



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 171, Amendment 4

**Aeronautical Telecommunication Services – Operation
and Certification**

Docket 8/CAR/1

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Rule objective

The objective of amendment 4 to Part 171 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 transition provisions. No submissions related specifically to Part 171. See also *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 4 to Part 171 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 171.51 is revoked and replaced by the following rule:

171.51 Personnel requirements

(a) An applicant for an aeronautical telecommunication service 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 to meet applicable operational requirements; and

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

(2) a senior person or persons responsible to the chief executive and who are responsible for—

(i) ensuring that the applicant's organisation complies with its exposition; and

(ii) the system for safety management required under rule 171.73; and

(3) sufficient personnel to inspect, supervise, and maintain the facilities listed in the applicant's exposition.

(aa) The senior person or persons 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) An applicant for an aeronautical telecommunication service certificate must establish procedures for personnel, who are authorised by the holder of the aeronautical telecommunications service certificate to place into operational service any of the facilities listed in the exposition, to—

(1) assess the competency of those authorised personnel; and

- (2) maintain the competency of those authorised personnel; and
- (3) establish a means to provide those authorised personnel with written evidence of the scope of their authorisation.

Rule 171.71 is revoked and replaced by the following rule:

171.71 Records

(a) An applicant for an aeronautical telecommunication service certificate must establish procedures to identify, collect, index, store, maintain, and dispose of the records that are necessary to record—

- (1) the safe provision of the aeronautical telecommunication services; and
- (2) the safe operation of each aeronautical facility listed in the applicant's exposition.

(b) The procedures required under paragraph (a) must require that accurate records of the following are maintained:

- (1) for each aeronautical facility, a record—
 - (i) documenting the operating performance of the aeronautical facility; and
 - (ii) providing a history of the maintenance, and the periodic inspections and tests of the aeronautical facility, that are traceable to the person or persons responsible for each of the recorded activities; and
- (2) for each aeronautical facility, a record of the establishment of, or a change in, the periodic tests required under rule 171.59(a); and
- (3) for each item of test equipment required under rule 171.63(a) that is used for the measurement of an aeronautical facility's critical performance parameters, a record that includes a traceable history of the location, maintenance, and the calibration checks for the item of test equipment; and

- (4) for each facility malfunction incident reported under Part 12, a record that includes—
 - (i) details of the nature of the malfunction; and
 - (ii) the findings of the investigation; and
 - (iii) the follow up corrective actions; and
 - (iv) if applicable, a copy of the report submitted to the Authority under Part 12; and
 - (5) [*revoked*]
 - (6) for each person who is authorised in accordance with rule 171.51(b) to place aeronautical facilities into operational service, a record that includes details of the person's experience, qualifications, training, competence assessments, and current authorisations.
- (c) The procedures required under paragraph (a) must require—
- (1) all records to be legible and of a permanent nature; and
 - (2) all aeronautical facility records required under paragraph (b)(1) to be retained for a period of at least three years unless a longer period is required—
 - (i) by the Director; or
 - (ii) to establish a performance history for the aeronautical facility.

Rule 171.73 is revoked and replaced by the following rule:

171.73 Safety management

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

Rule 171.77 is revoked and replaced by the following rule:

171.77 Aeronautical telecommunication service organisation exposition

(a) An applicant for an aeronautical telecommunication service 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—
 - (i) the exposition defines the organisation and demonstrates its means and methods for ensuring ongoing compliance with this Part; and
 - (ii) the exposition, and all associated manuals, operating, and maintenance instructions, must be complied with by the organisation's personnel at all times; and
- (1A) in relation to the system for safety management required by rule 171.73,—
 - (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 aeronautical telecommunication 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 171.51(a)(1) and (2); and
- (3) the duties and responsibilities of the senior person or persons required by rules 171.51(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 each senior person or persons required by rules 171.51(a)(1) and (2) and covering each location listed under paragraph (a)(7); and
- (5) a summary of the organisation's staffing structure at each location listed under paragraph (a)(7); and
- (5A) information identifying the lines of safety responsibility within the organisation; and
- (6) a list of each type of aeronautical facility to be operated under the authority of the aeronautical telecommunication service certificate; and
- (7) a summary of the scope of activities at each location where the organisation's personnel are based for the purpose of providing or maintaining the types of facilities listed under paragraph (a)(6); and
- (8) a summary of the operational details of each aeronautical facility associated with each location listed under paragraph (a)(7); and
- (9) details of the security programme required under rule 171.55; and
- (10) [*revoked*]
- (11) the detailed procedures, or an outline of the procedures including information that identifies the documentation that contains the detailed procedures, that are required under—
 - (i) rules 171.51(b)(1) and (2) regarding the competence of personnel; and
 - (ii) rule 171.53(a) regarding the design, installation, and commissioning of facilities; and
 - (iii) rule 171.53(b) regarding the operation of temporary facilities for site tests; and

- (iv) rule 171.57(b) regarding the control of documentation; and
 - (v) rule 171.59(a) regarding periodic inspections and testing of facilities; and
 - (vi) rule 171.61 regarding facility performance; and
 - (vii) rule 171.63 regarding the control, calibration, and maintenance of inspection, measuring, and test equipment; and
 - (viii) rule 171.65(a) regarding the notification of facility information; and
 - (ix) rule 171.67(a) regarding facility checks after notification of an accident or incident; and
 - (x) rule 171.69 regarding facility malfunction incidents; and
 - (xi) rule 171.71(a) regarding the identification, collection, indexing, storage, maintenance, and disposal of records; and
 - (xii) rule 171.75 regarding the communication procedures; and
- (12) detailed procedures to control, amend, and distribute the exposition.
- (b) The applicant's exposition must be acceptable to the Director.

