



**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 *5<sup>th</sup>* day of *July* 2004

by **HARRY JAMES DUYNHOVEN**

Associate Minister of Transport

**Civil Aviation Rules**

**Part 91, Amendment 11**

**General Operating and Flight Rules**

*Docket 98/CAR/1304*

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### Consultation Details

## **Rule objective**

The objective of amendment 11 to Part 91 is to:

- Amend various rules as a consequence of the re-issue of Part 71 and the revocation of Part 73 to change references to Part 73 to read Part 71, change references to low flying areas to read low flying zones, change references to military operational areas to read military operating areas, change references to mountainous area to read mountainous zone, and to reflect that mountainous areas are now designated under Part 71.
- Revise and clarify pilot responsibilities in the rules relating to restricted and danger areas, low flying zones, military operating areas, mandatory broadcast zones, volcanic hazard zones, general aviation areas, and operations in controlled airspace.
- Revise and clarify the intent of the rule regarding minimum heights for VFR flights.
- Clarify the criteria where the table of cruising levels comes into effect in the rule regarding VFR cruising altitude and flight level.
- Amend the rule relating to compliance with ATC clearances and instructions, to align pilot procedures with ICAO standards when manoeuvring in response to an ACAS resolution advisory.
- Make an editorial amendment to the rule regarding VFR flight plan in respect to changing and terminating SARTIME.

## **Extent of consultation**

A Notice of Proposed Rule Making 99-5 was issued for public comment in September 1999. As a result of comments received to this 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 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. Four submissions were received in relation to Part 91.

An internal CAA comment raised a concern regarding the amended wording in 91.311(b)(1) and (2) where the words ‘at an aerodrome’ had been inserted, as the Part 1 definition of an aerodrome would restrict general aviation operations particularly helicopter operations in remote locations.

A submission from Aviation Services Limited and four similar submissions from other flight examiners sought an amendment to rule 91.311(d)(1)(ii) to allow simulated engine failure training to be conducted below 500 feet outside a low flying zone.

Aviation Theory Centre (NZ) Ltd requested that 91.311(d)(3) be amended to include a prohibition against the carriage of passengers when operating in a low flying zone.

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

- General aviation areas
- Compliance with ATC instructions
- Operations in controlled airspace
- Special VFR weather minima
- Minimum altitudes for IFR flights
- Effective date for consequential changes in respect to raising the transition altitude and transition level.

These submissions and the comments have been considered and as a result various amendments were made to the rules.

After considering the proposals to further amend **91.311(d)(1)(ii)** to allow simulated engine failure training to be conducted below 500 feet outside a low flying zone, the CAA concluded that such a proposal could have an impact on public safety and therefore requires further consultation outside the scope of the Part 71 Airspace NPRM. These issues would need to be addressed as a separate rules project.

After considering the comment from Airways Corporation to delay the changes to the transition altitude and transition level, the CAA has decided to move these changes into a separate amendment 12 to Part 91 which will come into force on 25 November 2004. This will allow time for industry documents and the AIP to be amended.

The rules as amended were 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.

### **Insertion of Amendments**

The amendments to the rules in this Part are reflected by the revocation of existing rules and the insertion of new rules, and the revocation of an existing rule.

### **Effective date of rule**

Amendment 11 to Part 91 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 91 Amendments

### Subpart A General

*Rule 91.1 is revoked and the following new rule inserted:*

#### **91.1 Purpose**

(a) This Part prescribes general operating and flight rules for the operation of civil aircraft.

(b) Subject to paragraphs (c)(1) and (d), the following rules also apply to members of the New Zealand Defence Force and any aircraft operated by the New Zealand Defence Force within the territorial limits of New Zealand:

- (1) Rule 91.129:
- (2) Rules 91.223 to 91.225, when operating in the vicinity of civil aircraft:
- (3) Rule 91.229, when operating in the vicinity of civil aircraft:
- (4) Rule 91.233:
- (5) Rule 91.241:
- (6) Rules 91.245 to 91.247:
- (7) Rule 91.309:
- (8) Rule 91.313:
- (9) Rules 91.407 to 91.411:
- (10) Rules 91.425 to 91.427:
- (11) Rule 91.431:
- (12) Rule 91.541.

- (c) This Part does not apply to—
- (1) any member of the New Zealand Defence Force or any aircraft operated by the New Zealand Defence Force acting in connection with—
    - (i) any war or other like emergency; or
    - (ii) the defence of New Zealand and other New Zealand interests; or
    - (iii) aid to the civil power in time of emergency; or
    - (iv) the provision of any public service; or
    - (v) any operation performed within a restricted, danger, or military operating area designated under Part 71 for military purposes; and
  - (2) persons operating aircraft to which Part 101 applies; and
  - (3) persons and equipment to which Part 105 applies.
- (d) The following rules do not apply to any member of the New Zealand Defence Force or any aircraft operated by the New Zealand Defence Force performing training for an operation specified in paragraph (c)(1) if that training cannot be performed in accordance with the rule:
- (1) Rule 91.225(b):
  - (2) Rule 91.233:
  - (3) Rule 91.313, if training outside controlled airspace:
  - (4) Rule 91.407, if training outside controlled airspace:
  - (5) Rule 91.427, if training outside controlled airspace.

