



PURSUANT to Section 29 of the Civil Aviation Act 1990

I, HARRY JAMES DUYNHOVEN, Minister for Transport Safety,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *16th* day of *September* 2008

by **HARRY JAMES DUYNHOVEN**

A handwritten signature in black ink, appearing to read 'Harry James Duynhoven', followed by a large, stylized graphic element that resembles a triangle or a stylized letter 'D'.

Minister for Transport Safety

Civil Aviation Rules

Part 91, Amendment 19

General Operating and Flight Rules

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

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Rule objective

The objective of amendment 19 to Part 91 is to update various rules in Part 91 that include references to Parts 19 and 97 in respect of instrument flight procedures.

This amendment to Part 91 is consequential to the implementation of Part 95.

Background

Some of the rules in Part 91 refer to instrument procedures prescribed under Part 19 and some refer to instrument procedures prescribed under Part 97 with transitional provisions until Part 97 comes into force.

When Part 91 was originally drafted it was planned to have a Part 97 for prescribing IFR procedures and Part 19 provided an interim provision for the Director to prescribe instrument procedures until Part 173 came into force.

The original development of Part 95 and its associated Part 173 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 legislative 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 rule development project for Parts 95 and 173 was recommenced in 2003 under dockets 99/CAR/1333 for Part 95 and 99/CAR/1334 for Part 173. The Part 95 draft final rule proposals from the initial project were, between 2003 and 2007, updated to take into account current legal

drafting practices, the amendments that had been made to other rules in the meantime and submissions made between 2003 and 2007.

The original NPRM 98-7 for Part 95 included significant amendments to Part 91 General Operating and Flight Rules regarding operating rules, general flight rules, instrument flight rules, and use of GPS for air navigation including equipment requirements. These amendments originally proposed for Part 91 have in some cases been addressed by other amendments to Part 91, and others may be addressed in a future amendment to Part 91.

The only amendments to Part 91, and other Parts, that are now being processed as part of this Part 95 rule development project are those amendments that are a direct consequence of the implementation of Part 95.

During the finalisation and updating of updating of Parts 95 and 173, 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 experience in or an interest 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.

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 rules were developed from the original NPRM. These draft final rules 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, mainly

associated with Part 173, were received from 22 of the 40 persons and organisations contacted. The feedback and discussion was considered and taken into account in the final rules submitted for the Minister's signature.

Significant changes have been made to Part 95 from the original proposals contained in NPRM 98-7. A number of the proposed definitions and abbreviations are already contained in Part 1 and other Parts, and the proposed criteria and standards for the design of instrument flight procedures have been moved into Part 173. The requirements prescribed in Part 95 for giving legal effect for an instrument flight procedure have also been amended to reflect the current practices and requirements.

The remaining consequential amendments to Part 91 including some editorial changes to update the rules in accordance with current drafting standards were then referred to Parliament's Regulations Review Committee before being signed by the Minister for Transport Safety.

Examination of submissions

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

Effective date of rule

Amendment 19 to Part 91 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 91 Amendments

Subpart E — Instrument Flight Rules

Rule 91.405 is revoked and replaced by the following new rule:

91.405 IFR alternate aerodrome requirement

(a) A pilot-in-command of an aircraft operating under IFR must list at least one alternate aerodrome in the flight plan unless—

- (1) the aerodrome of intended landing has a standard instrument approach procedure published in the applicable AIP; and
- (2) at the time of submitting the flight plan, the meteorological forecasts indicate, for at least 1 hour before and 1 hour after the estimated time of arrival at the aerodrome of intended landing, that—
 - (i) the ceiling at the aerodrome will be at least 1000 feet above the minima published in the applicable AIP for the instrument procedure likely to be used; and
 - (ii) visibility will be at least 5 km, or 2 km more than the minima published in the applicable AIP, whichever is the greater.

