



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, **HARRY JAMES DUYNHOVEN**, Associate Minister of Transport,
HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *5th* day of *July* 2004
by **HARRY JAMES DUYNHOVEN**

Associate Minister of Transport

Civil Aviation Rules

Part 71 – Re-issue

Designation and Classification of Airspace

Docket 98/CAR/1304

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Rule objective

The objective of this Rule is to update and re-issue Rule Part 71 which prescribes the general rules for the designation and classification of airspace for aviation purposes and in the public interest.

In particular, this re-issue of Part 71:

- incorporates the provisions for designating special use airspace that were prescribed in Part 73 which is revoked as part of this rulemaking
- amends various airspace designation and classification rules
- expands the criteria for the Director to designate transponder mandatory airspace to allow for the more effective use of airborne collision avoidance systems (ACAS)
- incorporates changes to airspace terminology arising from harmonisation discussions with the Civil Aviation Safety Authority Australia (CASA).

Part 71 empowers the Director as the person who may designate and classify airspace for aviation purposes in New Zealand's domestic airspace (New Zealand Flight Information Region) and the airspace over the high seas for which New Zealand has accepted responsibility for the management of the airspace under an ICAO Regional Air Navigation Agreement (Auckland Oceanic Flight Information Region).

Part 71 also empowers the Director to restrict aviation activity by the designation of special use airspace in the interests of aviation safety and security, national security, and for any other reason in the public interest.

Extent of consultation

A Notice of Proposed Rule Making 99-5 was initially issued for public comment in September 1999. As a result of comments received on that NPRM, and the need to harmonise airspace terminology with Australia, extend the Director's power to designate transponder mandatory airspace to provide for the more effective use of ACAS, and address

consequential amendments to other Rule Parts, a new NPRM 01-04 was issued in October 2003.

Considerable public and industry consultation on various issues had already taken place prior to and during the development of this new NPRM. This consultation included:

- the public consultation that took place on the original NPRM 99-5 issued in 1999, and the consequential meetings and discussions with Gliding New Zealand and Airways Corporation
- the airspace terminology harmonisation discussions that took place with the Civil Aviation Safety Authority Australia over the period December 2000 to July 2001
- discussions on transponder mandatory airspace during the Part 121 and Part 125 Airborne Collision Avoidance System rules development projects during 2001 and 2002
- the extensive consultation that took place with various aviation user groups and industry representatives during 2001/02 in association with the Airspace Review conducted by the CAA Aeronautical Services Unit.

A Notice of Proposed Rulemaking, NPRM 04-01, containing the proposed re-issue of Part 71 and the revocation of Part 73 together with the consequential amendments to Parts 1, 77, 91, 101, 105, and 172 was issued for public consultation under Docket 98/CAR/1304 on 16 October 2003.

The publication of this NPRM was notified in the Gazette on 16 October 2003 and advertised in the daily newspapers in the five main provincial centres on 18 October 2003. The NPRM was 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 period of 30 days was allowed for comment on the proposed rule.

Summary of comments

Fourteen written submissions were received on the NPRM. Three written submissions were received in relation to Part 71.

A Massey University flight instructor was concerned that there was no reference to Special Procedure Areas (SPA) other than in the NZAIP, and that procedures around uncontrolled airfields had been relaxed. The submission sought an amendment to Part 71 to include SPA and to rename rule 91.141 to Special Procedures Areas or to make an addition to Part 91 to enable rules of operation around a SPA to be promulgated in a rule.

Airways Corporation made a number of comments in their submission covering:

- **71.5(a)(2), 71.9(b), 71.55(a)(1), 71.55(c)** Suggesting various amendments to the text in the rules regarding boundaries of designated airspace, procedures for designation and classification of airspace, and control zones.
- **71.57** Commenting on geographical features regarding determining VFR transit lanes.
- **71.57(1) and (2)** Suggesting that there could be some confusion if the term ‘transiting’ is deleted from the rules regarding transit lanes.
- **71.59** Suggesting a retrospective rule change to rule 104.53(1) regarding General Aviation Areas and glider cloud flying.
- **71.107 and 71.109** Commenting on the effects of removing the additional separation requirements that have been in place at night.
- **71.109** Pointing out that ICAO does not allow a control zone to be designated as Class E airspace.
- **71.55** Commenting that ICAO uses the term ‘Military Operating Area’.

- **71.161** Commenting on the proposed use of danger areas for parachuting.
- **71.251(a)(2)** Commenting on the use of visual reference regarding visual reporting points.
- **71.253** Commenting on the use of area QNH zones and aligning terminology with Australia.

The Department of Conservation Southern Regional Office submission included the following:

- **General** Supporting the CAA procedures for designating and classifying airspace and the need to coordinate with CAA on airspace matters especially in regard to establishing wilderness areas.
- **71.163(e)(3)** Commenting on the use of the term ‘registered owner or administrator’, and making additional comment in respect to identifying administering authorities that administer riverbeds, lake beds and waterbodies.
- **71.151(a)(3) and 71.151(b)** Commenting on the use and definition of the term ‘public interest’, in respect to special use airspace.

These submissions and comments have been considered and where appropriate the rules have been amended.

Details of all public submissions and the CAA responses to NPRM 04-01 are contained in the Consultation Details at the end of this document.

The rule as amended was then referred to Parliament’s Regulations Review Committee before being signed by the Associate Minister of Transport.

Examination of comments

Comments 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.

Re-issue

The re-issue of Part 71 is reflected by the revocation of the existing Part and insertion of the re-issued Part.

Effective date of rule

The re-issue of Part 71 comes into force on 5 August 2004.

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 71 is revoked and the following new Part 71 is issued

Part 71—Designation and Classification of Airspace

Subpart A—General

71.1 Purpose

This Part prescribes rules for the designation and classification of—

- (1) airspace within the territorial limits of New Zealand; and
- (2) airspace for which New Zealand has accepted responsibility under international civil aviation agreements.

