



**Notice of Proposed Rule Making  
NPRM 16-31  
1 December 2016**

**Part 129  
Foreign Air Operator - Certification**

**Docket CAR/16/129/01  
2016 Rules Review**

## Background to the Civil Aviation Rules

The Civil Aviation Rules establish the minimum regulatory safety boundary for participants to gain entry into, operate within, and exit the Papua New Guinea civil aviation system. The Rules are structured in a manner similar to the Civil Aviation Rules of New Zealand and the Federal Aviation Regulations of the USA. Where practicable the Rules also align with the regulatory code of the Civil Aviation Safety Authority of Australia.

Rules are divided into Parts and each Part contains a series of individual rules which relate to a particular aviation activity. Advisory Circulars accompany many rule Parts and contain information about standards, practices and procedures that the Director has established to be an Acceptable Means of Compliance (AMC) with the associated rule. An Advisory Circular may also contain guidance material (GM) to facilitate compliance with the rule requirements.

The objective of the Civil Aviation Rules system is to strike a balance of responsibility between, on the one hand, the State and regulatory authority, the Civil Aviation Safety Authority of PNG (CASA PNG) and, on the other hand those who provide services and exercise privileges in the civil aviation system. This balance must enable the State and regulatory authority to set standards for, and monitor performance of aviation participants whilst providing the maximum flexibility for the participants to develop their own means of compliance within the safety boundary.

Section 45 of the Civil Aviation Act 2000 prescribes general requirements for participants in the civil aviation system and requires, amongst other things, participants to carry out their activities safely and in accordance with the relevant prescribed safety standards and practices.

Section 69 of the Act allows the Minister to make ordinary rules for any of the following purposes:

- The implementation of Papua New Guinea's obligations under the Convention
- To provide for safe, sustainable, effective and efficient aviation services
- To provision of aviation metrological services, search and rescue services and civil aviation security programs and services
- Assisting aviation safety and security, including but not limited to personal security
- Assisting economic development
- Ensuring environmental sustainability

## 1. Purpose of this NPRM

The purpose of this Notice of Proposed Rulemaking (NPRM) is to put forward for consideration the proposed amendments to Part 129 of the Civil Aviation Rules (CAR).

## 2. Background to the Proposal

Assessment of Part 129 did not identify any major gaps. However, there are a few typographical errors and one amendment clarifying the requirement for fit and proper persons.

## 3. Costs associated with this NPRM

There is no cost associated with this amendment.

## 4. Summary of changes

1. Rule 129.9(2) to include correct reference to rule 129.63(a) (1) and (2).
2. Rule 129.9(2) to be amended to clarify that the demonstration of fit and proper person assessments are the responsibility of the foreign state.
3. Rule 129.13(b)(8) amended to correct the spelling of the word ‘Papua’.
4. Rule 129.103 amended to correct the spelling of the word ‘incorporated’.

## 5. Legislative Analysis

The Minister may make ordinary rules under sections 69, 70, 71 and 72 of the Civil Aviation Act 2000, for various purposes including implementing Papua New Guinea’s obligations under the Convention on International Civil Aviation, assisting aviation safety and security, and any matter contemplated under the Act.

These proposed rules are made pursuant to:

- (a) Section 69(1)(a) which provides for the Minister to make rules for the implementation of Papua New Guinea’s obligations under the Convention;
- (b) Section 72(a) which provides for the Minister to make rule for the designation, classification and certification of-
  - (1) Air services:
  - (2) Aerodrome operators:
  - (3) Aviation security providers:
  - (4) Aviation training organizations”



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### **6.5 Final date for submissions**

Comments must be received before **4:00pm, Friday 31<sup>st</sup> of March 2017.**

### **6.6. Further information**

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## Subpart A — General

### 129.1 Purpose

(a) Except as provided in paragraph (b), this Part shall apply to persons conducting foreign air operations of—

- (1) more than two take-offs or landings within Papua New Guinea in any consecutive 28 day period; or
- (2) more than eight take-offs or landings within Papua New Guinea in any consecutive 365 day period.

(b) This Part shall not apply to air operations conducted for the purpose of medical emergencies, including evacuations, or the carriage of medical supplies or body organs.