Subpart C — Operating Requirements

Rule 171.115 is revoked and replaced by the following rule:

171.115 Changes to certificate holder's organisation

- (a) A holder of an aeronautical telecommunication service certificate must—

- (1) ensure that the exposition is amended, as required, to remain a current description of the certificate holder's organisation, aeronautical telecommunication services, and facilities; and
 - (2) ensure that any amendment made to its exposition meets the applicable requirements of this Part; and
 - (3) comply with the amendment procedures contained in its exposition; and
 - (4) 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
 - (5) make such amendments to its exposition as the Director may consider necessary in the interests of aviation safety.
- (b) Before a holder of an aeronautical telecommunication service certificate changes any of the following, prior acceptance by the Director is required—
- (1) the chief executive:
 - (2) the listed senior persons:
 - (3) the security programme:
 - (4) the types of aeronautical facility operated under the authority of the certificate:
 - (5) the system for safety management, if the change is a material change.
- (c) An application to make any of the changes under paragraph (b) must be made by the certificate holder on form CAA 24171/01.
- (d) The Director may impose any conditions, that the Director considers necessary in the interests of aviation safety, under which the holder of an aeronautical telecommunications service certificate must operate during or following any change specified in paragraph (b).

(e) The holder of an aeronautical telecommunication service certificate must comply with any conditions imposed by the Director under paragraph (d).

(f) If any of the changes under paragraph (b) requires an amendment to the aeronautical telecommunication service certificate, the certificate holder must forward the certificate to the Director for endorsement of the change as soon as practicable.

Subpart E — Transition Provisions

Insert rule 171.251 after rule 171.201:

171.251 Transition for aeronautical telecommunication service organisation certificate holders and applicants

(a) This rule applies to each—

- (1) aeronautical telecommunication service certificate holder:
- (2) aeronautical telecommunication service certificate applicant.

(b) Before 1 February 2018, an organisation to which this rule applies—

- (1) is not required to comply with—
 - (i) rule 171.51(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 171.73, 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 171.253:
 - (iii) rule 171.77(a)(1A):
 - (iv) rule 171.77(a)(3)(ii):
 - (v) rule 171.77(a)(5A); 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 171.73.
- (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 171.251(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 aeronautical telecommunication 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 171.253 after rule 171.201 and following rule 171.251:

**171.253 Transitional internal quality assurance for
aeronautical telecommunication service organisation
certificate holders and applicants**

(a) The internal quality assurance system required by rule 171.251(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, including the procedure required under rule 171.69 for investigating facility malfunction incidents; and
- (2) a procedure to ensure quality indicators, including equipment availabilities, malfunctions, faults, and personnel and customer feedback, are monitored to identify existing problems or potential causes of problems within the internal quality assurance system; and
- (3) a procedure for corrective action to ensure existing problems that have been identified within the internal quality assurance system are corrected; and
- (4) a procedure for preventive action to ensure that potential causes of problems that have been identified within the internal quality assurance system are remedied; and
- (5) an internal audit programme for the applicant's organisation to ensure conformity with the procedures in the applicant's exposition and to achieve the goals set in the safety policy; and
- (6) management review procedures, that should include the use of statistical analysis if appropriate, to ensure the continuing suitability and effectiveness of the internal quality assurance system in satisfying the requirements of this Part.

(c) The procedure required under paragraph (b)(3) for corrective action must specify how—

- (1) to correct an existing quality problem; and
- (2) to follow up a corrective action to ensure the action is effective; and
- (3) to amend any procedure required under this Part as a result of a corrective action; and
- (4) management will measure the effectiveness of any corrective action taken.

(d) The procedure required under paragraph (b)(4) for preventive action must specify how—

- (1) to correct a potential quality problem; and
- (2) to follow-up a preventive action to ensure the action is effective; and
- (3) to amend any procedure required under this Part as a result of a preventive action; and
- (4) management will measure the effectiveness of any preventive action taken.

(e) The internal audit programme required under paragraph (b)(5) must—

- (1) specify the frequency and location of the audits taking into account the nature of the activity to be audited; and
- (2) measure the effectiveness of any preventative or corrective action taken by the personnel responsible for the activity being audited since the last audit; and
- (3) require preventative or corrective action to be taken by the personnel responsible for the activity being audited if problems are found by the audit; and

- (f) The procedure for management review required under paragraph (b)(6) must —
- (1) specify the frequency of management reviews of the internal quality assurance system taking into account the need for the continuing effectiveness of the system; and
 - (2) identify the senior person responsible for the management reviews referred to in paragraph (f)(1); and
- (g) The senior person responsible for the internal quality assurance system must—
- (1) ensure that the safety policy and the safety policy procedures are understood, implemented, and maintained at all levels of the aeronautical telecommunication service certificate holder's organisation; and
 - (2) ensure that the audits are performed by trained auditing personnel who are independent of those having direct responsibility for the activity being audited; and
 - (3) ensure that the results of the audits are reported to the personnel responsible for the activity being audited; and
 - (4) ensure that all corrective and preventative actions are followed up to review the effectiveness of those actions; and
 - (5) ensure that the results of the management review are evaluated and recorded; and
 - (6) have direct access to the chief executive on matters affecting the integrity of the facilities operated under the authority of the aeronautical telecommunications service certificate.
- (h) This rule expires on 1 February 2018.

Consultation Details

(This statement does not form part of the rules contained in Part 171. 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 specifically to Part 171. 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.