71.3 Overview of this Part

(a) Under this Part the Director may designate—

- (1) any portion of airspace within the Auckland Oceanic Flight Information Region and the New Zealand Flight Information Region as any one or more of the following:
 - (i) a sector if the Director considers such a designation is necessary to facilitate the provision of an air traffic service within that flight information region:
 - (ii) controlled and associated airspace in accordance with Subpart B:
 - (iii) special use airspace in accordance with Subpart D:
 - (iv) transponder mandatory airspace in accordance with Subpart E.
- (2) visual reporting points, area QNH zones, mountainous zones, and other miscellaneous designations in accordance with Subpart F.

(b) The Director must classify airspace that is designated as controlled airspace under paragraph (a)(1)(ii) in accordance with Subpart C.

(c) The Director may classify a portion of airspace that is not designated as controlled airspace under paragraph (a)(1)(ii) as Class F in accordance with Subpart C.

(d) Any portion of airspace within a flight information region that is not designated as controlled airspace under paragraph (a)(1)(ii) is uncontrolled airspace and is classified as Class G airspace unless it is classified as Class F airspace under paragraph (c).

71.5 Boundaries of designated airspace

(a) The lateral limits of airspace designated under this Part must be defined by—

- (1) geographical co-ordinates in degrees, minutes, and seconds;
and
- (2) any one or more of the following:
 - (i) prominent geographical line features;
 - (ii) a circle or any part of a circle of specified radius around a geographical co-ordinate;
 - (iii) a great circle between 2 points;
 - (iv) a parallel of latitude.

(b) The vertical limits of airspace designated under this Part must be defined by heights, altitudes, or flight levels.

(c) Unless otherwise specified, the expression **to a height** includes that height.

71.7 Application for designation and classification of airspace

(a) Any person with a bona fide interest in airspace may apply to the Director for a designation or classification of airspace under this Part.

(b) An applicant for an airspace designation or classification must provide the following details:

- (1) the name and contact details of the applicant:
- (2) the type of designation or classification required:
- (3) the reason for the designation or classification:
- (4) the dimensions or other boundary information for the airspace that is required:
- (5) the period for which the designation or classification is required:
- (6) the contact details of any applicable administering authority or using agency:
- (7) any other applicable information required by the Director.

(c) Except for urgent requests that are associated with Police operations, search and rescue operations, security, or other emergency situations, an application for an airspace designation or classification must be submitted to the Director not less than 90 days before the date on which the designation or classification is to come into force unless a shorter period is acceptable to the Director.

71.9 Procedure for designation and classification of airspace

(a) Before making a designation or classification under this Part, the Director must consult with such persons, organisations, and representative groups within the aviation industry and elsewhere, Government departments, and Crown agencies as the Director in each case considers appropriate, having regard to the requirements of—

- (1) Subpart B (controlled airspace); and
- (2) Subpart C (classification of airspace); and
- (3) Subpart D (special use airspace); and
- (4) Subpart E (transponder mandatory airspace); and
- (5) Subpart F (reporting points, area QNH zones, mountainous zones, and other miscellaneous designations).

(b) For each designation or classification of airspace made under this Part, the Director must specify—

- (1) the period that the designation or classification is active; or
- (2) the method by which the designation or classification is made active.

(c) Designations and classifications of airspace, and designations of reporting points, area QNH zones, and mountainous zones that are made under this Part do not come into force until those designations and classifications are notified and published in accordance with paragraphs (d) and (e).

(d) Except as provided in paragraph (g), the Director must ensure that each of the following is notified in the *Gazette*:

- (1) a designation of airspace:
- (2) a classification of airspace:
- (3) a designation of a reporting point:
- (4) a designation of an area QNH zone:
- (5) a designation of a mountainous zone.

(e) The Director must ensure that the details of each designation and classification of airspace, and each designation of a reporting point, area QNH zone, and mountainous zone are—

- (1) published in an AIP Supplement or by NOTAM; and
- (2) entered in the New Zealand Air Navigation Register.

(f) The *Gazette* notice required under paragraph (d) must specify the date on which the designation and the classification, as the case may be, comes into force.

(g) Designations and classifications that will be effective for a period of not more than 6 months need not be notified in the *Gazette*.

71.11 Review of designated and classified airspace

At least every 5 years, the Director must review each current airspace designation and classification to verify the continuing need for the airspace designation or classification.

71.13 Withdrawal of designations and change of airspace classification

(a) If the Director is satisfied that a designation, or a classification, that has been made under this Part is no longer needed or is no longer appropriate, the Director may withdraw the designation or alter the classification.

(b) Except as provided in paragraph (d), the withdrawal of an airspace designation or the change of an airspace classification made under paragraph (a) does not come into force—

- (1) until that withdrawal or change is notified in the *Gazette*; and
- (2) the details are published in an AIP Supplement or by NOTAM; and
- (3) the details in the New Zealand Air Navigation Register are amended.

(c) The *Gazette* notice required under paragraph (b)(1) must specify the date that the withdrawal of an airspace designation or the change of an airspace classification comes into force.

(d) Paragraph (b)(1) does not apply to an airspace designation or an airspace classification that has been in force for a period of not more than 6 months.

71.15 New Zealand Air Navigation Register

(a) The Director must establish and maintain a register called the New Zealand Air Navigation Register.

(b) The Director must ensure that the New Zealand Air Navigation Register contains the following information:

- (1) a current description, of each portion of airspace that is designated under this Part:
- (2) a current description of the boundary information of each portion of airspace that is classified by the Director as class F airspace under this Part:
- (3) current information, including the name or designator and co-ordinates of each visual reporting point designated under this Part:
- (4) the details required under Part 95 for each current instrument flight procedure:
- (5) the details required under Part 95 for each current aerodrome meteorological minima.

71.17 Transitional provisions

If an airspace designation specified in column 1 of the following table (an **old Part 73 designation** or a **Part 19 designation**) was, immediately before 5 August 2004, in force under those Parts, the old Part 73 designations and the Part 19 designation are, on and after 5 August 2004, deemed to–

- (1) have the re-issued Part 71 designation specified in column 2 of that table opposite the old Part 73 designation and the Part 19 designation; and
- (2) have been designated and notified in accordance with this Part:

Column 1	Column 2
Old Part 73 designation	Re-issued Part 71 designation
Restricted area	Restricted area
Military operational area	Military operating area
Mandatory broadcast zone	Mandatory broadcast zone
Volcanic hazard area	Volcanic hazard zone
Danger area	Danger area
Low flying area	Low flying zone
Part 19 designation	
Mountainous area	Mountainous zone

Subpart B—Controlled Airspace

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.

