



**Notice of Proposed Rule Making
NPRM 21/09-45
Date: 02/11/2021**

**Part 172
Air Traffic Service Organisations –
Certification and Operation**

**Consequential Amendments
Nil**

**Docket 21/09/CAR172/45
2021 Rules Review**

Proposed Effective 02 November 2021

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 International Civil Aviation Organization Annexes and 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 that 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 (CASA) 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 while 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, among 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 a safe, sustainable, effective and efficient aviation services
- The provision of aviation meteorological services, search and rescue services and civil aviation security programmes and services
- Assisting aviation safety and security, including but not limited to personal security
- Assisting economic development
- Improving access and mobility
- Protecting and promoting public health
- Ensuring environmental sustainability
- Any matter related or reasonably incidental to any of the following:
 - i. The Minister's functions and role under section 8 of the Act;
 - ii. The Authority's general objects and functions under section 11 of the Act;
 - iii. The Authority's functions in relation to safety under section 12 of the Act; and
 - iv. The Director's functions and powers under section of 17 the Act
 - v. The Director's powers under section 52A, 53 and 54 of the Act
- Any other matter contemplated by any provision of the Act.

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1. Purpose of this NPRM

The purpose of this Notice of Proposed Rulemaking (NPRM) is to put forward for consideration proposed editorial changes only to Civil Aviation Rule (CAR) Part 172.

2. Background to the Proposal

2.1 General Summary

Following review of CAR Part 172 and to maintain the quality of presentation in the rule part, CASA is proposing to make editorial changes as detailed in paragraph 3.5 – Summary of Changes

2.2 NPRM Development

As a signatory to the convention on international civil aviation, Papua New Guinea is committed to aligning its regulations to ICAO SARPS, where practicable. Therefore, air traffic service operations will need to remain consistent with the requirements of Annex 11 and international best practices, where applicable.

2.3 Key Stakeholders

The Civil Aviation Safety Authority identifies the following as key stakeholders for the proposed rule amendments contained in this NPRM:

- The Civil Aviation Safety Authority
- The Minister for Transport
- The Minister for Civil Aviation
- NiuSky Pacific Limited
- Aviation Search and Rescue Organisations
- Airline Operators

3. Issues Addressed during Development

The NPRM development addresses the legislative gaps against Annex 11 and will contain the ICAO standards and requirements for oversight of the air traffic service provider.

3.1 Consequential Amendments

There are no other consequential amendments in other Rule Parts.

3.2 Exemptions

There are no current Exemptions against this Rule Part.

3.3 ICAO SARPS and Level of Risk to Papua New Guinea Aviation Safety

The rule amendments are intended to align, where practicable, with the SARPs contained in ICAO Annexes and are written in consultation with the following Annexes:

- Annex 11 (amendment 52) – Air traffic services
- Annex 10 Vol 5

3.4 Compliance Costs

The proposed amendments will not incur any cost.

4. Summary of changes

CASA is proposing the following editorial changes to CAR Part 172:

1. 172.51 (b)(4) – delete “~~where practicable~~”.
2. 172.93 – delete heading ‘Traffic information’, between paragraph (f) and (g).
3. 172.111 – change title wording for clarity.
4. 172.155 – ‘risk assessment’ changed to lower case for consistency.
5. 172.289 – correction to numbering.
6. Overall re-alignment of texts as tracked.

