention on International Civil Aviation.

## **Extent of consultation**

This project was originally conceived to have a three stage implementation plan where the safety management provisions would be included in every affected rule. A project working group was formed in 2009 to address stage 1 which included international air operators, their maintainers, international aerodromes, and air traffic control.

Subsequent development shifted the direction to a single stage rule implementation, with 2 different transition times; and the safety management requirements would mostly be contained in a new rule part – Part 100.

As a result, a new policy project developed options for a safety management rule proposal in a risk based regulation environment. This policy was consulted in 2013 and was well received by the industry; and rule development continued as recommended in the policy document.

A Notice of Proposed Rulemaking, NPRM 15-02, containing the proposed new Part 100 and consequential amendments to Parts 19, 115, 119, 121, 125, 135, 137, 139, 141, 145, 146, 148, 149, 171, 172, 173, 174 and 175 was issued for public consultation under Docket 8/CAR/1 on 7 May 2015.

The publication of this NPRM was notified in the Gazette on 7 May 2015. The NPRM was published on the CAA web site and mailed to identified stakeholders including representative organisations who were considered likely to have an interest in the proposal.

A period of 42 days was allowed for comment on the proposed rule.

## **Summary of submissions**

20 written submissions and 60 oral comments were received on the NPRM. These submissions and comments have been considered and as

a result a number of proposed amendments were removed for reasons of standardisation and the submissions influenced the shape of the transitional provisions. One submission related to this amendment of Part 115. However, the status quo was retained. Refer also to *Consultation Details* on page 17.

### **Examination of submissions**

Submissions may be examined by application to the Docket Clerk at the Civil Aviation Authority between 8:30 am and 4:30 pm on weekdays, except statutory holidays.

### **Insertion of Amendments**

The amendments to the rules in this Part are reflected by replacing the affected existing rules with the amended rules.

### **Effective date of rule**

Amendment 3 to Part 115 comes into force on 1 February 2016.

### **Availability of rules**

Civil Aviation Rules are available from–

CAA web site: <http://www.caa.govt.nz/>

Freephone: 0800 GET RULES (0800 438 785)

## Subpart B —Certification Requirements

*Rule 115.51 is revoked and replaced by the following rule:*

### **115.51 Personnel requirements**

(a) An applicant for the grant of an adventure aviation operator certificate must employ, contract, or otherwise engage—

(1) a senior person identified as the chief executive who—

(i) has the authority within the applicant’s organisation to ensure that all activities undertaken by the organisation can be financed and carried out in accordance with the requirements and standards prescribed by this Part; and

(ii) is responsible for ensuring that the applicant’s organisation complies with the requirements and standards prescribed by this Part; and

(2) a senior person or persons—

(i) responsible for ensuring that the applicant’s organisation complies with its exposition; and

(ii) responsible for the functions referred to in paragraph (b)(1); and

(iii) ultimately responsible to the chief executive; and

(3) sufficient personnel to plan, perform, supervise, inspect, and certify the operations listed in the applicant’s exposition.

(b) The senior person or persons required by paragraph (a) must—

(1) unless otherwise acceptable to the Director as a consequence of the size and expected scope of the applicant’s organisation, each be responsible for not more than one of the following functions—

- (i) adventure aviation operations, including the flight and descent operations and any applicable ground support operations:
  - (ii) crew member and ground crew training and competency assessment:
  - (iii) the control and scheduling of maintenance:
  - (iv) the system for safety management required under rule 115.77:
  - (v) conducting occurrence investigations in accordance with Part 12; and
- (2) hold the minimum qualifications, competency and experience listed in Appendix A that are applicable to the function for which the person is responsible.

***Rule 115.77 is revoked and replaced by the following rule:***

### **115.77 Safety management**

An applicant for the grant of an adventure aviation operator certificate must establish, implement, and maintain a system for safety management in accordance with rule 100.3.

