



**PURSUANT** to Sections 28, 29, and 30 of the Civil Aviation Act 1990

**I, HARRY JAMES DUYNHOVEN**, Minister for Transport Safety,

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This *16<sup>th</sup>* day of *September* 2008

by **HARRY JAMES DUYNHOVEN**

A handwritten signature in black ink, appearing to read 'Harry James Duynhoven', is written over the printed name. The signature is stylized and cursive.

Minister for Transport Safety

**Civil Aviation Rules**

**Part 12, Amendment 4**

**Accidents, Incidents, and Statistics**

*Docket 99/CAR/1333 & 99/CAR/1334*

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## **Rule objective**

The objective of amendment 4 to Part 12 is to update the rules prescribing the notification, investigation, and reporting of accidents and incidents to take into account the new rule Parts 95 and 173 becoming effective.

## **Background**

The original development of Part 173 and its associated Part 95 was commenced in 1998 as part of the original suite of Civil Aviation Rules that were developed under the Civil Aviation Act 1990 to replace the old 1953 Civil Aviation Regulations.

Two notices of proposed rulemaking were published in October 1998 to provide for public consultation on the proposals to certificate air navigation service organisations for the purpose of devolving the design and certification of instrument flight procedures to appropriate industry organisations.

A number of submissions on the NPRMs were received from industry and other interested persons. However after consideration of the submissions and development of proposed final rules taking into account the submissions, the project was put aside because of a higher priority for other rule development work.

The Part 173/95 rule development project was restarted in 2003 with the proposed final rules being updated to take into account the latest rule drafting styles and standards from the Parliamentary Counsel Office, the changed international standards for instrument flight procedures, and the submissions received during the updating.

## **Extent of consultation**

Two NPRM, 98-7 for Part 95 Visual and Instrument Procedures for Flight Under IFR, and 98-8 for Part 173 Air Navigation Service Organisations – Certification, containing the proposed rules prescribing the criteria and the processes for the establishment of visual and instrument procedures for flight under IFR and prescribing requirements for the certification of organisations providing IFR procedure design services were issued for public consultation under dockets 95/CAR/1107 and 95/CAR/1035 respectively on 23 October 1998.

The publication of these NPRM was notified in the Gazette on 22 October 1998 and advertised in the daily newspapers in the five main provincial centres on 31 October 1998. The NPRM were 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 further letter dated 15 November 1998 was sent to the civil aviation Swedavia Joint Consultative Group seeking their views on the provision of meteorological minima for IFR approaches to alternate aerodromes at the time of flight planning. (The Swedavia Joint Consultative Group was a joint industry/CAA group established to consult initially on the development of the Civil Aviation Act 1990, then on the programme and priorities for the rules re-write project that commenced in 1990, and then on the development of the various rules under the new Civil Aviation Act 1990.)

A period of 56 days was allowed for comment on the proposed rules.

Five submissions on NPRM 98-8 for Part 173, 9 submissions on NPRM 98-7 for Part 95, and 6 responses to the Swedavia Joint Consultative Group letter were received. The submissions and comments were considered and taken into account in the original draft final rule proposals. The docket numbers were updated in 1998 to 99/CAR/1333 for Part 95 and 99/CAR/1334 for Part 173.

The draft final rule proposals from this process were, between 2003 and the 2007, updated to take into account current legal drafting practices and were significantly reformatted and redrafted into the style of other rules regulating organisations providing services to aviation in New Zealand. The proposed rules were also updated to meet current IFR procedure design standards, safety and quality requirements.

During this updating process, drafts of the updated rules were sent for consultation to 40 international and New Zealand organisations and individuals who were known to have, or indicated they had an interest in IFR procedure design. Twenty two of those 40 organisations and individuals responded and this consultation continued during the development of the attached final rules. The respondents who are individuals or representatives of organisations, (both from within and outside New Zealand) with an interest in or experience in IFR flight

procedure design, support these proposed final rules. These proposed final rules were also forwarded to those persons who responded to the original NPRM. No comment, except those responding to the redrafting process, was received from this latter group.

Amendments to Part 12 were not included in either NPRM as they have arisen as a consequence of the updating and implementation of Parts 95 and 173.

### **Summary of submissions**

A total of 20 submissions were received on the original NPRM (5 on NPRM 98-8 Part 173, 9 on NPRM 98-7 Part 95, and 6 on the Swedavia Joint Consultative Group letter). These submissions and other comments received by the CAA were considered and draft final rule proposals were developed from the original NPRM. These proposals were further developed into the final rules. During this final development process the rules and the changes to the rules were distributed to 40 stakeholders, interested parties and the submitters responding to the original NPRM for their review and comment. Comments were received from 22 of the 41 persons and organisations contacted. The feedback and discussion was considered and taken into account in the final rules submitted for the Minister's signature.

