



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 *7th* 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 172, Amendment 11

Air Traffic Service Organisations – Certification

Docket 8/CAR/1

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Rule objective

The objective of amendment 11 to Part 172 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. No submissions related specifically to Part 172. See also Consultation Details on page 19.

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 11 to Part 172 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 172.51 is revoked and replaced by the following rule:

172.51 Personnel requirements

- (a) An applicant for the grant of an air traffic service certificate must employ, contract, or otherwise engage—
- (1) a senior person identified as the chief executive who has the authority within the applicant's organisation to ensure that every air traffic service listed in its exposition—
 - (i) can be financed; and
 - (ii) is provided in accordance with the requirements and standards prescribed by this Part; and
 - (2) a senior person or persons ultimately responsible to the chief executive who is or are responsible for the following functions—
 - (i) ensuring that the applicant's organisation complies with the requirements of this Part; and
 - (ii) the system for safety management required under rule 172.123; and
 - (3) sufficient personnel to manage, support, and provide the air traffic services and any associated training or assessment listed in the applicant's exposition.
- (aa) The senior person required by paragraph (a)(2)(ii) must be able to demonstrate competency and experience relevant to the management of safety systems and the activities of the certificate holder.
- (b) The applicant must establish procedures to—
- (1) ensure the competence of those personnel who are authorised by the applicant to provide the air traffic services, and training and assessment for those services, listed in the applicant's exposition; and

- (2) provide those authorised personnel with written evidence of the scope of their authorisation; and
- (3) ensure that those authorised personnel hold appropriate current licences and ratings issued under the Act and in accordance with Part 65; and
- (4) ensure, where practicable, that authorised personnel only exercise the privileges of their rating or ratings if they are familiar with all relevant and current information; and
- (5) facilitate, for rated air traffic service licence holders, compliance with the recent experience requirements of Part 65; and
- (6) ensure, where practicable, that an air traffic controller does not exercise the privileges of their rating or ratings—
 - (i) unless they comply with any endorsements on their medical certificate; and
 - (ii) when any decrease in their medical fitness might render them unable to safely exercise these privileges.

Rule 172.115 is revoked and replaced by the following rule:

172.115 Records

- (a) An applicant for the grant of an air traffic service certificate must establish systems and procedures for identifying, collecting, indexing, filing, storing, securing, maintaining, accessing, and disposing of, records necessary for—
 - (1) the operational provision of air traffic services; and
 - (2) the purpose of assisting with any accident or incident investigation.
- (b) The records referred to in paragraph (a) must include—
 - (1) telephone communications; and
 - (2) radio broadcasts and communications; and

- (3) air-ground digital data exchanges; and
 - (4) radar information; and
 - (5) filed flight plans including standard and repetitive plans; and
 - (6) flight progress strips; and
 - (7) staff duty rosters; and
 - (8) appropriate meteorological and aeronautical information, except where the information is retained for an equivalent period by a meteorological or AIS organisation; and
 - (9) [*revoked*]
 - (10) a record for every person who is required to be trained under rule 172.165, including details of—
 - (i) each segment of training that is undertaken; and
 - (ii) knowledge testing or competency assessment as appropriate for the training conducted.
- (c) The applicant must establish systems and procedures for ensuring the electronic recording of—
- (1) all ATS radio and telephone communications; and
 - (2) all high-frequency air-ground communications; and
 - (3) all relevant data from primary and secondary radar equipment, or obtained through automatic dependent surveillance (ADS), used in providing or supporting an ATC service; and
 - (4) for any equipment coming into service after the date this Part comes into force, any transfer and acceptance of control process not conducted by telephone.
- (d) The applicant must establish systems and procedures to ensure that electronic records referred to in paragraph (c)—

- (1) include time recording, correct to within 5 seconds of UTC, as determined by reference to a standard time station or GPS time standard; and
 - (2) either—
 - (i) replicate the voice communications, and, if applicable, the radar picture, applying at the particular operating position; or
 - (ii) are accompanied by a statement fully describing the differences between the recording supplied and a recording in accordance with subparagraph (i).
- (e) For the purposes of paragraph (d)(2) the term radar picture includes any visual presentation of aircraft position, however derived.
- (f) The option provided by paragraph (d)(2)(ii) only applies to equipment that was in service on 1 January 1998.
- (g) The applicant must establish systems and procedures for ensuring that all records, except where replication is required by paragraph (d)(2)(i), are sufficiently clear to convey the required information.
- (h) The applicant must establish procedures for ensuring that the records referred to in paragraph (b) are retained for 31 days from the date of entry, except for—
- (1) staff duty rosters which must be retained for 2 years; and
 - (2) written records associated with the requirements of rules 172.121(a)(2) and (3) which must be retained for 2 years; and
 - (3) training records which must be retained for a period of 3 years from the date the affected person ceases to work or be associated with the air traffic service organisation.