### 129.3 Definitions

In this Part—

**Foreign air operation** means an operation to or from Papua New Guinea conducted by persons not domiciled in Papua New Guinea:

### 129.5 Requirement for certificate

No person shall perform an operation to which this Part applies except under the authority of, and in accordance with, a foreign air operator certificate issued under this Part.

### 129.7 Application for certificate

Each applicant for the grant of a foreign air operator certificate shall—

- (1) complete form CAA 129/01 and submit it to the Director with a payment of the appropriate application fee not less than 90 days before the date of intended operation, unless a shorter period is acceptable to the Director; and
- (2) provide the details required by 129.13(b) for the operations specifications; and
- (3) provide for review those parts of its exposition relevant to its operations to, from, or within Papua New Guinea, required by 129.63; and
- (4) provide evidence of its authorisation required by 129.51.

### 129.9 Issue of certificate

An applicant is entitled to a foreign air operator certificate if the Director is satisfied that—

- (1) the applicant meets all applicable requirements of Subpart B; and
- (2) the applicant and the applicant's senior person or persons nominated in accordance with 129.63(a)(1) and (2) are fit and proper persons under the foreign state approval; and
- (3) the ICAO contracting State or State or territory referred to in 129.51 is maintaining its functions in respect of the proposed foreign air operation in accordance with the Convention; and

- (4) the granting of the certificate is not contrary to the interests of aviation safety.

### **129.11 Privileges of certificate holder**

A foreign air operator certificate specifies the foreign air operations that the holder of the foreign air operator certificate may perform.

### **129.13 Operations specifications**

(a) A holder of a foreign air operator certificate must comply with the operations specifications on the certificate.

(b) The operations specifications required by paragraph (a) must contain the following—

- (1) reference to the foreign state approval to conduct air operations:
- (2) a statement regarding the responsibilities for regulatory oversight:
- (3) the location of the certificate holder's principal base of operations:
- (4) the location of other bases of operation:
- (5) the certificate holder's address for service in Papua New Guinea:
- (6) other business names under which the certificate holder may operate:
- (7) the type of air operation authorised:
- (8) the routes to and from Papua New Guinea and the destinations within Papua New Guinea authorised:
- (9) the senior persons required to be nominated by rule 129.63(a)(2):
- (10) details of the aircraft authorised to be operated:
- (11) details of aircraft authorised for use which are leased or hired by the certificate holder:
- (12) names of PNG organisations providing services to the certificate holder in respect of the foreign air operation:
- (13) arrangements for maintenance:
- (14) a statement regarding compliance with the security programme requirements of Part 108:
- (15) any exemption granted from any requirement of this or any other Part:
- (16) any limitation or and condition which the Director determines is necessary.

### **129.15 Duration of certificate**

- (a) A foreign air operator certificate may be granted or renewed for a period of up to five years.
- (b) A foreign air operator certificate remains in force until it expires or is suspended or revoked by the Director.
- (c) The holder of a foreign air operator certificate that expires or is revoked shall forthwith surrender the certificate to the Director.

(d) The holder of a foreign air operator certificate that is suspended shall forthwith produce the certificate to the Director for appropriate endorsement.

#### **129.17 Notification of termination of operations**

Each holder of a foreign air operator certificate who terminates operations to which this Part applies shall notify the Director in writing within 30 days of the date of termination.

#### **129.19 Renewal of certificate**

(a) An application for the renewal of a foreign air operator certificate shall be made by the holder on form CAA 129/01.

(b) The application required by paragraph (a) shall be submitted to the Director before the application renewal date specified in the certificate or, if no such date is specified, not less than 60 days before the certificate expires.

### **Subpart B — Foreign Air Operator — Certification Requirements**

#### **129.51 Authorisation**

Each applicant for the grant of a foreign air operator certificate shall be the holder of a valid air operator certificate or equivalent document issued by an ICAO contracting State or a State or a territory that is acceptable to the Director, that authorises the holder to conduct proposed air operations to, from, or within Papua New Guinea.

#### **129.53 Proving flights or tests**

(a) Each applicant for the grant or amendment of a foreign air operator certificate shall, if required by the Director, perform proving flights or tests to satisfy the Director that it can meet any relevant prescribed requirement.

