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# **Summary of Public Submissions Received on NPRM 15-01— Omnibus 2014**

**Prepared by DENISE RATIETA  
and PAUL ELTON**

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## General

Notice of Proposed Rule Making NPRM 15-01(Docket 14/CAR/3) was issued for public consultation on 25 March 2015, with a submission close-off date of 17 April 2015. The purpose of NPRM 15-01 was to make minor editorial and minor technical amendments to various rules by—

- correcting grammatical and editorial errors:
- updating rule wording where it is not consistent with current rule drafting conventions:
- updating rule wording and rule references so that they are in line with applicable rule changes:
- updating various rules in accordance with current International Civil Aviation Organization (ICAO) standards, definitions, abbreviations, and measurements:
- including and correcting required rule documentation:
- revoking expired transitional arrangements.

A copy of the NPRM was sent to:

- The Ministry of Transport:
- The Aviation Community Advisory Group (ACAG):
- The Project Working Group.

The NPRM was also published on the CAA website 25 March 2015 and notified to the industry by automatic email alerts.

## Summary of Submissions

Three written submissions were received – two covered five topics (three related to Part 1, one related to Part 65, and one related to Part 121); and the third was regarding topics that were absent from the Omnibus proposals.

The submissions relating to Part 1 queried proposed definitions of “Controlled Aerodrome”, “Special VFR”, and “TEMPO”.

The submission relating Part 65 queried the “Area control automatic dependent surveillance” rating.

The submission relating to Part 121 queried ELT and ELT(S) regarding their full definitions and the types of ELTs provided for in Part 121 operations.

The submission relating to absences commented on two changes that were needed to Part 139:

- Table 3 in Appendix C to Part 121 should be aligned with Table D-1 of Appendix D to Part 139 (per NPRM 11-02R). This was accomplished in the 139 project by deleting the table in Part 121 (and Parts 125 and 135) and referring instead to the table in Part 139 (now table C-1 in Appendix C) for the strip widths.

- Amend the definitions of instrument approaches to align with ICAO’s recent changes. This was out of scope for both the Part 139 project and the Omnibus. However, the submission has been entered as a petition and will be considered for a future rulemaking project.

### **Definition of controlled aerodrome**

The submitter stated:

“Airways does not support the proposed change to the Controlled Aerodrome definition by moving it to Part 1 and adding the note.

The definition of Controlled Aerodrome was amended when Part 71 was amended and the current New Zealand airspace system was introduced.

Part 71 is clear that an air traffic control service can only be provided in a control zone or a control zone. This is in accordance with the policy change made for Part 71 introduction and the current airspace policy/structure.

Airways cannot provide an air traffic control service unless a control zone exists for an aerodrome.

The New Zealand controlled airspace system differs slightly from ICAO and Annex 11 in regard to control zones and controlled aerodromes so aligning the definitions is not appropriate.

Airways believes that the proposed definition of ‘controlled aerodrome’, and in particular the note referring to the definition directly conflicts with the mandatory requirement under Part 71 for the Director to designate that portion of airspace as a control zone.

*Rule 71.51 states:*

*71.51 General*

*(a) If the Director determines that an air traffic control service is required in a portion of airspace within a flight information region, the Director must—*

- (1) designate that portion of airspace as a control area or a control zone in accordance with this Subpart; and*
- (2) classify that portion of airspace as Class A, B, C, D, or E airspace in accordance with Subpart C.*

AIPNZ Definition GEN 2.2 – 34: Airways is concerned that the definition of Controlled Aerodrome in the AIPNZ was amended in September 2014 and is the same as the proposed definition in this NPRM. The AIPNZ definition does not comply with the current Part 1 definition and also contravenes Rule 71.51. No consultation was undertaken on the AIPNZ change and it is a significant change which goes against the New Zealand airspace policy and contravenes Part 71.

Airways recommends that this AIPNZ change is revoked.”