***Rule 115.79 is revoked and replaced by the following rule:***

### **115.79 Adventure aviation operator exposition**

(a) An applicant for the grant of an adventure aviation operator certificate must provide the Director with an exposition that contains—

- (1) a statement signed by the chief executive on behalf of the applicant's organisation confirming that the exposition and any included manuals—
  - (i) define the adventure aviation organisation and demonstrate its means and methods for ensuring ongoing compliance with the requirements prescribed in this Part and any other applicable Part; and

- (ii) are required to be complied with by the organisation's personnel at all times; and
- (1A) in relation to the system for safety management required by rule 115.77,—
  - (i) all of the documentation required by rule 100.3(b); and
  - (ii) for an applicant that is not applying for a renewal of an adventure aviation operator certificate, an implementation plan that describes how the system for safety management will be implemented; and
- (2) the titles and names of the senior persons required by rules 115.51(a)(1) and (2); and
- (3) the duties and responsibilities of the senior persons required by rules 115.51(a)(1) and (2) including—
  - (i) matters for which they have a responsibility to deal directly with the Director or the Authority on behalf of the organisation; and
  - (ii) responsibilities for safety management; and
- (4) if appropriate, an organisation chart showing lines of responsibility of the senior persons required by rules 115.51(a)(1) and (2) and extending to each location referred to in paragraph (5); and
- (5) details of the principal place of operation and the main maintenance base; and
- (5A) information identifying the lines of safety responsibility within the organisation; and
- (6) details of the applicant's procedures required by this Part; and
- (7) details of—

- (i) the maintenance procedures required by rules 115.59 and 115.61; and
  - (ii) the maintenance programme required by rule 115.61; and
  - (iii) every maintenance organisation that performs maintenance on the applicant's aircraft; and
- (8) details of—
- (i) the drug and alcohol programme required by rule 115.62; and
  - (ii) the means by which the applicant will ensure that, as required by rule 115.231, an adventure aviation operation does not take place if, in the opinion of the applicant, any of the persons referred to in rule 115.62 is impaired; and
- (9) details of—
- (i) the scheme for regulation and recording of flight and duty times required by Subpart G; and
  - (ii) the briefing or training to be provided to each passenger in the safety and emergency procedures applicable to the type of adventure aviation operation to be performed; and
  - (iii) the emergency situation action plans required by rule 115.209; and
  - (iv) the flight crew and ground crew training programme required by Subpart E; and
  - (v) the crew member and ground crew competency assessment programme required by Subpart F; and
- (10) details of the programmes required, as appropriate, by this Part; and

- (11) procedures for controlling, amending, and distributing the exposition.
- (b) The applicant's exposition must be acceptable to the Director.

## **Subpart C — Operating Limitations and Requirements**

*Rule 115.109 is revoked and replaced by the following rule:*

### **115.109 Changes to certificate holder's organisation**

- (a) A holder of an adventure aviation operator certificate must—
  - (1) ensure that the exposition required by rule 115.79 is amended—
    - (i) so that it remains a current description of the certificate holder's organisation; and
    - (ii) to ensure continued compliance with the applicable requirements prescribed in the Part or any other Part; and
  - (2) ensure that any amendment made to its exposition meets the applicable requirements of this Part or any other Part and complies with the amendment procedures contained in its exposition; and
  - (3) forward to the Director for retention a copy of each amendment to its exposition as soon as practicable after the amendment is incorporated into its exposition; and
  - (4) amend its exposition as the Director considers necessary in the interests of aviation safety.
- (b) Before a holder of an adventure aviation operator certificate changes any of the following, prior acceptance by the Director is required:
  - (1) the chief executive:

- (2) the title or name of any senior person referred to in rule 115.79(a)(2):
  - (3) the locations referred to in rule 115.79(a)(5), from which the certificate holder conducts adventure aviation operations:
  - (4) the scope of the certificate holder's certificate:
  - (5) the system for safety management, if the change is a material change:
  - (6) the maintenance programme required by rule 115.61:
  - (7) any contractor carrying out the certificate holder's maintenance:
  - (8) the scheme for regulation of flight and duty time required by rule 115.401:
- (c) The Director may impose conditions under which the holder of the adventure aviation operator certificate must operate during or following any change specified in paragraph (b).
- (d) The certificate holder must comply with any condition imposed by the Director under paragraph (c).
- (e) If any change referred to in paragraph (b) requires an amendment to the certificate or the operations specifications, the certificate holder must forward the certificate or the operations specifications to the Director for endorsement of the change as soon as practicable.