Editorial changes and technical corrections were also made to the final rules as part of the CAA internal review.

The rules as amended, were then referred to Parliament's Regulations Review Committee before being signed by the Minister for Transport Safety.

Note: The draft final rules were further updated to reflect the changes made by amendment 3 which was signed by the Minister for Transport Safety to come into force on 9 October 2008.

### **Examination of submissions**

Submissions and feedback 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 the revocation of the existing rules and the insertion of amended rules.

**Effective date of rule**

Amendment 4 to Part 12 comes into force on 23 October 2008.

**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 12 Amendments

### Subpart A — General

*Rule 12.1 is revoked and replaced by the following new rule:*

#### **12.1 Purpose**

- (a) Subject to paragraph (b), this Part prescribes rules for the—
- (1) notification, investigation, and reporting of accidents and incidents; and
  - (2) preservation of aircraft, aircraft contents, and aircraft records following an accident or serious incident; and
  - (3) preservation of records relating to an accident, facility malfunction incident, an airspace incident, or a promulgated information incident; and
  - (4) reporting of aircraft operating and statistical data.
- (b) This Part does not apply to an incident that is associated with any of the following operations:
- (1) gyrogliders and parasails, unmanned balloons, kites, rockets, and model aircraft operated under Part 101;
  - (2) microlight aircraft operated under Part 103;
  - (3) gliders operated under Part 104;
  - (4) parachutes operated under Part 105;
  - (5) hang gliders operated under Part 106.

*Rule 12.3 is revoked and replaced by the following new rule:*

#### **12.3 Definitions**

In this Part—

**Aircraft incident** means any incident, not otherwise classified, associated with the operation of an aircraft:

**Aerodrome incident** means an incident involving an aircraft operation and—

- (1) an obstruction either on the aerodrome operational area or protruding into the aerodrome obstacle limitation surfaces; or
- (2) a defective visual aid; or
- (3) a defective surface of a manoeuvring area; or
- (4) any other defective aerodrome facility:

**Airspace incident** means an incident involving deviation from, or shortcomings of, the procedures or rules for—

- (1) avoiding a collision between aircraft; or
- (2) avoiding a collision between aircraft and other obstacles when an aircraft is being provided with an Air Traffic Service:

**Bird incident** means an incident where—

- (1) there is a collision between an aircraft and one or more birds; or
- (2) when one or more birds pass sufficiently close to an aircraft in flight to cause alarm to the pilot:

**Cargo security incident** means an incident involving cargo or mail that is carried, or has been accepted by a regulated air cargo agent or an air operator for carriage, by air on an aircraft conducting an international regular air transport operation passenger service, and—

- (1) there is evidence of tampering or suspected tampering with the cargo or mail which could be an act or an attempted act of unlawful interference; or



- (2) a weapon, explosive, or other dangerous device, article or substance, that may be used to commit an act of unlawful interference is detected in the cargo or mail:

**Dangerous goods incident** means an incident associated with and related to the carriage of dangerous goods by air after acceptance by the operator, that—

- (1) results in injury to a person, property damage, fire, breakage, spillage, leakage of fluid or radiation, or other evidence that the integrity of the packaging has not been maintained; or
- (2) involves dangerous goods incorrectly declared, packaged, labelled, marked, or documented:

**Defect incident** means an incident that involves failure or malfunction of an aircraft or aircraft component, whether found in flight or on the ground:

**Fatal injury** means any injury which results in death within 30 days of the accident:

**Flight crew member** means a pilot or flight engineer assigned to duty in an aircraft during flight time:

**Facility malfunction incident** means an incident that involves an aeronautical facility:

**Occurrence** means an accident or incident:

**Promulgated information incident** means an incident that involves significantly incorrect, inadequate, or misleading information or aeronautical data promulgated in an aeronautical information publication, map, chart, or otherwise provided for the operation of an aircraft:

**Prosecution investigation** means an investigation carried out to establish whether an offence against the Act has been committed:

**Security incident** means an incident that involves unlawful interference:

**Serious incident** means an incident involving circumstances indicating that an accident nearly occurred:

**Serious injury** means any injury that is sustained by a person in an accident and that—

- (1) requires hospitalisation for more than 48 hours, commencing within 7 days from the date the injury was received; or
- (2) results in a fracture of any bone, except simple fractures of fingers, toes, or nose; or
- (3) involves lacerations which cause severe haemorrhage, nerve, muscle, or tendon damage; or
- (4) involves injury to an internal organ; or
- (5) involves second or third degree burns, or any burns affecting more than 5% of the body surface; or
- (6) involves verified exposure to infectious substances or injurious radiation:

**TAIC** means the Transport Accident Investigation Commission, which is established by section 3 of the Transport Accident Investigation Commission Act 1990.