Rule 172.123 is revoked and replaced by the following rule:

172.123 Safety management

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

Rule 172.125 is revoked and replaced by the following rule:

172.125 Air traffic service organisation exposition

(a) An applicant for the grant of an air traffic service certificate must provide the Director with an exposition containing—

- (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 organisation and demonstrate its means and methods for ensuring ongoing compliance with this and any other applicable Part; and
 - (ii) are to be complied with by its personnel at all times; and
- (1A) in relation to the system for safety management required by rule 172.123,—
 - (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 air traffic service certificate, an implementation plan that describes how the system for safety management will be implemented; and
- (2) the titles and names of the senior person or persons required by rules 172.51(a)(1) and (2); and
- (3) the duties and responsibilities of the senior person or persons required by rules 172.51(a)(1) and (2), including—

- (i) matters for which they have responsibility to deal directly with the Director or the Authority on behalf of the organisation; and
 - (ii) responsibilities for safety management; and
- (4) an organisation chart showing lines of responsibility of the senior person or persons required by rules 172.51(a)(1) and (2), and extending to each location listed under paragraph (a)(5)(i); and
- (5) in the case of an organisation providing air traffic services from more than 1 ATS unit, a table listing—
- (i) locations of ATS units; and
 - (ii) the aerodrome or airspace being serviced; and
 - (iii) the services provided; and
- (6) details of the applicant’s staffing structure for each ATS unit; and
- (7) details of procedures required by rule 172.51(b) regarding the competency, qualifications, maintenance of current operating practice, and fitness of personnel; and
- (8) details of procedures required by rule 172.53 regarding the training and assessment of ATS personnel, and regarding the qualifications of ATS training personnel; and
- (9) information identifying the lines of safety responsibility within the organisation; and
- (10) a description of the display systems to be used in meeting the requirements of rules 172.57(b)(5)(i) and 172.57(c)(2)(i); and
- (11) the information required by rule 172.59 regarding hours of service, the establishment of an air traffic service, and any transitional arrangements; and

- (12) procedures regarding shift administration required by rule 172.61; and
- (13) details of the procedures required by rule 172.63 regarding the control of documentation; and
- (14) the contingency plan required by rule 172.65; and
- (15) details of the systems and procedures required by rule 172.67 regarding co-ordination requirements; and
- (16) details of the procedures required by rule 172.69 regarding the notification of facility status; and
- (17) details of the systems and procedures required by rule 172.71 regarding general information requirements; and
- (18) details of the systems and procedures required by rule 172.73 regarding meteorological information and reporting; and
- (19) details of systems and procedures required by rule 172.75 regarding the provision of area control and approach control services; and
- (20) details of systems and procedures required by rule 172.77 regarding the provision of aerodrome control service; and
- (21) details of systems and procedures required by rule 172.79 regarding the separation of controlled flights and active special use airspace; and
- (22) details of the procedures required by rule 172.81 regarding responsibility for control; and
- (23) details of the procedures required by rule 172.83 regarding the application of priorities; and
- (24) details of the procedures required by rule 172.85 regarding flow control; and
- (25) details of the procedures required by rule 172.87 regarding ATC clearances; and

- (26) details of the procedures required by rule 172.89 regarding the allocation of cruising levels; and
- (27) details of the procedures required by rule 172.91 regarding deviations from an ATC clearance; and
- (28) details of systems and procedures required by rule 172.93 regarding the provision of flight information service; and
- (29) details of systems and procedures required by rule 172.95 regarding the provision of aerodrome flight information service; and
- (30) details of systems and procedures required by rule 172.97 regarding the provision of alerting service; and
- (31) details of the procedures required by rule 172.99 regarding the processing of flight plans; and
- (32) details of the procedures required by rule 172.101 regarding time; and
- (33) details of altimeter setting procedures required by rule 172.103; and
- (34) details of the radio and telephone procedures required by rule 172.105; and
- (35) details of the procedures required by rule 172.107 regarding the provision of radar services; and
- (36) details of the procedures required by rule 172.109 regarding aircraft emergencies and irregular operation; and
- (37) details required by rule 172.111 regarding procedures following a serious incident or accident; and
- (38) details of the procedures required by rule 172.113 regarding incidents; and
- (39) details of systems and procedures required by rule 172.115 regarding the gathering and management of records; and

- (40) details of the procedures required by rule 172.117 regarding the keeping of logbooks and position logs; and
 - (41) details of the programme required by rule 172.119 regarding security arrangements; and
 - (42) details of the procedures required by rule 172.121 regarding disruptions to service; and
 - (43) [*revoked*]
 - (44) procedures to control, amend and distribute the exposition.
- (b) The applicant's exposition must be acceptable to the Director.