(b) If another ICAO Contracting State provides an air traffic control service for any portion of airspace within the Auckland Oceanic 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 after consulting with the other State; and
- (2) classify that portion of airspace as Class A, B, C, D, or E airspace in accordance with Subpart C.

(c) The Director may designate portions of airspace within a control area or control zone as a specific sector to facilitate air traffic management.

(d) A control area or control zone becomes uncontrolled class G airspace during those times when an air traffic control service is not being provided within that control area or control zone.

(e) For each portion of airspace designated as a control area or control zone the Director must —

- (1) specify the air traffic control unit that has responsibility for providing the air traffic control service within that control area or control zone; and

- (2) identify the control area or control zone by—
 - (i) the ICAO nationality letters of the State providing the air traffic control service followed by the letter “A” followed by a number; and
 - (ii) the name of the air traffic control unit providing the air traffic control service within that control area or control zone, except that, if appropriate, the control area or control zone may be identified with the name of the aerodrome, town, city, or geographical feature over which the control area or control zone is established.

71.53 Control areas

- (a) The Director may specify a control area designated under this Part as—
 - (1) a terminal control area if the Director determines that an approach control service is required at the confluence of ATS routes in the vicinity of one or more major aerodromes; or
 - (2) an upper control area if the Director determines that an area control service is required; or
 - (3) an oceanic control area if the Director determines that an area control service is required over the high seas.
- (b) The upper limit of a control area must not exceed flight level 660.
- (c) The lower limit of a control area must—
 - (1) be at least 500 feet below the flight paths of IFR flights that the Director determines to require an air traffic control service; and
 - (2) be established at—
 - (i) the highest practical altitude; and

- (ii) not less than 700 feet above the surface of the earth;
and
- (3) when the lower limit of a control area is above 3000 feet AMSL, coincide with a VFR cruising altitude or flight level prescribed in Part 91.
- (d) If a portion of airspace below a control area is designated as another control area, the upper limit of the lower control area must extend to the lower limit of the control area directly above it.

71.55 Control zones

- (a) The Director may designate as a control zone that portion of airspace around an aerodrome if—
 - (1) the Director determines that an aerodrome control service or an aerodrome and approach control service is required; and
 - (2) the traffic density and pattern requires controlled airspace.
- (b) A control zone must be as small as practical consistent with the need to protect the flight paths of IFR flights arriving at and departing from the aerodrome.
- (c) The lateral limits of a control zone must—
 - (1) encompass at least those portions of the airspace that are not within a control area containing the paths of IFR flights arriving at and departing from the aerodrome under IMC; and
 - (2) extend to at least 5 nm from the centre of the aerodrome in the directions from which instrument approaches may be made; and
 - (3) take into account the category of IFR aircraft using the aerodrome and the areas of airspace that need to be protected for those IFR flights.
- (d) Prominent geographical features must be used, where practical, to define the lateral limits of a control zone.

(e) A control zone with an upper limit above 3000 feet AMSL must coincide with a VFR cruising altitude or flight level prescribed in Part 91.

71.57 VFR transit lanes

(a) The Director may designate a portion of controlled airspace as a VFR transit lane for either or both of the following purposes:

- (1) separating transiting VFR traffic from arriving and departing IFR flights;
- (2) permitting transiting VFR traffic to operate within the VFR transit lane without requiring an ATC clearance.

(b) A VFR transit lane must be clear of airspace that encompasses IFR arrival and departure procedures within that controlled airspace.

(c) The Director must—

- (1) ensure that buffer zones are provided between the nominal flight paths of arriving and departing IFR flights and each VFR transit lane; and
- (2) identify each VFR transit lane by the ICAO nationality letters of the State providing the air traffic control service followed by the letter “T” followed by a number.

(d) A VFR transit lane is class G airspace and may only be active during the day.

71.59 General aviation areas

(a) The Director may designate a portion of controlled airspace as a general aviation area for the purpose of allowing VFR flights access to a portion of previously controlled airspace without the requirement for an ATC clearance.

(b) For each general aviation area, the Director must—

- (1) specify, at the time that the Director designates the airspace, the air traffic control unit having responsibility for providing the air traffic control service over the area; and

- (2) identify the area by the ICAO nationality letters of the State providing the air traffic control service followed by the letter G followed by a number; and
- (3) specify that the area is active—
 - (i) permanently during the day; or
 - (ii) by approval of the ATC unit responsible for the airspace; or
 - (iii) by prior notification from an airspace user to the ATC unit responsible for the airspace.
- (c) A general aviation area—
 - (1) may only be active during the day; and
 - (2) is class G airspace while the area is active.

71.61 Subsidiary airspace designations

If the Director considers it necessary in the interests of aviation safety, air traffic management, or international agreements, the Director may designate any controlled airspace or portion of controlled airspace as either or both of the following:

- (1) RNP airspace, on consideration of air traffic density and ATS route structure, and aircraft navigation system accuracy:
- (2) RVSM airspace, on consideration of air traffic density and ATS route structure, and aircraft altimetry system accuracy.

Subpart C—Airspace Classification

71.101 Class A airspace

Any portion of airspace that is designated as a control area or control zone under 71.51(a) or (b) must be classified as Class A airspace if the Director considers it necessary in the interests of aviation safety that—

- (1) separation is required between all flights; and
- (2) VFR flights are not permitted.

71.103 Class B airspace

Any portion of airspace that is designated as a control area or control zone under 71.51(a) or (b) must be classified as Class B airspace if the Director considers it necessary in the interests of aviation safety that separation is required between all flights.

71.105 Class C airspace

Any portion of airspace that is designated as a control area or control zone under 71.51(a) or (b) must be classified as Class C airspace if the Director considers it necessary in the interests of aviation safety that—

- (1) separation is required between—
 - (i) IFR flights; and
 - (ii) IFR and VFR flights; and
 - (iii) IFR and special VFR flights; and
 - (iv) special VFR flights when the flight visibility is reported to be less than 5 km; and
- (2) traffic information must be provided to VFR flights about other VFR flights; and
- (3) traffic avoidance advice must be provided to VFR flights on request.