(b) A pilot-in-command of an aircraft must not list any aerodrome as an alternate on the IFR flight plan under paragraph (a) unless the meteorological forecasts at the time of submitting the flight plan indicate that, at the estimated time of arrival at the alternate aerodrome, the ceiling and visibility at that aerodrome will be at or above the following meteorological minima—

- (1) if an instrument approach procedure with alternate minima has been published in the applicable AIP for the aerodrome, the specified alternate aerodrome minima for that instrument approach procedure; or
- (2) the following minima—

- (i) for a precision approach procedure, a ceiling of 600 feet, or 200 feet above DA/DH, whichever is the higher, and a visibility of 3000 metres, or 1000 metres more than the prescribed minima, whichever is the greater; and
 - (ii) for a non-precision approach procedure, a ceiling of 800 feet, or 200 feet above MDA/MDH, whichever is the higher, and a visibility of 4000 metres, or 1500 metres more than the prescribed minima, whichever is the greater; or
- (3) if an instrument approach procedure has not been published in the applicable AIP for the alternate aerodrome, the ceiling and visibility minima prescribed under Part 91 Subpart D for VFR operation for descent below the minimum altitude for IFR flight prescribed under rule 91.423.
- (c) A pilot-in-command of an aircraft must not list any aerodrome as an alternate aerodrome in the IFR flight plan under paragraph (a) unless that alternate aerodrome is equipped with a secondary electric power supply for—
- (1) the ground based electronic navigation aids necessary for the instrument approach procedure to be used; and
 - (2) aerodrome lighting for night operations.

Rule 91.409 is revoked and replaced by the following new rule:

91.409 Adherence to flight plan

- (a) A pilot-in-command of an aircraft must, when an IFR flight plan has been submitted, adhere to that flight plan or the applicable portion of the flight plan, unless—
- (1) a request for change has been made and clearance obtained from an appropriate ATC unit; or
 - (2) an emergency situation arises which necessitates immediate action to deviate from the flight plan.

- (b) A pilot-in-command of an aircraft operating under IFR must, where practicable—
- (1) when on a route published in the applicable AIP, operate along the defined centre line of the route; or
 - (2) when on any other route, operate directly between the navigation facilities and points defining the route; or
 - (3) when on an area navigation route or parallel offset route, operate along the centreline of the route specified by ATS.
- (c) If a deviation from a flight plan is made under paragraph (a)(2), the pilot-in-command must notify an appropriate ATS unit as soon as practicable.

Rule 91.413 is revoked and replaced by the following new rule:

91.413 Take-off and landing under IFR

- (a) ***Instrument approaches to aerodromes.*** When an instrument approach procedure to an aerodrome is necessary, a pilot-in-command of an aircraft operating under IFR must use a standard instrument approach procedure for the aerodrome published in the applicable AIP.
- (b) ***Authorised DA, DH, or MDA.*** When the instrument approach procedure required by paragraph (a) provides for and requires the use of a DA, DH, or MDA, a pilot-in-command must use the DA, DH, or MDA that is the highest of the following—
- (1) the DA, DH, or MDA prescribed by the instrument approach procedure; or
 - (2) the DA, DH, or MDA prescribed for the pilot-in-command; or
 - (3) the DA, DH, or MDA for which the aircraft is equipped.
- (c) ***Operation below DA, DH, or MDA.*** Where a DA, DH, or MDA is applicable, a pilot-in-command must not operate an aircraft at any aerodrome below the MDA, or continue an instrument approach procedure below the DA or DH prescribed in paragraph (b), unless—

- (1) the aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal manoeuvres that allows touchdown to occur within the touchdown zone of the runway of intended landing; and
- (2) the flight visibility is not less than the visibility published in the applicable AIP for the instrument approach procedure being used; and
- (3) except for a Category II or Category III precision approach procedure published in the applicable AIP for the aerodrome that includes any necessary visual reference requirements, at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot—
 - (i) the approach lighting system; or
 - (ii) the threshold markings; or
 - (iii) the threshold lights; or
 - (iv) the runway-end identification lights; or
 - (v) the visual approach slope indicator; or
 - (vi) the touchdown zone or touchdown zone markings; or
 - (vii) the touchdown zone lights; or
 - (viii) the runway or runway markings; or
 - (ix) the runway lights.
- (d) **Landing.** A pilot-in-command must not land an aircraft when the flight visibility is less than the visibility published in the applicable AIP for the instrument approach procedure used.
- (e) **Missed approach procedures.** A pilot-in-command must immediately execute the missed approach procedure published in the applicable AIP if—