## Subpart B Operating Rules

*Rule 91.129 is revoked and the following new rule inserted:*

### 91.129 Restricted and danger areas

(a) A pilot must not operate an aircraft within a restricted area designated under Part 71 unless that pilot—

- (1) has the approval of the administering authority responsible for the restricted area to operate within that area; and
- (2) complies with any conditions promulgated for operation within the restricted area; and
- (3) complies with any conditions imposed by the administering authority for operation within the restricted area.

(b) A pilot must not operate an aircraft within a danger area designated under Part 71 unless that pilot has determined that the activity associated with the danger area will not affect the safety of the aircraft.

*Rule 91.131 is revoked and the following new rule inserted:*

### 91.131 Low flying zones

(a) A pilot must not operate an aircraft within a low flying zone designated under Part 71 —

- (1) during the night; or
- (2) during the day unless—
  - (i) the pilot—
    - (A) is receiving dual flight instruction; or
    - (B) holds an instructor rating issued under Part 61; or
    - (C) is briefed on the boundaries of the low flying zone and the method of entry and exit from

the low flying zone and is authorised for that flight by the holder of an instructor rating issued under Part 61; and

- (ii) the pilot has been briefed by the using agency on the conditions of operation for flight within the low flying zone; and
- (iii) the pilot complies with the conditions of operation for flight within the low flying zone; and
- (iv) before entering the low flying zone, the pilot broadcasts on the appropriate VHF frequency details of the flight and the proposed duration in the low flying zone; and
- (v) the pilot maintains a listening watch on the appropriate VHF frequency while in the low flying zone and broadcasts or reports on vacating the low flying zone.

(b) A pilot operating an aircraft within a low flying zone designated under Part 71 must ensure that the aircraft is operated without hazard to persons or property on the surface.

(c) A pilot operating an aircraft within a low flying zone designated under Part 71 must not carry a passenger on the aircraft.

***Rule 91.133 is revoked and the following new rule inserted:***

### **91.133 Military operating areas**

A pilot must not operate an aircraft within a military operating area designated under Part 71 unless the pilot—

- (1) has the approval of the administering authority responsible for the military operating area—
  - (i) to operate a New Zealand registered aircraft within the military operating area; or

- (ii) to operate a foreign aircraft within any portion of the military operating area that is within the territorial limits of New Zealand; and
- (2) complies with any conditions promulgated for operation within the military operating area; and
- (3) complies with any conditions imposed by the administering authority for operation within the military operating area.

*Rule 91.135 is revoked and the following new rule inserted:*

### **91.135 Mandatory broadcast zones**

(a) Except as provided in paragraphs (b) and (c), a pilot must not operate an aircraft within a mandatory broadcast zone designated under Part 71 unless that pilot—

- (1) makes the following broadcasts on the radio frequency assigned to the mandatory broadcast zone:
  - (i) **at entry** – the aircraft callsign, position and altitude, and the pilot's intentions for flight within the mandatory broadcast zone:
  - (ii) **when joining the aerodrome traffic circuit of an aerodrome within the mandatory broadcast zone** – the aircraft callsign, position and altitude, and the pilot's intentions:
  - (iii) **before entering a runway for take-off from an aerodrome within the mandatory broadcast zone** – the aircraft callsign, the runway to be used for take-off, and the pilot's intentions for flight within the mandatory broadcast zone after take-off; and
  - (iv) **at any other time at least at the intervals prescribed for the mandatory broadcast zone** – the aircraft callsign, position and altitude, and the pilot's intentions for flight within the mandatory broadcast zone; and

- (2) maintains a listening watch on the radio frequency assigned to the mandatory broadcast zone; and
  - (3) activates, if equipped, the aircraft's landing lights or anti-collision lights.
- (b) Pilots of aircraft in formation may operate within a mandatory broadcast zone without complying with paragraphs (a)(1) and (a)(2), but only if—
- (1) all the pilots of the aircraft in formation comply with paragraph (a)(3); and
  - (2) the pilot of the lead aircraft complies with paragraphs (a)(1) and (a)(2).
- (c) A pilot-in-command of an aircraft without an operable radio may operate within a mandatory broadcast zone for the purpose of enabling repairs to be made to that radio, but only if—
- (1) the pilot-in command complies with paragraph (a)(3); and
  - (2) if practicable, the pilot-in-command arranges for another person to make the broadcasts required in paragraph (a)(1) on the pilot's behalf.
- (d) The pilot-in-command of a parachute-drop aircraft intending to drop a parachutist within or into a mandatory broadcast zone must make a broadcast on the radio frequency assigned to the mandatory broadcast zone stating the aircraft callsign, position, altitude, and the intentions of the person making the parachute descent before authorising that person to exit the aircraft to make the parachute descent.