## **Subpart CA — Transitional Provisions**

*Insert the following rule after rule 115.111:*

### **115.151 Transition for adventure aviation operator certificate holders and applicants**

- (a) This rule applies to each—
- (1) adventure aviation operator certificate holder:
  - (2) adventure aviation operator certificate applicant.

(b) Before 1 February 2021, an organisation to which this rule applies—

(1) is not required to comply with—

- (i) rule 115.51(b)(1)(iv), if instead of a senior person responsible for the system for safety management, the organisation has a senior person responsible for an organisational management system:
- (ii) rule 115.77, if instead of establishing, implementing, and maintaining the system for safety management, the organisation has established an organisational management system that complies with rule 115.153:
- (iii) rule 115.79(a)(1A):
- (iv) rule 115.79(a)(3)(ii):
- (v) rule 115.79(a)(5A); but

(2) by 30 July 2018 must submit to the Director with the accompanying completed CAA form an implementation plan that—

- (i) includes a proposed date for implementation of the system for safety management; and
- (ii) outlines how the organisation plans to implement the system for safety management required under rule 115.77.

(c) The Director will, if acceptable —

- (1) approve the organisation's implementation plan; and
- (2) set the date for implementation of the system for safety management.

(d) To avoid doubt, the date for implementation is the date the Director approves the system for safety management.

(e) In setting the date under rule 115.151(c)(2) , the Director must have regard to the following:

- (1) the capability of the organisation:
- (2) the complexity of the organisation:
- (3) the risks inherent in the activities of the organisation:
- (4) the date of any certificate renewal:
- (5) any resource or scheduling impacts on the organisation or the Authority or both:
- (6) the date for implementation must not be later than 1 February 2021.

(f) If the organisation is an applicant for an adventure aviation operator certificate it must submit its application for such a certificate together with the plan for implementation of the system for safety management.

(g) This rule expires on 1 February 2021.

*Insert the following rule after rule 115.111 and following rule 115.151:*

**115.153 Transitional organisational management system for adventure aviation operator certificate holders and applicants**

(a) The organisational management system required by rule 115.151(b)(1)(ii) must be established to ensure the organisation’s compliance with, and the adequacy of, the procedures required by this Part.

(b) The organisational management system procedures must be of sufficient detail when considering the size and complexity of the operation to ensure that the appropriate organisational procedures are understood, implemented, and maintained at all levels of the organisation.

- (c) The organisational management system must include—
- (1) a safety policy and safety policy procedures, including the procedure for occurrence investigations conducted under Part 12; and
  - (2) a procedure for ensuring that personnel and customer feedback are monitored to identify existing problems or potential causes of problems within the system; and
  - (3) a procedure for ensuring that problems, or potential problems, that have been identified within the system are—
    - (i) corrected; and
    - (ii) checked to ensure that any corrections have been effective; and
  - (4) a procedure for hazard identification; and
  - (5) a procedure for risk assessment and mitigation; and
  - (6) a procedure for checking that the organisation’s programmes and procedures achieve the stated aims of its safety policy; and
  - (7) a procedure for ensuring that the management of the organisation continues to be effective in satisfying the requirements of this Part, including—
    - (i) a regular plan of review; and
    - (ii) regular feedback to personnel including the results of the review and any actions undertaken to correct problems identified.
- (d) The senior person who is responsible for the organisational management system must communicate with the chief executive on matters affecting safety.

(e) Paragraph (c) does not apply to an applicant for the grant of an adventure aviation operator certificate that intends to conduct adventure aviation operations—

- (1) with a total of 3 or fewer aircraft listed on the applicant’s operations specifications; and
- (2) from a total of 2 or fewer bases.

(f) This rule expires on 1 February 2021.