***Rule 12.55 is revoked and replaced by the following new rule:***

### **12.55 Notification of incident**

(a) A holder of a certificate issued in accordance with the following Parts must notify the Authority as soon as practicable of any associated incident if the certificate holder is involved in the incident and the incident is a serious incident or is an immediate hazard to the safety of an aircraft operation:

- (1) Parts 119, 129, and 137 — aircraft incident, or dangerous goods incident:
- (2) Part 172 — airspace incident:
- (3) Parts 171 and 174 — facility malfunction incident:

- (4) Parts 19, 47, 119, 129, 137, 145, 146, and 148 — defect incident:
  - (5) Parts 119, 129, 139, 140, 171, and 172 — security incident:
  - (6) Part 139 — aerodrome incident:
  - (7) Parts 139, 171, 173, 174, and 175 — promulgated information incident:
  - (8) Parts 119, 129, and 109 — cargo security incident.
- (b) A person who is involved in an incident that is a serious incident or an immediate hazard to the safety of an aircraft operation must notify the Authority of the incident as soon as practicable if the person—
- (1) operates, maintains, services, or does any other act in respect of an aircraft, aeronautical product, or aviation related service; and
  - (2) is not employed by, or associated with, the holder of a certificate referred to in paragraph (a); or
  - (3) has responsibilities under Part 95.
- (c) A pilot-in-command of an aircraft that is involved in an airspace incident or a bird incident must notify the Authority of the incident as soon as practicable.
- (d) The notification of an incident required by paragraphs (a), (b), and (c) must be conveyed by a means acceptable to the Authority and contain, where ascertainable, information in accordance with the following:
- (1) for airspace incidents, Appendix A(a):
  - (2) for defect incidents, Appendix A(b):
  - (3) for facility malfunction incidents, Appendix A(c):
  - (4) for aircraft incidents, Appendix A(d):

- (5) for security incidents, Appendix A(e):
- (6) for promulgated information incidents, Appendix A(f):
- (7) for aerodrome incidents, Appendix A(g):
- (8) for a cargo security incident, Appendix A(h):
- (9) for dangerous goods incidents, bird incidents, or any other incident, Appendix A(i).

## **Subpart C — Preservation of Aircraft, its Contents, and Records**

*Rule 12.103 is revoked and replaced by the following new rule:*

### **12.103 Preservation of records**

- (a) The holder of a certificate of registration of an aircraft that is involved in a serious incident or accident must preserve all records, including all recording media maintained for the operation and maintenance of the aircraft, for at least 14 days after the serious incident or accident unless otherwise notified by the Authority.
- (b) The holder of a certificate issued in accordance with—
  - (1) Part 171 that is involved in a facility malfunction incident or an accident; or
  - (2) Part 172 that is involved in an airspace incident or an accident; or
  - (3) Part 173 that is involved in a promulgated information incident or an accident;

must preserve all records, including log entries, electronic recordings, technical and other relevant data relating to the incident or accident for at least 14 days after the incident or accident unless otherwise notified by the Authority.

- (c) A person who is involved in a promulgated information incident or an accident involving responsibilities under Part 95 must preserve all

records, including log entries, electronic recordings, technical and other relevant data relating to the incident or accident for at least 14 days after the incident or accident unless otherwise notified by the Authority.

*Appendix A is revoked and replaced by the following new Appendix A:*

## **Appendix A — Information Required for Initial Notification of Incidents**

(a) **Airspace incident** – The following information is required for notification of an airspace incident under rule 12.55(d)(1):

- (1) date and time of the incident:
- (2) brief description of events:
- (3) aircraft nationality, registration, radio call sign, flight number, and type:
- (4) name of the aircraft operator:
- (5) aircraft position and altitude:
- (6) name of the pilot-in-command:
- (7) phase of flight:
- (8) effect on flight:
- (9) flight rules under which the aircraft was operating:
- (10) aircraft point of departure and destination:
- (11) location, type, and class of airspace, and the ATS unit involved:
- (12) any other relevant information submitted by the pilot concerned.

(b) **Defect incident** – The following information is required for notification of a defect incident under rule 12.55(d)(2):

- (1) date and time the incident was detected:
- (2) brief description of events:
- (3) aircraft nationality, registration, and type:
- (4) name of the aircraft operator and owner:
- (5) location of the aircraft, part, or equipment at the time of the incident:
- (6) phase of flight:
- (7) effect on flight:
- (8) aircraft point of departure and destination:
- (9) name of the manufacturer of the aircraft, part, or equipment, and where appropriate, the part number, its modification standard, and its location on the aircraft:
- (10) description of the incident, its effects, and any other relevant information:
- (11) whether the person or organisation making the notification has instituted an investigation into the defect and expected time of completion:
- (12) name, organisation, and contact details of the person notifying the incident.