71.107 Class D airspace

Any portion of airspace that is designated as a control area or control zone under 71.51(a) or (b) must be classified as Class D airspace if the Director considers it necessary in the interests of aviation safety that—

- (1) separation is required between—
 - (i) IFR flights; and
 - (ii) IFR and special VFR flights; and
 - (iii) special VFR flights when the flight visibility is reported to be less than 5 km; and
- (2) traffic information must be provided to—
 - (i) IFR flights about VFR flights; and
 - (ii) VFR flights about IFR flights; and
 - (iii) VFR flights about other VFR flights; and
- (3) traffic avoidance advice must be provided to IFR and VFR flights on request.

71.109 Class E airspace

Any portion of airspace that is designated as a control area under 71.51(a) or (b) must be classified as Class E airspace if the Director considers it necessary in the interests of aviation safety that—

- (1) separation is required between IFR flights; and
- (2) traffic information must be provided, where practical, to—
 - (i) IFR flights about VFR flights; and
 - (ii) VFR flights about IFR flights; and
 - (iii) VFR flights about other VFR flights.

71.111 Class F airspace

The Director may classify any portion of uncontrolled airspace as Class F airspace if the Director considers it necessary in the interests of aviation safety that—

- (1) IFR flights within the airspace need to receive an air traffic advisory service; and
- (2) all flights within the airspace should receive a flight information service if requested.

71.113 Class G airspace

Class G airspace is any uncontrolled airspace that is not Class F airspace and—

- (1) IFR flights are entitled to receive a flight information service; and
- (2) VFR flights are entitled to receive a flight information service on request.

Subpart D—Special Use Airspace

71.151 General

(a) The Director may designate special use airspace under this Subpart if the Director considers such airspace is necessary—

- (1) in the interests of safety or security within the civil aviation system; or
- (2) in the interests of national security; or
- (3) for any other reason in the public interest.

(b) The Director must ensure that each portion of airspace designated under this Subpart is as small as practicable consistent with the activities for which the area is required.

(c) Airspace designated by the Director under this Subpart must be identified by an alphanumeric designator that is not being used to identify any other portion of airspace designated under this Part.

71.153 Restricted areas

(a) The Director may—

- (1) designate a portion of airspace as a restricted area to restrict the activities of aircraft within that area —
 - (i) within the territorial limits of New Zealand; and
 - (ii) within the territorial limits of another ICAO Contracting State in the Auckland Oceanic Flight Information Region upon request by that State; and
- (2) impose conditions under which—
 - (i) aircraft may be permitted to fly within that restricted area; and
 - (ii) the administering authority responsible for the restricted area must operate.

- (b) The Director must—
 - (1) specify the type of activity for which each restricted area is designated; and
 - (2) specify the administering authority responsible for each restricted area; and
 - (3) identify each area by the ICAO nationality letters of the applicable State followed by the letter “R” followed by a number.

- (c) The administering authority responsible for a restricted area—
 - (1) must manage—
 - (i) the entry of aircraft into the restricted area; and
 - (ii) the operation of aircraft within the restricted area; and
 - (iii) the exit of aircraft from the restricted area; and
 - (2) if the restricted area is designated as being made active by NOTAM, must at least 24 hours before the restricted area is to become active, give to the New Zealand NOTAM Office notice of that restricted area becoming active, except that in the case of emergencies less than 24 hours notice may be given; and
 - (3) may, within any conditions imposed by the Director under paragraph (a)(2)(ii), impose conditions under which an aircraft may be operated within the restricted area.

71.155 Military operating areas

- (a) The Director may—
 - (1) designate a portion of airspace as a military operating area to segregate military activities from other traffic; and
 - (2) impose conditions under which—

- (i) aircraft may be permitted to fly within that military operating area; and
 - (ii) an administering authority specified under paragraph (b)(2) must operate.
- (b) The Director must—
 - (1) specify the type of activity for which each military operating area is designated; and
 - (2) specify the administering authority responsible for each military operating area; and
 - (3) identify each military operating area by the ICAO nationality letters of the applicable State followed by the letter “M” followed by a number.
- (c) The administering authority responsible for a military operating area—
 - (1) must manage—
 - (i) the entry of aircraft into the military operating area; and
 - (ii) the operation of aircraft within the military operating area; and
 - (iii) the exit of aircraft from the military operating area; and
 - (2) if the military operating area is designated as being made active by NOTAM, must at least 24 hours before the military operating area is to become active, give to the New Zealand NOTAM Office notice of that military operating area becoming active, except that in the case of emergencies less than 24 hours notice may be given; and
 - (3) may, within any conditions imposed by the Director under paragraph (a)(2)(ii), impose conditions under which an aircraft may be operated within the military operating area.

71.157 Mandatory broadcast zones

- (a) The Director may designate a portion of uncontrolled airspace as a mandatory broadcast zone if, due to traffic density or special circumstances, the pilots within that zone are required to make radio broadcasts of their position and intentions.
- (b) The Director must—
- (1) identify each mandatory broadcast zone by the ICAO nationality letters of the applicable State followed by the letter “B” followed by a number; and
 - (2) assign the radio frequency to be used within the mandatory broadcast zone for the mandatory radio broadcasts; and
 - (3) prescribe the maximum interval between a pilot’s mandatory radio broadcasts.

71.159 Volcanic hazard zones

- (a) The Director may designate a portion of airspace as a volcanic hazard zone if volcanic activity (such as flying rocks, gas plumes, and ash clouds) may present a hazard to aircraft.
- (b) The Director must identify each volcanic hazard zone by the ICAO nationality letters of the applicable State followed by the letter “V” followed by a number.