(b) The flights or tests shall be conducted in a manner acceptable to the Director.

#### **129.55 Reporting of accidents and incidents**

Each applicant for the grant of a foreign air operator certificate shall establish procedures for notifying any accident or incident involving its aircraft and occurring within Papua New Guinea to the Director, in accordance with Part 12.

#### **129.57 Records – personnel**

Each applicant for the grant of a foreign air operator certificate shall establish procedures to ensure that—

- (1) an accurate record is maintained, in Papua New Guinea, of each person employed, contracted, or otherwise engaged by it who is based in Papua New Guinea if that person in the performance of their duties is—
  - (i) required to hold an aviation document; or
  - (ii) exercising any delegation of the Director's functions or powers; or
  - (iii) exercising any authorisation granted by the certificate holder.

- (2) the record includes details of—
  - (i) the relevant experience, qualifications, and training of each person listed under subparagraph (1); and
  - (ii) the scope, validity, and currency of any licence or rating referred to in subparagraph (1)(i); and
  - (iii) the delegations referred to in subparagraph (1)(ii) ; and
  - (iv) authorisations referred to in subparagraph (1)(iii).
- (3) the record is retained in Papua New Guinea for two years from the date that employee—
  - (i) ceases to perform duties requiring a licence or rating; or
  - (ii) exercises any delegation or authorisation.

### **129.59 Records – resources**

Each applicant for the grant of a foreign air operator certificate shall—

- (1) establish procedures to ensure details are recorded of testing, checking, and calibration of any safety-critical resources used in carrying out the operations specified on the certificate; and
- (2) retain in Papua New Guinea the record of details required by subparagraph (1) for 2 years from the date the details are recorded.

### **129.61 Air operator security programme**

Each applicant for the grant of a foreign air operator certificate that proposes to conduct an air operation to which this Part applies, that is carrying ten or more passengers shall establish an air operator security programme that meets the requirements of Part 108.

### **129.63 Foreign air operator exposition**

(a) An applicant for the grant of a foreign air operator certificate must ensure that its exposition contains the following details—

- (1) the titles and names of its senior person or persons based in Papua New Guinea:
- (2) the titles and names of its senior person or persons who have responsibility for the following:
  - (i) air operations:
  - (ii) control of airworthiness and maintenance:
  - (iii) the safety management system:
  - (iv) the quality management system:
  - (v) security.

- (3) the duties and responsibilities of the senior person or persons specified under paragraphs (a)(1) and (2), including matters for which they have responsibility to deal directly with the Director on behalf of the applicant's organisation:
  - (4) a summary of the scope of activities at each location within Papua New Guinea where operational personnel are based for the purpose of providing the foreign air operations:
  - (5) an organisation chart showing lines of responsibility of the senior persons specified under paragraphs (a)(1) and (2), and extending to each location listed under paragraph (a)(4):
  - (6) a summary of the applicant's staffing structure at each location listed under paragraph (a)(4):
  - (7) the principal place of operation in its country of domicile and, where applicable, its main operations base and main maintenance base:
  - (8) appropriate contacts within the civil aviation authority that have principal oversight of the applicant's organisation:
  - (9) the procedures required by—
    - (i) 129.55 regarding accidents and incidents:
    - (ii) 129.57 regarding personnel records:
    - (iii) 129.59 regarding resource records:
  - (10) where required by 129.61, the air operator security programme:
  - (11) the procedures by which the exposition is authorised, controlled, distributed, amended, and reviewed:
  - (12) such other information that is required by it to satisfactorily conduct operations to which this Part applies.
- (b) The Director shall not issue the applicant with a foreign air operator certificate unless the applicant's exposition as it relates to foreign air operations is acceptable to the Director.