### **CAA response**

*The CAA does not agree with the submission.*

*Airways' own operations manual contains the following definition, at RAC1-14, which reflects the intended change:*

*"Controlled aerodrome. An aerodrome at which air traffic control service is provided to aerodrome traffic.*

*Note.— The term "controlled aerodrome" indicates that air traffic control service is provided to aerodrome traffic but does not necessarily imply that a control zone exists. (ICAO)"*

*Rule 71.51 comes from ICAO Annex 11. At 2.5.2.2 it states that control areas and control zones relate to a portion of airspace – not a portion of aerodrome. The subsequent entry at 2.5.2.3 - controlled aerodrome has no link with the airspace reference. The CAA considers that rule 71.51 is intended to deal with area control and approach control.*

*Not all ATC services are necessarily applied in a control zone; but approach control service is, as the control zone is established for the protection of IFR routes and procedures and approach control is an ATC service for arriving and departing controlled flights. Area control and approach control service separate IFR aircraft; aerodrome control service is an ATC service for aerodrome traffic, being all aircraft operating in the vicinity of the aerodrome – the aerodrome traffic circuit (see definition in the Act).*

*The CAA's position is that a control zone is not required in order to provide an air traffic control service at an aerodrome. Rule 71.55 specifically deals with an aerodrome control service and indicates that a control zone is a discretionary matter.*

*Part 71 was revised a decade ago to comply with ICAO standards pertaining to airspace; not aerodromes. Controlled airspace and controlled aerodrome are different things.*

## **Definition of special VFR flight**

The submitter stated:

“Airways does not support the proposed change to the Special VFR definition.

Airways believe this will impact on aircraft operations and is not a simple Omnibus amendment. Currently, the definition permits SVFR to be conducted in controlled airspace including both control zones (CTR) and control areas (CTA). The proposed definition would limit SVFR to control zones only.

ATC do authorise SVFR in a CTA on occasion particularly for military operations. The definition previously allowed SVFR in a CTR only but this was changed a number of years ago to permit SVFR in a CTA. There is no supporting detail on why this definition needs to be changed back to the previous definition which was changed to the current to include CTA. If the definition needs to be amended then Airways propose the definition is amended to:

Special VFR flight means a VFR flight cleared by an ATC unit to operate within a control zone or control area in meteorological conditions below visual meteorological conditions:

This proposal would limit SVFR to a control zone or a control area not all controlled airspace as per the current definition.

It is also noted that Rule 91.303 would need to be changed to align with the new definition.”

### **CAA Response**

*The CAA does not agree with the submission.*

*The CAA considers the omnibus change is minor and is appropriate for safety reasons as explained below – specifically to correct the definition to not authorise SVFR in control area, and to conform with the ICAO standard with its limiting intent.*

*Special VFR is not a reduced form of VMC to be used in controlled airspace including control areas when convenient. It is an arrangement for special circumstances in a control zone – a relatively small portion of airspace normally well charted or familiar to VFR pilots, for a short duration whereby visual navigation is enabled by visual reference to the surface during a period of reduced visibility/close proximity to cloud.*

*ATC can observe or otherwise have good appreciation of the local weather conditions and if SVFR is authorised, separate the aircraft from other traffic. CTA does not have the surface as a base, and visual reference to the surface is far from certain. Furthermore, in New Zealand, CTA extends from an altitude upwards to a very high upper limit and for vast distance.*

*SVFR is not intended for en route cruise of VFR aircraft, perhaps between layers of cloud and in reduced visibility with the horizon perhaps indiscernible.*

*Civil Aviation Rules applying to military aircraft are detailed in Rule 91.1(b). In particular, military aircraft are not bound by rules in relation to the VMC criteria specified in Rule 91.301.*

*However, the CAA agrees that amending rule 91.303 to align with the new definition is appropriate, and will replace “controlled airspace” with “control zone”.*

### **Definition of TEMPO**

The submitter stated:

“Air NZ believe there is some confusion existing between the use of TEMPO in a TAF and that used in a METAR/SPECI.

The current CAR Part 1 definition already matches the ICAO definition for the use of TEMPO in a TAF. Current rule wording:

TEMPO means a description of temporary fluctuations in the meteorological conditions which reach or pass specified threshold values and last for a period of less than one hour in each instance and, in the aggregate, cover less than one-half of the forecast period during which the fluctuations are expected to occur:

ICAO recommendation for use in a TAF. (Appendix 5 – 1.3.5)

The change indicator “TEMPO” and the associated time group should be used to describe expected frequent or infrequent temporary fluctuations in the meteorological conditions which reach or pass specified threshold values and last for a period of less than one hour in each instance and, in the aggregate, cover less than one-half of the forecast during which the fluctuations are expected to occur.

The proposed rule wording does not make it clear that the TEMPO conditions should be for less than one-half of the forecast period.”