5. Legislative Analysis

5.1 Power to Make Rules

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, 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 allows the Minister to make rules for the purpose of the implementation of Papua New Guinea’s obligations under the Convention:
- (b) Section 69(b) which allows the Minister to make rules for the purpose of assisting aviation safety and security, including (but not limited to) personal security:
- (c) Section 69(5) which allows the Minister to make rules that provide for matters to be determined or approved by the Authority, the Director, or any other person or empower the Authority, the Director or any other person to impose requirements, or conditions on the performance of any activity including but not limited to procedures to be followed:
- (d) Section 70(c) which allows the Minister to make rules providing for general operating rules, air traffic rules, and flight rules, including but not limited to the following:
 - (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft:
 - (ii) the prevention of aircraft endangering persons or property.
- (e) Section 72(a) which allows the Minister to make rules for the designation, classification, and certification of all or any of the following:
 - (i) aircraft:
 - (ii) aircraft pilots:
 - (iii) flight crew members:
 - (iv) air traffic service personnel:

- (v) aviation security service personnel:
 - (vi) aircraft maintenance personnel:
 - (vii) aviation examiners or medical examiners:
 - (viii) air services:
 - (ix) air traffic services:
 - (x) aerodromes and aerodrome operators:
 - (xi) aeronautical navigation service providers:
 - (xii) aviation training organizations:
 - (xiii) aircraft design, manufacture, and maintenance organizations:
 - (xiv) aeronautical procedures:
 - (xv) aviation security services:
 - (xvi) aviation meteorological services:
 - (xvii) aeronautical communication services:
 - (xviii) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system:
- (f) Section 70(b) which allows the Minister to make rules for the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph 70(a) including the specifications of standards of design, construction, manufacture, processing, testing, supply, approval, and identification of aircraft and aeronautical products:
- (g) Section 70(c) which allows the Minister to make rules setting the conditions of operation of foreign aircraft and international flights to, from, or within Papua New Guinea:
- (h) Section 70(d) which allows the Minister to make rules for the definitions, abbreviations, and units of measurement to apply within the civil aviation system.

The proposed amendment of Part 43 complies with the requirements of the Civil Aviation Act and does not contravene the Constitution, the Aerodrome (Business Concession) Act, Civil Aviation (Aircraft Operator Liability) Act, Aircraft Charges Act, Airport Departure Tax Act, the Explosive Act, Firearms Act, Customs Act, Plant and Disease Control Act and the Environmental Act.

The proposed Rule has been checked for language and compliance with the legal conventions of Papua New Guinea.

5.2 Matters to be taken into account

The development of this NPRM and the proposed rule changes take into account the matters under section 75 of the Act that the Minister must take into account when making ordinary rules including the following:

5.2.1 ICAO Standards and Recommended Practices

The proposed rule amendments comply with applicable sections of the International Civil Aviation Organization (ICAO) Annexes listed in 3.3 above.

5.2.2 Assisting Economic Development

The proposed rule amendments will have no detrimental impact on economic development, and in some cases will reduce costs incurred by the aviation industry.

5.2.3 Assisting Safety and Personal Security

The proposed rule amendments will maintain safety levels in respect to clarifying and maintaining common standards of definitions, abbreviations and units of measurements used throughout the industry.

5.2.4 Improving Access and Mobility

The proposed rule amendments will have no impact on access and mobility.

5.2.5 Protecting and Promoting Public Health

The proposed rule amendments will have no impact on protecting and promoting public health.

5.2.6 Ensuring Environmental Sustainability

The proposed rule amendments will have no impact on environmental sustainability.

6. Submissions on the NPRM

6.1 Submissions are invited

Interested persons are invited to participate in the making of the proposed rules by submitting written data, views, or comments. All submissions will be considered before final action on the proposed rulemaking is taken. If there is a need to make any significant change to the rule requirements in this proposal as a result of the submissions received, then interested persons may be invited to make further submissions.

6.2 Examination of Submissions

All submissions will be available in the rules docket for examination by interested persons both before and after the closing date for submissions. A consultation summary will be published on the CAA web site and provided to each person who submits a written submission on this NPRM. Submissions may be examined by application to the Docket Clerk at the Civil Aviation Safety Authority Headquarter Building 1, Level 1, Morea Tobo Road, Six Mile, NCD Port Moresby between 8:30 am and 3:30 pm on weekdays, except statutory holidays.