71.161 Danger areas

- (a) The Director may designate a portion of airspace as a danger area to notify operators that there is a potential danger to aircraft flying in the area.
- (b) The Director must—
- (1) specify the nature of the danger for which each danger area is designated; and
 - (2) if the Director considers it necessary, nominate a using agency as the contact point for a danger area; and

- (3) identify the area by the ICAO nationality letters of the applicable State followed by the letter “D” followed by a number.
- (c) The using agency for a danger area must—
- (1) be a person or organisation that is responsible for the activity that necessitated the danger area being so designated; and
 - (2) ensure that the activities that necessitated the designation of the danger area are contained within that danger area; and
 - (3) if the danger area is designated as being made active by NOTAM, at least 24 hours before the danger area is to become active, give to the New Zealand NOTAM Office notice of that danger area becoming active, except that in the case of emergencies less than 24 hours notice may be given.

71.163 Low flying zones

- (a) The Director may designate a portion of airspace as a low flying zone where pilot training in low level manoeuvres may be conducted.
- (b) The Director must—
- (1) nominate a using agency responsible for—
 - (i) briefing pilots on the associated conditions of use agreed with the registered owner or administrator of the land or water below the low flying zone; and
 - (ii) complying with paragraphs (e) and (f); and
 - (2) identify each low flying zone by ICAO nationality letters of the applicable State followed by the letter “L” followed by a number.
- (c) A low flying zone may only be active during the day.
- (d) The vertical limits of a low flying zone must extend from the surface of the earth to a height of 500 feet.

- (e) The Director may not designate a portion of airspace as a low flying zone unless the using agency nominated for the low flying zone—
- (1) provides the Director with a map or chart on which the boundaries of the low flying zone are defined; and
 - (2) satisfies the Director that the registered owner or administrator of the land or water below the low flying zone consents to the portion of airspace above their land or water being used for low flying; and
 - (3) provides the Director with full details of consultation with other airspace users.
- (f) A using agency nominated under paragraph (b)(1) must satisfy the Director, if requested to, that the using agency continues to have the consent referred to in paragraph (e)(2).

Subpart E—Transponder mandatory airspace

71.201 Transponder mandatory airspace within controlled airspace

The Director may designate a control area or a control zone, or any portion of a control area or a control zone, as transponder mandatory airspace if—

- (1) the operation of transponders is required for the provision of an air traffic control surveillance service; or
- (2) the Director determines that the traffic density in the airspace requires the operation of transponders to reduce the risk of an airborne collision with those aircraft that are required to be fitted with an airborne collision avoidance system.

71.203 Transponder mandatory airspace within special use airspace

The Director may designate any portion of special use airspace as transponder mandatory airspace if the Director determines that the traffic density in the airspace requires the operation of transponders to reduce the risk of an airborne collision with those aircraft that are required to be fitted with an airborne collision avoidance system.

Subpart F—Miscellaneous

71.251 Visual reporting points

(a) The Director may designate visual reporting points for the purpose of—

- (1) facilitating the requirements of air traffic services for information regarding the progress of aircraft in flight; or
- (2) facilitating the safe conduct of flight by visual reference.

(b) The Director must ensure that visual reporting points —

- (1) are based on prominent geographical features; and

- (2) are identified by names or designators that—
- (i) are easily recognisable in voice communications; and
 - (ii) will not be confused with those of other reporting points in the same general area; and
 - (iii) do not create confusion with other communications exchanged between pilots and between air traffic services and pilots.

71.253 Area QNH zones

The Director may designate as an area QNH zone those portions of airspace from the surface of the earth to a specified altitude within which a common area QNH altimeter setting must be used.

71.255 Mountainous zones

The Director may designate a portion of airspace as a mountainous zone if, in the interests of safety, the Director considers it necessary to increase the minimum obstacle clearance to provide additional height above terrain for IFR flights to accommodate the possible effects of turbulence, down draughts, and other meteorological phenomena on the performance of aircraft.

Consultation Details

(This statement does not form part of the rules contained in Part 71. It provides details of the consultation undertaken in making the rules.)

Notice of Proposed Rule Making

An NPRM was published under Notice of Proposed Rule Making 04-01 (Docket Number 98/CAR/1304) on 16 October 2003. The purpose of this notice was to:

- Combine Parts 71 and 73 into one Part.
- Propose changes to various airspace designation and classification rules, including changes to the criteria for the designation of transponder mandatory airspace to allow for the more effective use of airborne collision avoidance systems (ACAS).
- Incorporate airspace terminology changes arising from airspace terminology harmonisation discussions with the Civil Aviation Safety Authority Australia (CASA).

This proposal also included consequential airspace related amendments to other Parts, revised certain operating rules affecting pilot's use of the airspace, and made an editorial change to rule 91.307.

Fourteen written submissions were received on the NPRM.

Summary of Comments on NPRM 04-01 Docket Number 98/CAR/1304

General comments on the NPRM

A **microlight operator** expressed concern that a consequence of fitting a transponder to a microlight to operate in any newly designated transponder mandatory airspace would subject the operator to additional ongoing costs to comply with maintenance tests originally meant for IFR aircraft. The operator sought an amendment to rule 91.601(b) to add transponder equipment to the requirements that do not apply to microlight aircraft maintained under Part 103.

CAA Comment: Any additional transponder mandatory airspace will only be designated following consultation with affected local airspace users. Generally, this additional transponder mandatory airspace will only be considered around aerodromes within a mandatory broadcast zone where there are IFR movements. In addition, the airspace model proposed will restrict the lower limit of transponder mandatory airspace above an aerodrome to a height to allow for non-transponder equipped aircraft operations. Therefore it is unlikely that any additional transponder mandatory airspace designations will require transponders to be fitted to a microlight.

The maintenance issue raised in respect to Part 91 and Part 103 is outside the scope of this NPRM. However, a transponder is an item of safety equipment required for any aircraft where the pilot wants to operate in transponder mandatory airspace. Therefore all transponders must be maintained to the required standards.

Gliding New Zealand acknowledged the positive responses developed in this NPRM resulting from previous submissions. They reiterated that the use of transponders and the development of transponder mandatory airspace at secondary airfields must be done in the knowledge that airborne collision avoidance systems (ACAS) are error-prone when faced with manoeuvring targets.

CAA Comment: The CAA is aware of an overseas experiment involving a number of transponder equipped aircraft manoeuvring in close proximity to one ACAS equipped aircraft. While this experiment showed some garbling did occur on the ACAS display under certain conditions, the ACAS equipment was still able to detect the presence of intruder aircraft when they were in a cluster even though the equipment was unable to correctly track individual aircraft within the cluster.