#### **CAA Response**

*The CAA agreed with the submission and noted that the definition of TEMPO was only partially defined in the NPRM. The CAA also noted that TEMPO has two definitions; one when used in a TAF and another when used in a TREND. Both need to be included in Part 1.*

*The CAA agreed to amend the definition of TEMPO to the following:*

TEMPO (when used in a TAF) means a description of forecast temporary fluctuations in the meteorological conditions which reach or pass specified values and last for a period of less than one hour in each instance and, in the aggregate, cover less than one-half of the period during which the fluctuations are forecast to occur.

TEMPO (when used in a TREND) means a description of forecast temporary fluctuations in the meteorological conditions, which reach or pass specified threshold values and last for a period of less than one hour in each instance. Such fluctuations are expected to occur during the 2 hours following the issue time of the METAR, SPECI or METAR AUTO, and to take place sufficiently infrequently for the prevailing conditions to remain those originally reported in the METAR, SPECI or METAR AUTO.

#### **Change to area control automatic dependent surveillance rating**

The submitter stated:

“Airways does support the deletion of the existing area control automatic dependent surveillance rating but does not support this occurring at this current time.

This is the 'prime' rating under which our Oceanic controllers operate and it may be that some Oceanic controllers do not hold an area rating.

Airways can confirm that approximately 75% of the Advisory Circular 65-7.6 Air Traffic Service Personnel Licences and Ratings – Air Traffic Controller Ratings – Area Control Automatic Dependant Surveillance Rating syllabus is not contained within the Area Control Rating.

Advisory Circular 65-7.6 was updated and published in February 2014; during this process the CAA did not advise Airways there was a concern regarding this particular rating. Airways need to review the syllabi and we would need to do extensive additional work to amend the training and documentation.

Airways requests the proposal to delete the existing area control automatic dependent surveillance rating be removed from this Omnibus and be included in a future Omnibus rule change once Airways has completed the required analysis and changes.”

### **CAA response**

*The CAA agrees with the submission, however, a transitional clause in the rule is included to allow the existing rating to remain valid for one year after the rule comes into force (refer explanation below). Further, an advisory circular will be issued outlining the transitional arrangement with a table to show the old rating and current ICAO terminology, while existing ACs 65-7.2 to -7.5 are accordingly amended and content from redundant AC 65-7.6 is incorporated into AC 65-7.4.*

*The CAA is aligning Part 65 ratings terminologies with current ICAO standards including containing the present and unique ADS rating within the Area Procedural Control rating.*

*Unlike ADS-B, ADS-C is not an ATS surveillance system approved by ICAO (or member States) to provide an ATS surveillance service; ADS-C, in conjunction with CPDLC, comprise an Oceanic Control System facility used to support an area procedural control service in oceanic airspace. For the purpose of correcting the terminology, legacy arrangements for up to one year may be applied while the transition is managed. This will be explained in the transitional arrangements in the AC.*

### **Emergency locator transmitter requirements**

The submitter stated:

“While the abbreviations ELT and ELT(S) are defined in Part 1 the full definitions are not. Annex 6 contains those definitions. Given Part 91.525 has an ELT(S) or EPIRB, the clarity provided by the NPRM 121.353(a)(1)(ii) is still potentially conflicting. i.e. is an ELT(S) or for that matter an EPIRB under 91.525 considered to be an ELT under 121.353(a)(1)(ii). I believe that is the intent, but it is not 100% clear. Under Annex 6 an ELT(S) is simply an ELT “stowed so as to facilitate its ready in an emergency, and manually activated by survivors”

### **CAA Response**

*The CAA acknowledges the submitter’s concerns regarding ELT, ELT(S) and EPIRB as they are currently presented in current rules 91.525, 91.529, and 121.353(a)(1)(ii).*



*While the submitter claims that ELT and ELT(S) are not as fully defined in Part 1 as they are in ICAO Annex 6, the CAA believes they are sufficiently defined in Part 1 as ‘Emergency locator transmitter’ and ‘Emergency locator transmitter (survival)’ and are aligned with Annex 6.*

*Further, the CAA believes that the narrative provided in the NPRM for rule 121.353(a)(1)(ii) is correct and represents an ELT(S) being one of the ELTs that is required in the current rule. However, the purpose of amending rule 121.353(a)(1)(ii) is to eliminate an unreasonable requirement of having a fourth type of ELT which is placing unnecessary and excessive financial burden on an operator.*

*Further, and as a result of the submission, the CAA is taking this opportunity to clarify the types of ELTs provided for in Part 91 and Part 121 by adding (AF) after ELT to elucidate it is an ELT(AF) or “Emergency locator transmitter (automatic fixed)” where that is the intent of the requirement.*