## **Subpart C — Foreign Air Operator — Operating Requirements**

### **129.101 Continued compliance**

- (a) A holder of a foreign air operator certificate must comply with the operations specifications required by rule 129.13.
- (b) A holder of a foreign air operator certificate must—
  - (1) continue to meet the standards and comply with the requirements of Subpart B; and
  - (2) hold at least one current copy of those parts of the certificate holder's exposition required to be provided by 129.7(3) and the operations specifications relevant to the Foreign Air Operator Certificate at each major location in Papua New Guinea specified in the exposition; and
  - (3) comply with every procedures detailed in the certificate holder's exposition; and

- (4) make each applicable part of the certificate holder's exposition and the operations specifications issued by the Director under this Part available to personnel who require those parts to carry out their duties.

(c) When requested by the Director to do so, a holder of a foreign air operator certificate must make available to the Director the certificate holder's exposition containing the details required by 129.63.

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

- (a) A holder of a foreign air operator certificate must—
  - (1) ensure that the exposition is amended to reflect changes to the organization and changes to the procedures for conducting air operations to or from Papua New Guinea; and
  - (2) provide the Director with a copy of every amendment to its exposition as soon as practicable after the amendment is incorporated into its exposition.
- (b) Where the holder of a foreign air operator certificate proposes to make a change to any of the information required by rule 129.13(b) to be in the operations specifications, notification to, and approval in writing by the Director is required before the changes takes effect.
- (c) Changes to the exposition required under rule 129.63 as a consequence of a change proposed under paragraph (b) must not take effect until the Director has issued revised operations specifications approving the change.
- (d) The Director may specify in writing conditions under which the foreign air operator may operate during or following any of the changes specified in paragraph (b).
- (e) A certificate holder must comply with any conditions prescribed under paragraph (d).
- (f) A certificate holder must amend the exposition for the holder's organisation as the Director may consider necessary in the interests of aviation safety or security.

### **129.105 Airborne Collision Avoidance System (ACAS II)**

A holder of a foreign air operator certificate must ensure that a turbine-powered aeroplane, with a MCTOW greater than 5700kg or a certificated passenger seating capacity greater than 19 seats, operated to or from Papua New Guinea under that certificate is equipped with an ACAS II that meets the requirements of FAA TSO-C119b.

### **129.107 Use of Aerodromes**

A holder of a foreign air operator certificate must ensure that an aeroplane conducting a foreign air transport operation under the authority of the certificate after 1 October 2009 does not use an aerodrome within Papua New Guinea for landing or taking-off unless-

- (1) the runway to be used at the aerodrome is provided with a RESA at each end of the runway in accordance with the requirements of Part 139 Appendix A.1; or
- (2) if the runway does not have a RESA as required in paragraph (1), the certificate holder ensures that the take-off and landing performance calculations for the aeroplane are based on a reduction of the appropriate declared distances for the runway to provide the equivalent of a 90 metre RESA at the overrun end of the runway strip.

### **129.109 Emergency Locator Transmitter**

- (a) A holder of a foreign air operator certificate conducting a foreign air transport operation with an aeroplane is not required to comply with rule 91.529(a).
- (b) Despite paragraph (a), a holder of a foreign air operator certificate must not conduct a foreign air transport operation using an aeroplane after 1 October 2009 unless the aeroplane is equipped in accordance with the following:
- (1) if the aeroplane is authorised to carry more than 19 passengers and the individual airworthiness certificate for the aeroplane was first issued before 1 October 2009, the aeroplane must be equipped with at least 1 automatic ELT or 2 ELTs of any type:
  - (2) if the aeroplane is authorised to carry more than 19 passengers and the individual airworthiness certificate for the aeroplane is first issued after 1 October 2009, the aeroplane must be equipped with at least 2 ELTs, one of which must be automatic:
  - (3) if the aeroplane is authorised to carry 19 passengers or less and the individual airworthiness certificate for the aeroplane was first issued before 1 October 2009, the aeroplane must be equipped with at least one ELT of any type:
  - (4) if the aeroplane is authorised to carry 19 passengers or less and the individual airworthiness certificate for the aeroplane is first issued after 1 October 2009, the aeroplane must be equipped with at least 1 automatic ELT:
  - (5) every ELT installed or carried in the aeroplane must-
    - (i) meet the requirements of FAA TSO C-126; and
    - (ii) transmit on both frequencies of 406MHz and 121.5MHz.

## **Subpart D — Transition Provisions**

### **129.151 Transition**

Transition provisions detailed in Part 20 apply to this Part.