6.3 Disclosure

Submitters should note that any information attached to submissions will become part of the docket file and will be available to the public for examination at the CASA office.

Submitters should state clearly if there is any information in their submission that is commercially sensitive or for some other reason the submitter does not want the information to be released to other interested parties.

7. How to make a submission

Submissions may be sent by the following methods:

by Mail: Docket Clerk (NPRM 21/09-45)
Civil Aviation Safety Authority
PO Box 1941
BOROKO
National Capital District

delivered: Docket Clerk (NPRM 21/09-45)
Civil Aviation Safety Authority
Morea-Tobo Road
Six Mile, Jacksons Airport
Port Moresby NCD

by Fax: Docket Clerk (NPRM 21/09-45)
3251789 / 325 1919

by Email: Docket Clerk (NPRM 21/09-45)
rules@casapng.gov.pg

7.1 Final date for submissions

Comments must be received before **COB, 24 September 2021.**

7.2 Availability of the NPRM

Any person may obtain a copy of this NPRM from-

CASA web site: www.casapng.gov.pg

or at a cost from

Docket Clerk
Civil Aviation Safety Authority Headquarter
Building 1, Level 1
Morea-Tobo Road
Six Mile, Jacksons Airport
Port Moresby NCD

7.3 Further information

For further information contact:

Carol Jaran (Ms)
Manager – Legal Service
CASA PNG
cjaran@casapng.gov.pg

Ph: 325 7320

Mob:70306848

Proposed Rule Amendments

Part 72 Air Traffic Service Organisations – Certification and Operation

172.51 Personnel requirements

- (a) An applicant for the grant of an air traffic service certificate shall engage, employ, or contract—
- (1) a senior person identified as the Chief Executive who has the authority within the applicant's organisation to ensure that each air traffic service listed in its exposition—
 - (i) can be financed; and
 - (ii) is provided in accordance with the requirements prescribed by this Part; and
 - (2) a senior person or persons who are responsible for ensuring that the applicant's organisation complies with the requirements of this Part. Such nominated person or persons shall be ultimately responsible to the Chief Executive; 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.
- (b) The applicant shall 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 personnel licences and ratings issued under Part 65; and
 - (4) ensure, ~~where practicable~~, that authorised personnel only exercise the privileges of their ratings if they are familiar with all relevant and current information; and
 - (5) facilitate, for rated air traffic service personnel licence holders, compliance with the recent experience requirements of Part 65; and
 - (6) ensure that an air traffic controller does not exercise the privileges of 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.
- (c) The applicant shall develop and implement a policy and procedures for recruiting and retaining appropriately qualified and experienced ATS personnel applicable to the person's function.

172.93 Flight information service

General

- (a) An applicant for the grant of an air traffic service certificate shall establish procedures to ensure that a flight information service is provided to any aircraft that is likely to be affected by the information, if—
- (1) the aircraft is being provided with an ATC service; or

- (2) the aircraft is being provided with an aerodrome flight information service; or
 - (3) the aircraft is operating under IFR; or
 - (4) the aircraft is operating under VFR having filed the flight plan required by 91.307; or
 - (5) the pilot of an aircraft operating under VFR without a flight plan makes a specific request for flight information.
- (b) The applicant shall establish procedures to ensure that the flight information service includes the provision of available and relevant—
- (1) SIGMET information; and
 - (2) information on weather conditions reported or forecast, at departure, destination, and alternate aerodromes; and
 - (3) information concerning pre-eruption volcanic activity, volcanic eruptions, and volcanic ash clouds; and
 - (4) information concerning the release into the atmosphere of radioactive materials or toxic chemicals; and
 - (5) information on changes in the serviceability of navigation aids; and
 - (6) information on changes in the condition of aerodromes and associated facilities, including information on the state of the aerodrome movement areas when they are affected by snow, ice, or water; and
 - (7) information on unmanned free balloons; and
 - (8) other information likely to affect safety.
- (c) The applicant shall establish procedures to ensure that flight information provided to aircraft operating on a VFR flight plan, and aircraft specifically requesting the information, includes available details concerning weather conditions along the route of flight that are likely to make operation under VFR impracticable.
- (d) The applicant shall establish procedures to ensure that, when requested by a pilot, flight information for a long-distance flight over water includes any available information on surface vessels in the area.
- (e) The applicant shall establish procedures to ensure that, whenever water is present on a runway, a description of the runway surface conditions on the centre half of the width of the runway is made available using one of the following terms—
- (1) DAMP – the surface shows a change of colour due to moisture; or
 - (2) WET – the surface is soaked but there is no standing water; or
 - (3) WATER PATCHES – significant patches of standing water are visible; or
 - (4) FLOODED – extensive standing water is visible.
- (f) The applicant shall establish procedures to ensure that, where practical, local aircraft operators likely to be affected by the information are advised of short-notice changes to published hours of service where they are unlikely to have the information from any other sources.