***Rule 91.137 is revoked and the following new rule inserted:***

**91.137 Volcanic hazard zones**

A pilot must not operate an aircraft within a volcanic hazard zone designated under Part 71—

- (1) during the night; or

- (2) in IMC; or
- (3) in VMC during the day unless the pilot determines that, after considering all of the following, the volcanic hazard will not affect the safety of the flight:
  - (i) relevant meteorological information contained in NOTAM;
  - (ii) SIGMET information;
  - (iii) other information provided for this purpose by a Part 174 organisation.

***Rule 91.139 is revoked and the following new rule inserted:***

**91.139 General aviation areas**

A pilot must not operate an aircraft within a general aviation area designated under Part 71—

- (1) during the night; or
- (2) during the day unless—
  - (i) the general aviation area is active permanently during the day; or
  - (ii) if the general aviation area is made active by the approval of the ATC unit responsible for the airspace, an approval has been given by the ATC unit to operate within the general aviation area and the pilot complies with any request from the ATC unit to vacate the general aviation area; or
  - (iii) if 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 general aviation area is active.

***Rule 91.141 is revoked***

## Subpart C      General Flight Rules

*Rule 91.241 is revoked and the following new rule inserted:*

### **91.241    Compliance with ATC clearances and instructions**

(a) A pilot of an aircraft operating in a control area or control zone designated under Part 71 must—

- (1) except when manoeuvring in accordance with an ACAS resolution advisory or a GPWS or TAWS alert, comply with any ATC clearance or instruction issued by the ATC unit responsible for the control area or control zone; and
- (2) when a deviation from an ATC clearance or instruction is required for the safe operation of the aircraft, notify ATC of the deviation as soon as possible.

(b) A pilot of an aircraft need not comply with an ATC clearance or instruction if compliance would cause the pilot to breach any rule in this Part.

(c) A pilot of an aircraft who elects not to comply with an ATC clearance or instruction under paragraph (b) must immediately notify the appropriate ATC unit of the non-compliance.

*Rule 91.245 is revoked and the following new rule inserted:*

### **91.245    Operations in controlled airspace**

(a) Except as provided in paragraphs (e) and (f), a pilot-in-command of an aircraft must not enter a control area or control zone designated under Part 71 unless the pilot-in-command obtains an ATC clearance to enter the control area or control zone.

(b) A pilot-in-command of an aircraft operating in Class A airspace must—

- (1) operate the aircraft under IFR; and
- (2) unless otherwise authorised by the ATC unit responsible for the class A airspace, maintain two-way communications with that ATC unit on the appropriate frequency.

(c) A pilot-in-command of an aircraft that operates in the following classes of airspace must maintain two-way radio communications with the ATC unit responsible for the airspace concerned on the appropriate frequency unless otherwise authorised by the ATC unit:

- (1) Class B, C, or D airspace:
- (2) Class E airspace under IFR.

(d) If different classes of airspace adjoin one above the other, a pilot operating at the common level may comply with the requirements of the less restrictive class of airspace.

(e) A pilot of an aircraft operating under VFR does not require an ATC clearance to enter a control area that is classified under Part 71 as class E airspace.

(f) Airspace within a control area and a 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.

## Subpart D Visual Flight Rules

*Rule 91.303 is revoked and the following new rule inserted:*

### **91.303 Special VFR weather minima**

A pilot-in-command of an aircraft may perform a VFR operation within controlled airspace in meteorological conditions below those prescribed in 91.301 if—

- (1) the ceiling and flight visibility is—
  - (i) at least 600 feet and at least 1500 m respectively; or
  - (ii) for helicopters, less than 600 feet and less than 1500 m respectively if the helicopter is operated at a speed that will give adequate opportunity to observe other traffic or any obstructions in order to avoid collisions; and

- (2) the aircraft is equipped with two-way radio capable of communicating with ATC on the appropriate frequency; and
- (3) the operation is conducted—
  - (i) in compliance with an ATC clearance and any ATC instructions; and
  - (ii) only during the day; and
  - (iii) clear of clouds.

***Rule 91.307 is revoked and the following new rule inserted:***

**91.307 VFR flight plan**

(a) A pilot-in-command of an aircraft must submit a VFR flight plan to an appropriate ATS unit before starting any flight conducted under VFR if—

- (1) the pilot-in-command plans to proceed more than 50 nm from shore; or
- (2) the pilot-in-command requires an alerting service.