It is not the CAA's intention that the development of transponder mandatory airspace around uncontrolled aerodromes would be the only safety initiative put in place. The combination of transponder mandatory airspace and increased carriage of ACAS is designed to be the last line of defence as an independent safety net against mid-air collisions, should all other safety measures, such as mandatory broadcast zones and pilots making radio broadcasts of their position, fail.

A CAA Field Safety Adviser passed on a question as to the reason why New Zealand had a transition layer of 2000 feet.

CAA Comment: New Zealand has a 2000 foot transition layer to take into account the range of air pressures that can be experienced in order to ensure that the vertical separation of 1000 feet between the transition altitude (QNH) and the transition level (flight level) is not compromised during low air pressure situations. This ensures that the lowest flight level does not have to be lowered when the air pressure drops below 980 hPa to ensure there is 1000 feet minimum between the lowest flight level and the highest altitude, given that for every 1 hPa the lowest flight level gets 30 feet closer to the highest altitude.

Airways Corporation commented that they are comfortable with the concept of VFR transit lanes in terminal controlled airspace in rule 71.57. However, the CAA must ensure that geographical features used to determine these lanes are prominent, given the altitude that the lane may extend to.

CAA Comment: The comment is noted and will be considered as part of the CAA internal procedures.

Airways Corporation commented that the impact of changes to the transition altitude and level in rules 91.313 and 91.423 will be a major change for the aviation industry. These changes will impact on a significant amount of documentation used by the industry and will effect many pages in the NZAIP. They believe that consultation with industry and with the Part 175 AIP certificate holder should be conducted to determine the most appropriate implementation schedule for changes to these rules. The CAA should consider introducing changes to these rules at a date after other changes notified by this NPRM.

CAA Comment: The CAA agrees with the comment. These rules have been put into a separate amendment that will be made effective on an appropriate AIRAC date that will be later than the effective date of the other rule changes covered by this rulemaking project.

Airways Corporation commented that the proposed amendments to Schedule 1 of the Civil Aviation (Offences) Regulations did not include penalties for kites and kite surfers operating within 4 km of an aerodrome.

CAA Comment: A major revision of all our Offences Regulations, including rule 101.55, has been prepared under a separate project and is currently under review by the Ministry of Transport.

The Department of Conservation Southern Regional Office provided a background perspective of their responsibilities under the Conservation Act 1987 and Tourism 2010 Strategy in respect to their needs for airspace management.

CAA Comment: The background provides useful data for the two CAA Operating Groups most likely to be involved with the Department. These two Groups are the General Aviation Group and the Aeronautical Services Unit. Both Groups have been given copies of the Departments submission.

The Department of Conservation Southern Regional Office commented that it increasingly needs to coordinate with CAA and industry on airspace matters, as it would be fruitless for them to establish a wilderness area over an area where there are large amounts of low flying aircraft, for instance. They support rule 71.9(a) and may be interested in airspace changes within 5000 feet AGL over areas that they manage.

CAA Comment: As a general comment, the rules in Part 71 are of an administrative nature and simply provide the “tools” for the Director to designate and classify airspace. As such, these rules avoid – where possible – being overly prescriptive to allow for flexibility in their day-to-day application.

There are no low flying zones designated above conservation areas and it is unlikely that the CAA would consider doing so. In any case, as the Department is the administrator of such areas it would be consulted under the provisions of rules 71.9 and 71.163.

Specific comments on the NPRM

An Internal CAA Comment from the General Aviation Operating Group raised an issue with the addition of the words ‘at an aerodrome’ in rule 91.311(b)(1) and (2), as general aviation aircraft may not always operate to or from sites that fit the definition of an aerodrome.

The words ‘at an aerodrome’ have been deleted from 91.311(b)(1) and (2).

Aviation Services Limited and similar submissions from a B Cat instructor and the CFI at the Marlborough Aero Club, a CAA Flight Examiner, and Flight Test NZ Ltd sought an amendment to rule 91.311(d) to allow descent below 500 feet during simulated engine failure training or practice. The general theme of the submissions was that the current rule restricts a flight examiner’s ability to accurately assess a student’s ability to carry out a forced landing, as a number of critical aspects of this manoeuvre occur below 500 feet.

CAA Comment: This issue has been discussed informally within the CAA and it is clear that there are differing views held as to whether the rule should be relaxed to allow descent below 500 feet when conducting simulated engine failure training or practice. It is the CAA view that this issue requires further wider consultation in a more appropriate forum than the Part 71 Airspace NPRM. The CAA therefore does not intend to address these submissions under the Part 71 NPRM but retain the submissions and handle this issue as a separate rules project at some stage.

A Massey University Flight Instructor was concerned that there is no reference to Special Procedure Areas (SPA) other than in the NZAIP, and that the procedures around uncontrolled airfields have in fact been relaxed with the withdrawal of aerodrome traffic zones. The submission sought an amendment to Part 71 Subpart D to include special procedures areas, and either rename rule 91.141 to special procedures areas or make an addition to Part 91 Subpart B to enable the rules of operation in and around a SPA to be promulgated in a rule. The submitter considered that the Australian common traffic advisory frequency (CTAF) procedure may be more appropriate than SPA.

CAA Comment: Special procedure areas (SPA) are designed as a frequency management tool to indicate to pilots the frequency to use within certain portions of uncontrolled airspace. SPA are not mandatory, are advisory in nature, are not associated with the designation of airspace, and can not therefore be covered by a rule. SPA were introduced as a result of industry consultation during the Airspace Review conducted during 2001/02, where the need for such a tool was identified for those areas where the more restrictive mandatory

broadcast zone (MBZ) procedure is not appropriate. The CAA has no current plans to introduce the Australian CTAF procedure instead of SPA, as CTAF would impose similar restrictions to an MBZ and would thus defeat the purpose of the voluntary nature of SPA.

Since aerodrome traffic zones (ATZ) were disestablished in March 2003, the CAA is not aware of any industry concerns that safety around the affected aerodromes has been compromised. The CAA is of the view that rule 91.223 plus good airmanship practices provide an adequate level of safety.

