



**WELLINGTON NEW ZEALAND**

**PURSUANT** to Section 28 of the Civil Aviation Act 1990

**I, MAURICE WILLIAMSON**, Minister of Transport,

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This *15* day of *September* 1999

by **MAURICE WILLIAMSON**

Minister of Transport

A handwritten signature in black ink, appearing to read 'Maurice Williamson', written over a horizontal line.

**Civil Aviation Rules**

**Part 129 Amendment 1**

**Foreign Air Transport Operator — Certification**

*Docket 98/CAR/1314*

**Civil Aviation Rules**

**Part 129**

**Foreign Air Transport Operator —  
Certification**

### **RULE OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT**

The objective of Part 129 Amendment 1 is to prescribe rules providing for certification of operators not domiciled in New Zealand, that perform air transport operations to, from, or within New Zealand.

A draft of Part 129 Amendment 1 was developed by the CAA in consultation with members of the consultative group. This culminated in the issue of Notice of Proposed Rulemaking 98-5 under Docket 98/CAR/1314.

The publication of this notice was advertised in the daily newspapers in the five main provincial centres on 5 September 1998. The notice was mailed to 45 members of industry with a registered interest and to other parties, including overseas Aviation Authorities and organisations, who were considered likely to have an interest in the proposal. A period of 6 weeks was allowed for consultation.

A period of 30 days was allowed for comment on the proposed rule. A total of two submissions were received. The submissions and verbal comments were considered and where appropriate the proposed rules amended to take account of the comments made.

Amendment 1 to Part 129 comes into force 28 days after the date of its notification in the Gazette.



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## **Part 129 Amendment 1, Foreign Air Transport Operator — Certification**

### **Subpart A — General**

Rule 129.1 is revoked and the following new rule 129.1 inserted:

#### **"129.1 Applicability**

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

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

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

Rule 129.3 is revoked and the following new rule 129.3 inserted:

#### **"129.3 Definitions**

In this Part—

**Foreign air transport operation** means an air transport operation to, from, or within New Zealand conducted by persons not domiciled in New Zealand."

Rule 129.5 is revoked and the following new rule 129.5 inserted:

#### **"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."

Rule 129.7 is amended by revoking subparagraph (4) and inserting the following new subparagraph (4):

"(4) provide evidence of its authorisation required by 129.51."

Rule 129.9 is amended by revoking subparagraph (3) and inserting the following new subparagraphs (3) and (4):

"(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 transport operation in accordance with the Convention; and

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

Rule 129.17 is revoked and the following new rule 129.17 inserted:

**"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."

Rule 129.21 is revoked.



Part 129 is amended by revoking the title to Subpart B and inserting the following new title:

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

Rule 129.51 is revoked and the following new rule 129.51 inserted:

### ***"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 operations to, from, or within New Zealand."

Rule 129.57 is amended by revoking subparagraph (1) and inserting the following new subparagraph (1):

"(1) an accurate record is maintained, in New Zealand, of each person employed, contracted, or otherwise engaged by it who is based in New Zealand and to whom any of the following applies:

- (i) the person, in the performance of their duties, is required to hold an aviation licence or rating:
- (ii) the person is exercising any delegation of the Director's functions or powers:
- (iii) the person is exercising any authorisation granted by the certificate holder."

Rule 129.61 is revoked and the following is inserted:

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

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

Rule 129.63 is amended by revoking paragraphs (a)(1) and (a)(2) and inserting the following new paragraphs (a)(1) and (a)(2):

"(1) the titles and names of its senior person or persons based in New Zealand; and

(2) the titles and names of its senior person or persons who have responsibility for ensuring that the certificate holder meets the requirements of this or any other Part; and"

Rule 129.63 is amended by revoking paragraph (a)(12) and inserting the following new paragraph (a)(12):

"(12)... such other information that is required by it to satisfactorily conduct operations to which this Part applies."

Part 129 is amended by revoking the title to Subpart C and inserting the following new title:

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

Rule 129.101 is amended by revoking paragraph (a)(2) and inserting the following new paragraph (a)(2):

"(2) hold at least one current copy of those parts of its exposition required to be provided by 129.7(3) and its operations specifications relevant to the Foreign Air Operator Certificate at each major location in New Zealand specified in its exposition; and"

Rule 129.103 is amended by revoking paragraph (b)(1), and inserting the following new paragraph (b)(1):

"(1) the senior person or persons nominated in accordance with 129.63(a)(1); and"

**Rule 129.103** is amended by revoking paragraphs (c), (d), (e), and (f) and inserting the following new paragraphs (c), (d), (e), (f), and (g):

"(c) An application to make any of the changes specified in paragraph (b) shall be made by the certificate holder on form CAA 24129/01.