(b) In addition to the requirement in paragraph (a), a pilot-in-command of an aircraft may submit a VFR flight plan to an appropriate ATS unit for any other flight conducted under VFR.

(c) A VFR flight plan referred to in paragraphs (a) or (b) must include the following information:

- (1) the aircraft registration and callsign;
- (2) the type of aircraft to be used;
- (3) the route including, if practicable for each route segment, aerodromes of departure and intended landing, estimated elapsed times, and time on the ground at each intermediate aerodrome;
- (4) the SARTIME:

- (5) fuel endurance:
  - (6) the total number of persons in the aircraft:
  - (7) the name and telephone contact details of the pilot-in-command:
  - (8) the name of the aircraft owner or operator:
  - (9) any additional information that may assist search and rescue operations.
- (d) If a VFR flight plan has been submitted to an ATS unit under paragraphs (a) or (b), the pilot-in-command must—
- (1) inform an appropriate ATS unit of any change to the details in the flight plan and of any change to the flight plan SARTIME before the expiry of that SARTIME; and
  - (2) terminate the flight plan by advising an appropriate ATS unit before the flight plan SARTIME.

***Rule 91.311 is revoked and the following new rule inserted:***

**91.311 Minimum heights for VFR flights**

- (a) A pilot-in-command of an aircraft must not operate the aircraft under VFR—
- (1) over any congested area of a city, town, or settlement, or over any open air assembly of persons at a height of less than 1000 feet above the surface or any obstacle that is within a horizontal radius of 600 metres from the point immediately below the aircraft; or
  - (2) over any other area—
    - (i) at a height of less than 500 feet above the surface; or
    - (ii) at a height of less than 500 feet above any obstacle, person, vehicle, vessel, or structure that is within a horizontal radius of 150 metres from the point immediately below the aircraft; and

- (3) for any operation, at a height less than that required to execute an emergency landing in the event of engine failure without hazard to persons or property on the surface.
- (b) Paragraph (a) does not apply to a pilot-in-command of an aircraft—
- (1) conducting a take-off or landing; or
  - (2) conducting a balked landing or discontinued approach; or
  - (3) taxiing.
- (c) Paragraph (a)(2) does not apply to a pilot-in-command of an aircraft if the *bona fide* purpose of the flight requires the aircraft to be flown at a height lower than that prescribed in paragraph (a)(2), but only if—
- (1) the flight is performed without hazard to persons or property on the surface; and
  - (2) only persons performing an essential function associated with the flight are carried on the aircraft; and
  - (3) the aircraft is not flown at a height lower than that required for the purpose of the flight; and
  - (4) the horizontal distance that the aircraft is flown from any obstacle, person, vessel, vehicle, or structure is not less than that necessary for the purpose of the flight, except that in the case of an aeroplane, the aeroplane remains outside a horizontal radius of 150 metres from any person, vessel, vehicle, or structure that is not associated with the operation.
- (d) Paragraph (a)(2) does not apply to a pilot-in-command—
- (1) who is the holder of, or authorised by the holder of, a current instructor rating issued under Part 61 and who is conducting flight training or practice flights consisting of—
    - (i) simulated engine failure after take-off commencing below 1000 feet above the surface; or

- (ii) simulated engine failure commencing above 1000 feet above the surface provided that descent below 500 feet above the surface is conducted within a low flying zone in accordance with 91.131; or
- (2) who is the holder of a current instrument rating issued under Part 61 and who is conducting IFR training, testing, or practice flights under VFR, but only if the pilot-in-command conducts the flight in accordance with 91.413, 91.423 and 91.425; or
- (3) operating an aircraft within a low flying zone in accordance with 91.131; or
- (4) operating an aircraft at an aviation event in accordance with 91.703.

## **Subpart E Instrument Flight Rules**

*Rule 91.423 is revoked and the following new rule inserted:*

### **91.423 Minimum altitudes for IFR flights**

Except when necessary for take-off or landing, a pilot-in-command must not operate an aircraft under IFR below—

- (1) the applicable minimum altitudes prescribed under Part 19; or
- (2) if no applicable minimum altitude is prescribed under that Part—
  - (i) in the case of operations over a mountainous zone designated under Part 71, a height of 2000 feet above the highest obstacle within a horizontal radius of 5 nm from the position of the aircraft; or
  - (ii) in any other case, a height of 1000 feet above the highest obstacle within a horizontal radius of 5 nm from the position of the aircraft.

## **Consultation Details**

(This statement does not form part of the rules contained in Part 91. It provides details of the consultation undertaken in making the rules.)

The consultation details relating to amendment 11 to Part 91 are contained in the consultation details of the re-issue of Part 71. The comments and all the background material used in developing the rules are held on the docket and are available to the public. Persons wishing to view the docket should call at the Civil Aviation Authority and ask for docket 98/CAR/1304.