Aviation Theory Centre (NZ) Ltd was concerned that there was no restriction in the rules to prohibit the carriage of passengers when operating in a low flying zone. The submitter suggested an addition to 91.311(d)(3) to prohibit the carriage of passengers during such flights.

CAA Comment: The CAA accepts the comment and a new paragraph (c) which reads ‘A pilot operating an aircraft within a low flying zone designated under Part 71 must not carry a passenger on the aircraft’ has been inserted into 91.131.

The New Zealand Model Aeronautical Association was pleased with changes to the rule 101.205(a)(1)(iii) regarding model aircraft activity at unmanned airfields. They were concerned regarding meeting the requirements of rule 101.207(2)(iv) when applying for a NOTAM 24 hours in advance, as the number of aircraft involved is not known until the actual day.

CAA Comment: The CAA accepts the comment and Rule 101.207(2)(iv) is deleted.

Airways Corporation commented that in rule 71.5(a)(2) the term ‘any combination of the following’ is incorrect as airspace can be defined by (i) or (ii) only. The text should read ‘any of the following’.

CAA Comment: The CAA agrees and the text is amended as suggested.

Airways Corporation commented that in rule 71.9(b) the use of ‘or’ in the third line means one or the other, and by invoking the second allowance means that the period of activity must be included in the

method. They suggest amending the text to read ‘ specify the period and method’ etc.

CAA Comment: The CAA does not agree with the suggested amendment as the rule covers two different situations.

Airways Corporation commented that in rule 71.55(a)(1) control zones require aerodrome control only, or aerodrome and approach control. The current text states one or the other. They suggest amending the text to read ‘...that an aerodrome control service, or aerodrome and approach control service is required’.

CAA Comment: The CAA agrees and the text is amended as suggested.

Airways Corporation commented that although the text for rule 71.55(c) lateral limits of a control zone is taken from ICAO Annex 11, it does not take into account modern technology like GPS where greater flexibility in tracking is available. They suggest sub paragraph (2) should be amended to include departure procedures since they are not necessarily restricted to runway alignment like arrival procedures are.

CAA Comment: The CAA does not agree with the comment. This is a minimum requirement that does not preclude the addition of extra airspace for visual manoeuvring that would need to be consulted with other airspace users.

Airways Corporation commented that by deleting the term ‘transiting’ from sub paragraphs (1) and (2) of rule 71.57 these have now been confused with General Aviation Areas. Transit lanes are for transiting aircraft and General Aviation Areas are for local flying. They believe the word ‘transiting’ should be retained.

CAA Comment: The CAA agrees and the text is amended as suggested.

Airways Corporation commented that a retrospective rule change to rule 104.53(1) had been missed in relation to 71.59 General Aviation Areas, in that General Aviation Areas are designated for the purpose of allowing VFR flights access to a portion of previously controlled airspace without the requirement for an ATC clearance. However,

CAR 104.53(1) states that flight by gliders in IMC may take place in a General Aviation Area designated by the Director for cloud flying. As the CAA had indicated that they would not in fact designate General Aviation Areas for that purpose, 104.53(1) should be deleted.

CAA Comment: The comment is noted in respect to rule 104.53(1) and this issue will be addressed the next time Part 104 is reviewed.

Airways Corporation commented that although rules 71.107 and 71.109 Class D and E separation requirements have been amended to align with Annex 11, by removing the additional separation requirements that have been in place at night it is noted that some visual type separations are for use by day only as there has been a recognition of the limitations of the use of ‘see and be seen’ principle at night. This would appear to conflict with the reason for the changes to these rules.

CAA Comment: The CAA does not agree with the comment. ICAO requirements for D and E airspace have been in place for many years with no conflict in visual separation during day. The CAA is not aware of any misunderstandings associated with certain visual separations available by day only.

Airways Corporation commented that rule 71.109 allows a control zone to be designated as Class E airspace. This is contrary to ICAO Annex 11 and should be removed.

CAA Comment: The CAA agrees and the words ‘control zone’ are deleted from the first line of rule 71.109.

Airways Corporation commented that the term ‘Military Operations Areas in 71.155 conflicts with the term “Military Operating Areas used by ICAO in Doc 8400, and that NZ should align with ICAO terminology.

CAA Comment: The CAA agrees. The term is changed to “Military Operating Areas’ as used by ICAO and Australia under their recently announced Airspace Reforms.

Airways Corporation commented that if the intention of rule 71.161 Danger Areas is to promulgate danger areas around those locations where extensive parachuting operations take place, then the

requirements in this rule that the danger area is either active all of the time or active by NOTAM may unnecessarily restrict use of this airspace. Operations within a danger area promulgated for this purpose will be weather dependent and therefore will not be able to be NOTAMed 24 hours in advance. If the danger area is permanently active by day then aircraft operators wishing to use this airspace will be penalised if parachuting is not taking place due to weather. A more flexible method of activation may have to be implemented.

CAA Comment: This is not a Part 71 issue but the comment is noted. Each airspace activation is considered on the basis of the local airspace issues. There is nothing to stop activation being specified as ‘when parachuting is in progress’ which of course reflects reality. All that is required is a means by which other pilots can be informed of this and the ideal system is an AWIB.

Airways Corporation commented that in rule 71.251(a)(2) Visual reporting points, given that the text refers to both VFR and IFR aircraft the text should read ‘facilitating the safe conduct of flight by visual reference’ (Visual reference is continuous reference to terrain – land or water).

CAA Comment: The CAA agrees and the text is amended as suggested.

Airways Corporation commented that with reference to rule 71.253 Area QNH Zones, according to the Australian AIP an Area QNH Zone is an area within which a forecast (Area) QNH setting applies. Also Australian altimeter setting procedures require the use of the Area QNH only if a local QNH from a station within 100NM of an aircraft is not available. They consider that aligning NZ terminology with Australia when the application of terminology is different has potential for error.

CAA Comment: The CAA does not agree with the comment. The NZ principle is the same. Outside of the vicinity of an aerodrome use Area settings otherwise use the aerodrome settings. Only the distance from an aerodrome changes with Australia using 100NM.