- (1) the requirements of paragraph (c) are not met at either of the following times:
 - (i) when the aircraft is being operated below MDA; or
 - (ii) upon arrival at the missed approach point, including a DA or DH where a DA or DH is specified and its use is required, and any time after that until touchdown; or
 - (2) an identifiable part of the aerodrome is not distinctly visible to the pilot during a circling manoeuvre at or above MDA, unless the inability to see an identifiable part of the aerodrome results only from normal manoeuvring of the aircraft during approach.
- (f) **Take-off Minima.** Except as provided in paragraph (g), a pilot-in-command of an aircraft must not take-off from an aerodrome under IFR unless weather conditions are—
- (1) at or above the weather minima for IFR take-off published in the applicable AIP for the aerodrome ; or
 - (2) if weather minima for IFR take-off are not published in the applicable AIP for a particular aerodrome, a ceiling of at least 300 feet and more than 1500 m visibility.
- (g) **Reduced Take-off Minima.** A pilot-in-command of an aircraft may take-off under IFR at an aerodrome at a take-off minima of zero cloud ceiling and visibility at or above 800 m if—
- (1) the runway to be used has centre-line marking or centre-line lighting; and
 - (2) the take-off weather visibility is confirmed by the pilot-in-command by observing the runway centre-line marking or centre-line lighting; and
 - (3) reduced take-off minima on the runway to be used are published in the applicable AIP; and

- (4) any obstacles in the take-off flight path are taken into account; and
- (5) if the aircraft is a two-engine propeller-driven aeroplane, the aircraft is equipped with an operative auto-feather or auto-coarse system.

Rule 91.423 is revoked and replaced by the following new rule:

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 published in the applicable AIP; or
- (2) if an applicable minimum altitude is not published in the applicable AIP—
 - (i) for operations over a mountainous zone designated under Part 71 or applicable AIP, a height of 2000 feet above the highest obstacle within a horizontal radius of 5 nm from the position of the aircraft; or
 - (ii) a height of 1000 feet above the highest obstacle within a horizontal radius of 5 nm from the position of the aircraft.

Subpart I — Foreign Registered Aircraft Operations and Operation of NZ Registered Aircraft Outside New Zealand

Rule 91.755 is revoked and replaced by the following new rule:

91.755 Special rules for foreign aircraft operations

- (a) ***General.*** In addition to the other applicable rules of this Part, a person operating a foreign registered aircraft within New Zealand must comply with this rule.

(b) **VFR.** A person must not conduct an aircraft operation under VFR that requires two-way radio communications under this Part unless at least one flight crew member on the aircraft is able to conduct two-way radio communications in the English language and is on duty during the operation.

(c) **IFR.** A person must not operate an aircraft under IFR unless—

- (1) the aircraft is equipped with—
 - (i) radio equipment allowing two-way radio communications with ATS when the aircraft is being operated in controlled airspace; and
 - (ii) a navigation system which will enable the aircraft to proceed in accordance with its flight plan; and
- (2) the person piloting the aircraft—
 - (i) holds a current New Zealand instrument rating, or holds a current instrument rating issued by the country of that aircraft's registry; and
 - (ii) is familiar with the New Zealand IFR en route, holding, and approach procedures published in the AIPNZ; and
- (3) at least one flight crew member of the aircraft is able to conduct two-way radio telephone communications in the English language and the flight crew member is on duty while the aircraft is operating under IFR.

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 editorial changes to Part 91 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 rule Parts 95 and 173 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.