Traffic Information

- (g) An applicant for the grant of an air traffic service certificate for an air traffic control service, shall establish procedures to ensure that essential traffic information is passed to

all affected traffic.

- (h) An applicant for the grant of an air traffic service certificate shall establish procedures to ensure that traffic information is provided to flights likely to be affected by the information as follows:
- (1) in class C airspace, between VFR flights, together with traffic avoidance advice on request;
 - (2) in class F airspace, between IFR flights, IFR flights and VFR flights, and where practical, between VFR flights on request;

172.111 Action after serious incident or accident involving navigational facilities

An applicant for the grant of an air traffic service certificate shall establish procedures regarding a serious incident or accident to—

- (1) determine if any air navigation facilities have contributed to the event; and
- (2) ensure immediate action is taken to—
 - (i) warn other aircraft that may be using or intending to use the facilities; and
 - (ii) advise the operator of the facility of the occurrence, and that the facility may be implicated; and
- (3) assist the operator of the facility with the prompt promulgation of any decision to withdraw the equipment from service; and
- (4) ensure that any facility identified in paragraph (1) is not used in the provision of separation to IFR aircraft until cleared for use by the relevant holder of an aeronautical telecommunications service certificate issued under Part 171.

172.155 Safety Risk Assessment

- (a) The holder of an air traffic service certificate shall carry out a safety risk assessment in respect of proposal for significant airspace reorganisation, changes in provision of ATS procedures and for the introduction of new equipment, systems or facilities such as:
- (1) a reduced separation minimum to be applied within an airspace or at an aerodrome;
 - (2) a new operating procedure, including departure and arrival procedures, to be applied within an airspace or at an aerodrome;
 - (3) a reorganisation of the ATS route structure;
 - (4) a re-sectorisation of an airspace;
 - (5) implementation of new communications, surveillance or other safety-significant systems and equipment, including those providing new functionality or capabilities;
 - (6) activities potentially hazardous to civil aircraft;
- to demonstrate that an acceptable level of safety will be met.
- (b) The certificate holder must ensure that users of the services are consulted when carrying out the safety assessment as required under paragraph (a).
- (c) The certificate holder, where appropriate, must ensure that adequate provision is made for post-implementation monitoring to verify that the defined level of safety continues to be met.
- (d) For activities potentially hazardous to civil aircraft, the certificate holder must –

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- (1) implement appropriate mitigation measures, and

172.289 Separation from active special use airspace

Controlled flights shall be kept clear of active special use airspace designated under Part 71, except when—

- (1) ~~(3)~~ in the case of a danger area, the pilot of a VFR flight has notified an express intention to operate in the area, and accepted the responsibility to maintain own separation from the airspace; or
- (2) ~~(4)~~ in the case of a restricted or prohibited area, the administering authority has given approval; or
- (3) ~~(5)~~ achieved by the use of minima or procedures approved by the Director.