Airways Corporation questioned why the definition for Flight level in Part 1 still contained the mb setting in brackets. This should be removed.

CAA Comment: The CAA agrees and the definition is amended as suggested.

Airways Corporation commented that in rule 91.139(2)(iii) General Aviation Areas, ATC may not be able to activate an area for a period of time due to activity currently within the area. They suggest sub paragraph (iii) should read ‘ where the general aviation area is made active by notification from an airspace user to the ATC unit responsible for the airspace, prior notification has been given to the ATC unit, and the ATC unit has confirmed that the area will be active for that period, or from the notified time’.

CAA Comment: The CAA does not agree with the comment. The wording must be positive in that an airspace user needs to know that the airspace is active or not active, at the time.

Airways Corporation commented that rule 91.241(a) Compliance with ATC clearances and instructions should take into account rule 172.91 in that TAWS (GPWS) alerts should be included.

CAA Comment: The CAA agrees with the comment and the text of 91.241(a) is amended to include these alerts.

Airways Corporation commented that references in rule 91.245 Operations in controlled airspace to ‘control area or control zone’ should read ‘controlled airspace’. They also pointed out a spelling error in subparagraph (e).

CAA Comment: The CAA does not agree with the comment. The wording is consistent with other Part 91 rules for pilots. The spelling error in (e) is corrected.

Airways Corporation commented that under rule 91.303 Special VFR weather minima, special VFR operations will be available within CTA airspace as well as CTR airspace. Rules 172.75 and 172.77 require separation between Special VFR flights when the flight visibility is reported to be less than 5 km. There is therefore a requirement for pilots to advise ATC when requesting a Special VFR clearance, that their flight visibility is less than 5 km, otherwise ATC will not be able to provide the separation required. They suggest the first line would read better if redrafted to read ‘A pilot in command of an aircraft may

perform a VFR operation within controlled airspace in weather conditions below those prescribed in 91.301–‘. They also comment that in 91.303(4) visibility should read ‘flight visibility’.

CAA Comment: The CAA agrees with the suggested text for the first line. The CAA agrees with the comment re 91.303(4) and the text is amended accordingly.

Airways Corporation commented that in 91.423(2)(i) and (ii) Minimum altitudes for IFR flights the words ‘track intended to be flown’ be amended to read ‘the estimated position of the aircraft’. This would bring the text in line with Annex 2 and take into account navigational accuracy determined by the navigation system in use by that aircraft.

CAA Comment: The CAA has noted the comment. The words ‘track intended to be flown’ is replaced by the words ‘position of the aircraft’ in 91.423(2)(i) and (ii).

Airways Corporation commented that in rule 101.205(2) Aerodromes, to be consistent with other rules ‘an authorisation from ATC’ should read ‘an authorisation from the applicable ATC unit’.

CAA Comment: The CAA agrees with the comment and the text is amended accordingly.

Airways Corporation in regard to rule 101.207(2) Airspace asks how the Notam Office (NOF) will know who the Director has approved. The proposed change suggests that the Director will be required to provide the NOF with details of approved associations, and keep this information up to date, otherwise the NOF will have no way of knowing if the requestee is approved or not.

CAA Comment: This issue is outside the scope of this NPRM. The CAA will consider providing a list to the NOF.

Airways Corporation commented that in rule 105.13(2) Parachute descents, ‘aeronautical chart’ should read ‘current visual aeronautical chart’.

CAA Comment: The text is amended by inserting ‘current’ before aeronautical chart.

Airways Corporation commented that in respect to rule 172.103(2) Altimeter setting procedures, many aircraft when contacting an ATS sector or unit notify receipt of an ATIS message and the QNH associated with that broadcast, or receipt of the applicable QNH setting that has just been passed to other aircraft. If this information is correct there is no need to repeat such a setting. They suggest 172.103(2) be amended to read ‘ the appropriate aerodrome QNH altimeter setting or area QNH zone altimeter setting is provided to all aircraft on initial radio contact, including aircraft that advise having received the current applicable ATIS broadcast, except when it is known the aircraft has already received the information.

CAA Comment: The CAA agrees with the comment and 172.103(2) is amended accordingly.

Airways Corporation advised that a consequential amendment to 19.217 in respect to amending Flight Level 130 to Flight Level 150 had been overlooked.

CAA Comment: Rule 19.217(a)(2) and (c) are amended to read Flight Level 150.

The Department of Conservation Southern Regional Office commented that in rule 71.163(e)(3) the term ‘registered owner or administrator’ should read ‘registered owner and/or administering authority’. This would make it consistent with the CAA comment on page 14 of the NPRM regarding administering authority and harmonising with Australian terminology. They make additional comment in respect to identifying administering authorities that administer riverbeds, lake beds and waterbodies.

CAA Comment: The CAA does not agree with the comment. An ‘administrating authority’ is specified by the Director when designating military operating areas or restricted areas only. The administrating authority has specific responsibilities for these areas and the terminology harmonises with that used by Australia. In the case of low flying zones the Director nominates a ‘using agency’ that also has specific responsibilities, one of which is to satisfy the Director that the registered

owner or administrator of the land or water consents to the airspace above that land or water being used for low flying. The additional comments in respect to identifying agencies that administer riverbeds or lake beds and Waterbodies are noted.

The Department of Conservation Southern Regional Office commented that the Special Use Airspace rule 71.151(a)(3) should read ‘public interest’ and public interest be defined to include ‘Protection of wildlife; management of recreational experiences; protection of natural quiet’. They also commented that 71.151(b) be amended to read ‘ The Director must ensure that each portion of airspace designated under this subpart, is as only as small as required, will protect the public interest values present, and is consistent with any provisions of a Conservation Management Strategy, Conservation Management Plan, or National Park Plan under the Conservation Act or National Parks Act’.

CAA Comment: The CAA does not agree with the comment. The text of rule 71.151(a) reflects the intent of section 29A of the Civil Aviation Act (1990) and provides for special use airspace to be designated in the public interest. Section 29A of the Act does not define public interest and for this reason neither does the rule. The Director designates special use airspace for a number of agencies and Government Departments in the public interest and needs the flexibility to decide each designation on a case-by-case basis, in consultation with the appropriate officials.