



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

I, GERRY BROWNLEE, Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This **29th** day of **NOVEMBER** 2012

by **Hon GERRY BROWNLEE**

A handwritten signature in blue ink, appearing to read 'Gerry Brownlee', is written over the printed name. The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Minister of Transport

Civil Aviation Rules

Part 172, Amendment 8

Air Traffic Service Organisations – Certification

Docket 7/CAR/1

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Rule objective

The objective of amendment 8 to Part 172 is to improve protection from aviation security threats affecting the travelling public. The amendment addresses security training.

Extent of consultation

Development of the rule amendment proposal included informal discussions, meetings and emails with Air New Zealand, Air Nelson, Mount Cook Airline, Air Chathams, Vincent Aviation, Air Freight, Auckland International Airport, Rotorua Airport, Christchurch International Airport, Dunedin Airport, Qantas, LAN Chile, and Avsec. Prior to the publication of the notice of proposed rulemaking (NPRM), the Security Rules Update amendment project was undertaken in consultation with a project working group (PWG) that consisted of representatives from the aviation industry. The PWG also had support from the New Zealand Air Line Pilots Association.

A Notice of Proposed Rulemaking, NPRM 12-01, containing the proposed amendment to Part 172 was issued for public consultation under Docket 7/CAR/1 on 9 February 2012.

The publication of this NPRM was notified in the Gazette on 9 February 2012 and advertised on 10 February 2012 in the following metropolitan and regional newspapers: The New Zealand Herald, The Dominion Post, The Press, the Otago Daily Times, The Waikato Times, The Daily Post, the Manawatu Standard, and the Southland Times. 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 28 days was allowed for comment on the proposed rule.

Summary of submissions

Seven written submissions and two emailed comments were received on the NPRM. These submissions and comments have been considered and as a result the following changes have been made to the final rule:

- relaxed the security training recurrency interval from 2 years to 3 years;

- moved the record keeping requirements to existing rule 172.115 *Records*
- added transitional arrangements as new rule 172.151A.

The rule as amended was then referred to Parliament's Regulations Review Committee before being signed by the Minister of Transport.

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 amending existing rule 172.115, and adding new rules 172.151A and 172.165.

Effective date of rule

Amendment 8 to Part 172 comes into force on 16 January 2013.

Availability of rules

Civil Aviation Rules are available from–

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

Freephone: 0800 GET RULES (0800 438 785)

Part 172 Air Traffic Services Organisations – Certification

Subpart B — Certification Requirements

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) a record of each internal quality assurance review carried out under the procedures required by rule 172.123, including the

details of any activities reviewed and any necessary follow-up corrective and preventive actions; and

- (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 for ensuring that electronic records required by 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) applies only to equipment in service on the date this Part comes into force.
- (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.

Subpart C — Operating Requirements

Insert the following new rule after rule 172.151:

172.151A Transitional arrangements

- (a) Despite rule 172.151(4), a holder of an air traffic service certificate is not required to comply with rule 172.115(b)(10) until 16 July 2013.
- (b) Rule 172.165 does not apply to the holder of an air traffic service certificate until 16 July 2013.

Insert the following new rule after rule 172.163:

172.165 Security training programme

- (a) A holder of an air traffic service certificate must establish a security training programme and procedures for ensuring that every person who is employed, engaged, or contracted by the applicant has the appropriate level of security awareness applicable to the person's function.
- (b) The training programme required by paragraph (a) must contain—
- (1) applicable segments for initial training and recurrent training; and
 - (2) knowledge testing or competency assessment as appropriate for the training conducted.
- (c) The holder must establish procedures for ensuring that each segment required by paragraph (b)(1)—
- (1) includes a syllabus that is acceptable to the Director; and
 - (2) is conducted in a structured and coordinated manner by a person authorised by the certificate holder.
- (d) The holder of an air traffic service certificate must establish procedures for ensuring that every person who is required to be trained under paragraph (a) undertakes the recurrent training segment of the training programme at an interval of not more than 3 years.

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 12-01 Security Rules Update, containing the proposed rules was issued for public consultation under Docket 7/CAR/1 on 9 February 2012.

Submissions were received from Airways, Avsec, Chatham Islands Enterprise Trust, Christchurch International Airport, Federation of Air New Zealand Pilots, New Zealand Airports Association, and Qantas.

In addition to the seven formal submissions two organisations commented informally; and those comments have been included in this summary as they also resulted in changes being made to the proposed rules.

The submission relevant to Part 172 was as follows:

Subject area

Security training recurrency interval

Two submissions were received regarding the proposed security training recurrency interval of two years.

One submitter proposed that the training recurrency interval of two years should align with the airport identity card re-issue interval of three years. This was proposed on the basis of it being an administrative and compliance advantage to have the airport identity card requirement “trigger” the training requirement.

The other submitter commented that the proposed two year interval is unreasonably short and would give rise to increased costs without significant increase in security value. An interval of three years would be more appropriate having regard to the roles of the personnel affected. They, too, noted that it would align to the validity period of airport identity cards.

One international operator commented informally that they currently use a three year interval for their recurrency training, and find that to be satisfactory.

CAA Response

In light of the submission and comment, the CAA has reviewed the proposal and agrees that the cost associated with a shorter interval may not balance the security advantage. The CAA notes that there are provisions already to respond to security threats with either advisory material or mandatory requirements which, if necessary, could apply to training if more frequent updates were required. The CAA will amend the proposed training recurrency intervals from 2 years to 3 years.