Subpart C — Operating Requirements

Rule 172.161 is revoked and replaced by the following rule:

172.161 Changes to certificate holder's organisation

- (a) A holder of an air traffic service certificate must ensure that the holder's exposition is amended so as to remain a current description of the holder's organisation and services.
- (b) The holder of an air traffic service certificate must ensure that any amendment made to the holder's exposition—
- (1) meets the applicable requirements of this Part; and
 - (2) complies with the amendment procedures contained in its exposition; and
- (c) The holder of an air traffic service certificate must 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, except that, for the holder's operational manual or manuals, the holder must forward to the Director—
- (1) a copy of each amendment, at least 15 working days in advance of the effective date; and

- (2) an amendment of an urgent or immediate nature, without delay, and no later than the date on which it is effective.
- (d) Before a holder of an air traffic service certificate changes any of the following, prior acceptance by the Director is required:
- (1) the chief executive:
 - (2) the listed senior person or persons:
 - (3) any aspect of air traffic management that may have an adverse impact on air traffic services provided by a State responsible for adjacent airspace:
 - (4) the system for safety management, if the change is a material change.
- (e) The Director may impose conditions under which the holder of the air traffic service certificate must operate during or following any of the changes specified in paragraph (d).
- (f) The holder of an air traffic service certificate must comply with any condition imposed by the Director under paragraph (e).
- (g) If any change referred to in this rule requires an amendment to the certificate, the holder of the air traffic service certificate must forward the certificate to the Director for endorsement of the change as soon as practicable.
- (h) The holder of an air traffic service certificate must make amendments to its exposition as the Director considers necessary in the interests of aviation safety.

Subpart H Transitional Provisions

Insert rule 172.451 after rule 172.403:

172.451 Transition for air traffic service certificate holders and applicants

- (a) This rule applies to each—
 - (1) air traffic service certificate holder:

- (2) air traffic service certificate applicant.
- (b) Before 1 February 2018, an organisation to which this rule applies—
 - (1) is not required to comply with—
 - (i) rule 172.51(a)(2)(ii), if instead of a senior person responsible for the system for safety management, the organisation has a senior person responsible for internal quality assurance:
 - (ii) rule 172.123, if instead of establishing, implementing, and maintaining the system for safety management, the organisation has established an internal quality assurance system that complies with rule 172.453:
 - (iii) rule 172.125(a)(1A):
 - (iv) rule 172.125(a)(3)(ii):
 - (v) rule 172.125(a)(A9); but
 - (2) by 30 July 2016 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 172.123.
- (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 172.451(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 2018.

(f) If the organisation is an applicant for an air traffic service 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 2018.

Insert rule 172.453 after rule 172.403 and following 172.451:

172.453 Transitional internal quality assurance for air traffic service certificate holders and applicants

(a) The internal quality assurance system required by rule 172.451(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 internal quality assurance system must include—

- (1) a safety policy and safety policy procedures; and
- (2) a procedure to ensure quality indicators, including samples of radio and telephone records, defect and incident reports, and personnel and customer feedback, are monitored to identify

existing problems or potential causes of problems within the system; and

- (3) a procedure for corrective action to ensure existing problems that have been identified within the system are corrected; and
 - (4) a procedure for preventive action to ensure that potential causes of problems that have been identified within the system are remedied; and
 - (5) an internal audit programme to audit the applicant's organisation for conformity with its safety policy; and
 - (6) management review procedures to ensure the continuing suitability and effectiveness of the internal quality assurance system in satisfying the requirements of this Part.
- (c) The safety policy procedures must ensure that the safety policy is understood, implemented, and maintained at all levels of the organisation.
- (d) The procedure for corrective action must specify how—
- (1) to correct an existing problem; and
 - (2) to follow up a corrective action to ensure the action is effective; and
 - (3) to amend any procedure required by this Part as a result of a corrective action; and
 - (4) management will measure the effectiveness of any corrective action taken.
- (e) The procedure for preventive action must specify how—
- (1) to correct a potential problem; and
 - (2) to follow-up a preventive action to ensure the action is effective; and

- (3) to amend any procedure required by this Part as a result of a preventive action; and
 - (4) management will measure the effectiveness of any preventive action taken.
- (f) The internal quality audit programme must—
- (1) specify the frequency and location of the audits taking into account the nature of the activity to be audited; and
 - (2) ensure audits are performed by trained auditing personnel who are independent of those having direct responsibility for the activity being audited; and
 - (3) ensure the results of audits are reported to the personnel responsible for the activity being audited and the manager responsible for internal audits; and
 - (4) require preventive or corrective action to be taken by the personnel responsible for the activity being audited if problems are found by the audit; and
 - (5) ensure follow up audits to review the effectiveness of any preventive or corrective action taken.
- (g) The procedure for management review must—
- (1) specify the frequency of management reviews of the quality assurance system taking into account the need for the continuing effectiveness of the system; and
 - (2) identify the manager who is responsible for the review of the quality assurance system; and
 - (3) ensure the results of the review are evaluated and recorded.
- (h) The senior person who has the responsibility for internal quality assurance must have direct access to the chief executive on matters affecting the safe provision of any air traffic service listed in the exposition.

- (i) This rule expires on 1 February 2018.

Consultation Details

(This statement does not form part of the rules contained in Part 172. 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. None related to Part 172. Two submissions related to the proposed transition provisions 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.