(c) **Facility malfunction incident** – The following information is required for notification of a facility malfunction incident under rule 12.55(d)(3):

- (1) date and time of the incident:
- (2) brief description of events:
- (3) aircraft nationality, registration, radio call sign, flight number, and type:

- (4) name of the aircraft operator:
  - (5) aircraft position and altitude:
  - (6) name of aerodrome and runway used:
  - (7) name of the pilot-in-command:
  - (8) phase of flight:
  - (9) effect on the flight:
  - (10) identification, type, name, frequency, and provider of the aeronautical telecommunication facility involved:
  - (11) whether the person or organisation making the notification has instituted an investigation into the incident and, if so, expected time of completion:
  - (12) name, organisation, and contact details of the person notifying the incident.
- (d) **Aircraft incident** – The following information is required for notification of an aircraft incident under rule 12.55(d)(4):
- (1) date and time of the incident:
  - (2) brief description of events:
  - (3) aircraft nationality, registration, radio call sign, flight number, and type:
  - (4) name of the aircraft operator and owner:
  - (5) aircraft position and altitude:
  - (6) phase of flight:
  - (7) if applicable, name of aerodrome and runway used:
  - (8) effect on the flight:
  - (9) name of the pilot-in-command:

- (10) type of operation being conducted:
- (11) number of persons on board the aircraft:
- (12) name, organisation, and contact details of the person notifying the incident.

(e) **Security incident** – The following information is required for notification of a security incident under rule 12.55(d)(5):

- (1) date and time of the incident:
- (2) brief description of events:
- (3) aircraft nationality, registration, radio call sign, flight number, and type:
- (4) name of the aircraft operator and owner:
- (5) aircraft position and altitude or place of incident:
- (6) name of the aerodrome or aeronautical telecommunication facility if applicable:
- (7) name of the pilot-in-command:
- (8) phase of flight:
- (9) effect on the flight:
- (10) type of operation being conducted:
- (11) name, organisation, and contact details of the person notifying the incident.

(f) **Promulgated information incident** – The following information is required for notification of a promulgated information incident under rule 12.55(d)(6):

- (1) date and time the incident was discovered:
- (2) brief description of events:



- (3) details to identify the publication, map, chart, or other means by which the information or aeronautical data was promulgated:
- (4) details relating to the information or aeronautical data that gave rise to the incident:
- (5) name, organisation, and contact details of the person notifying the incident.

(g) **Aerodrome incident** – The following information is required for notification of an aerodrome incident under rule 12.55(d)(7):

- (1) date and time of the incident:
- (2) brief description of events:
- (3) name of the aerodrome:
- (4) description and the location of the reported defect or obstruction:
- (5) name, organisation, and contact details of the person notifying the incident.

(h) **Cargo security incident** — the following information is required for notification under rule 12.55(d)(8):

- (1) date and time of the incident:
- (2) brief description of the nature of the incident:
- (3) details, if known, of where the incident may have occurred:
- (4) name, organisation, and contact details of the person notifying the incident.

(i) **Dangerous goods, bird, or other incidents** – The following information is required for notification of a dangerous goods, bird, or other incident under rule 12.55(d)(8):

- (1) date and time of the incident:

- (2) brief description of events:
- (3) name, organisation, and contact details of the person notifying the incident.

## Consultation Details

*(This statement does not form part of the rules contained in Part 12. It provides details of the consultation undertaken in making the rules.)*

The changes to Part 12 are consequential to the introduction of new Rule Parts 173 and 95.

Parts 173 and 95 were consulted on in 2 parts as follows.

The initial consultation started in 1996 and culminated in draft rule proposals being developed from submissions on NPRM published in 1998. Due to a lack of resource no further action was taken until 2003 when the project was re-opened. During the consultation the CAA reorganised its docket files and the docket numbers and titles for each project were changed as follows:-

- Docket 95/CAR/1107 NPRM 98-7 Part 95 Visual and Instrument Procedures for Flight Under IFR became Docket 99/CAR/1333 Part 95 Instrument Flight Procedures—Registration.
- Docket 95/CAR/1035 NPRM 98-8 Part 173 Air Navigation Service Organisations – Certification became Docket 99/CAR/1334 Part 173 Instrument Flight Procedure Service Organisation—Certification and Operation.

Details of the consultation relating to the Part 95 and 173 rules are contained in the consultation details in the initial issues of Parts 173 and 95. The detail includes background and historical information.

The submissions and all background material used in developing the rules are held on the docket files and are available for public inspection at Aviation House, 10 Hutt Road Petone. Persons wishing to view the dockets should contact the Docket Clerk on Phone +64 560 9603 and ask for dockets 95/CAR/1035, 99/CAR/1334, 95/CAR/1107, and 99/CAR/1333.