(d) The Director may prescribe conditions during or following any of the changes specified in paragraph (b).

(e) The certificate holder shall comply with any conditions prescribed under paragraph (d).

(f) Where any of the changes referred to in paragraph (b) requires an amendment to the certificate, the certificate holder shall forward the certificate to the Director as soon as practicable.

(g) The certificate holder shall make such amendments to its exposition as the Director considers necessary in the interests of aviation safety or security."

Rule 129.105 is revoked.

## CONSULTATION DETAILS

(This statement does not form part of the rules contained in Part 129. It provides details of the consultation undertaken in making the rules.)

### Background to the Rules

The new rules are structured in a manner similar to the Federal Aviation Regulations (FAR) of the FAA, and aim to achieve maximum harmonisation whilst allowing for national variations. Close co-operation is also being maintained with the Civil Aviation Safety Authority of Australia to ensure maximum harmonisation with their regulatory code. NZ legislation is being generated where necessary for the areas not presently covered.

New Zealand's revised legislation is published as Civil Aviation Rules (CAR) which are divided into Parts. Each Part contains a series of individual rules which relate to a particular aviation activity.

Accompanying most Parts will be at least one associated Advisory Circular (AC) which will expand, in an informative way, specific requirements of the Part and acceptable means of compliance. For instance, an AC may contain examples of acceptable practices or procedures which would meet the requirements of a particular rule.

The objective of the new rules system is to strike a balance of responsibility between the State authority and those who provide services and exercise privileges in the civil aviation system. This balance must enable the State 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.

Section 12 of the Civil Aviation Act 1990 requires participants in the aviation system to carry out their activities safely and in accordance with the relevant prescribed safety standards and practices. Section 28 of the Act empowers the Minister to make ordinary rules.

### Notice of Proposed Rule Making

To provide public notice of, and opportunity for comment on the proposed new rules, the Authority issued Notice of Proposed Rule Making 98-5 under

Docket 98/CAR/1314 on 4 September 1998. This Notice proposed the introduction of Civil Aviation Rules Part 129 Amendment 1 to modify criteria for certification of Foreign Air Transport Operators

### **Supplementary Information**

The comments made on the Notice of Proposed Rule Making are available in the rules docket for examination by interested persons. A report summarising each substantive contact with the Civil Aviation Authority contact person concerning this rule making has been filed in the docket.

### **Availability of the Document**

Any person may view a copy of these rules at Aviation House, 1 Market Grove, Lower Hutt or on the CAA Internet page at <http://www.caa.govt.nz>

### **Summary of Comments on Docket 1314 NPRM**

#### **1. General comments on the NPRM**

From the 2 submissions received, both submissions had no comment to offer to the amendment to Part 129.

#### **2. Specific comments on the NPRM**

There were no specific comments received on the NPRM.

There were changes incorporated into the rule as part of the CAA's review of the proposal. These changes are discussed as follows:

**129.1** – The term ‘foreign air transport operation’ has been retained.

**129.3** – The definition for ‘foreign air transport operation’ has been removed from Part 1 and placed in this section. The term is not used anywhere else within the rules, making the definition more appropriately situated in Part 129.

**129.9(3)** - The addition provides that an ICAO State or State or territory that is acceptable to the Director is entitled to a Foreign Air Operators Certificate in accordance with the Convention.

**129.51** – The phrase 'State or territory that is acceptable to the Director' is added so that acceptable States are not limited to ICAO Contracting States.

**129.57(1)** The term 'record' has been strengthened, it now reads 'accurate record'.

**129.57(1) (i)** The term licence has been strengthened and now reads 'an aviation licence'. The last two editorial changes are to be incorporated in future certification rules.

**129.63** – The reference to 'domiciled' has been changed to 'based' as with other requirements in the rule.

### **Transitional arrangements**

There are no transitional arrangements.

### **Regulatory activities**

There are no regulations that are affected by this rule amendment.

### **Conclusion**

The Authority concludes from this consultation that the majority of the aviation industry participants favour the direction of the rule amendments.

The rules also meet New Zealand's international obligations under the Chicago Convention. The comments and all the background material used in the developing the rules are held on the docket file for public scrutiny. Persons wishing to view the docket should call at Aviation House, 1 Market Grove, Lower Hutt and ask for Docket 98/CAR/1314.

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