*Appendix A is revoked and replaced by the following Appendix:*

## **Appendix A — Qualifications and Competency of senior persons**

<b>Hot Air Balloon Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

<b>Parachute-Drop Aircraft Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities

		of the organisation.
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<b>Tandem Parachute Descent Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

<b>Glider and Glider Tow Aircraft Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

<b>Hang Glider/Paraglider and Hang Glider Tow Aircraft Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and

		safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

<b>Special Aircraft Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

<b>Microlight Aircraft Operation</b>		
Senior person responsible for safety management	Competency	Demonstrate competency relevant to systems of safety management.  A working knowledge of the applicable Civil Aviation Rules and safety management requirements.
	Experience	Experience and background relevant to the management of safety systems and the activities of the organisation.

## **Consultation Details**

*(This statement does not form part of the rules contained in Part 115. It provides details of the consultation undertaken in making the rules.)*

A Notice of Proposed Rulemaking, NPRM 15-02, Safety Management, containing the proposed rules was issued for public consultation under Docket 8/CAR/1 on 7 May 2015.

20 responses to the NPRM were received. One related to Part 115.

### **Personnel requirements**

Two submitters commented that proposed rule 145.51(b) separates “personnel authorisations” and “safety management” unless otherwise accepted by the Director; and notes that currently the function of internal audit may be undertaken concurrently with other functions by one person. Other submitters made the same comment on rules 19.317, 115.51, 146.51, and 148.51. One of those submitters suggested qualifying the requirement by referring to the size of the organisation.

*CAA Response: The introduction of the proposed requirement was intended to standardise that requirement across all certificate types – most of which have had that provision since the original issue of those rule parts (including rule 115.51(b)(1) which is unchanged in this proposal). There was no intent to change any existing structure. However, in light of the concerns raised, the CAA will recommend restoring the status quo in rules 145.51(b), 146.51(b), and 148.51(b).*

*Note: The intention to standardise organisational requirements across the rules, while well intentioned is probably not appropriate in terms of amending rules where there is no apparent problem, and thus imposing an unnecessary administrative burden on the industry to update their expositions. All such ‘standardisation’ changes have been reverted to the status quo.*

Two submissions related to the proposed transition requirements as follows:

### Transition rules

In regard to the time allowed for transition, most believed that the implementation time allowed was adequate. However, 2 submitters felt that it was too short – both were working in areas that were mainly Part 135 operations, but had a small element of Part 125 operations that would require the shorter transition period. This, they felt was unachievable; and in one case the submitter suggested that Part 125 operations should be allowed the longer transition to match Part 135.

One submitter suggested dropping the transitional rule that requires a transitional plan by a fixed date, as it appears nearly impossible to enforce in a meaningful way. The submitter questioned the CAA's intention if the CAA does not agree with an implementation plan? The submitter was of the view that as long as a plan is submitted, regardless of its content, the rule has been met. The intent of this rule may well be better achieved by other means, such as the anticipated timelines the CAA expects it will take to process an application for an exposition change that includes a SMS.

*CAA Response: The CAA has reviewed the proposed transitional provisions and came to the following conclusions:*

- *The timing of the proposed implementation stages has been examined and found that 1 year for the first group and 3 years for the second group would be unreasonably short considering the following:*
  - *the number of affected certificates;*
  - *non-validated data on the level of proactive implementation already undertaken by organisations; and*
  - *an untested SMS certification process.*

*Therefore, while still under consideration pending further review of information from other States who have already been through this process, the times are expected to be extended.*

- *The decision by CAA that organisations submit an implementation plan was informed by current best practice and that other States have done likewise. To ensure that the*

*organisation's SMS is properly developed within the required timeframe, some measure of additional oversight is necessary. Therefore, the final rules will be drafted to require that an implementation date is agreed between the organisation and the CAA; and that the implementation plan must be approved.*

*One of the acknowledged sources of hazards is change in an organisation's operation, and it is one of the reasons that effective change management practices be applied at the outset. Therefore, any changes to the implementation plan and SMS will be documented and submitted to the CAA for approval. If a change is required, the CAA may provide additional guidance to the organisation to ensure that the SMS remains in compliance with the SMS rules and is implemented within the specified period following the effective date of the final rule.*

*The final draft will also be explicit in requiring that, at the end of the implementation period (i.e. the implementation date), the SMS is acceptable to the Director.*