



PURSUANT to Section 30 of the Civil Aviation Act 1990

I, HARRY JAMES DUYNHOVEN, Minister for Transport Safety,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *16th* day of *September* 2008

by **HARRY JAMES DUYNHOVEN**

A handwritten signature in black ink, appearing to read 'Harry James Duynhoven', is written over the printed name. The signature is fluid and cursive, with a large, sweeping final stroke that extends to the right.

Minister for Transport Safety

Civil Aviation Rules

Part 172, Amendment 6

Air Traffic Service Organisations — Certification

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

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Rule objective

The objective of amendment 6 to Part 172 is to update the rules in Part 172 that include reference to Part 173.

This amendment to Part 172 is consequential to the implementation of new rule Part 173.

Background

Various rules in Part 172 refer to an air navigation service organisation certificate issued under Part 173. During the development of Part 173 the title of the certificate has been changed and therefore the rules in Part 172 need to reflect this change.

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

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

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

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

Extent of consultation

Two NPRM, 98-7 for Part 95 Visual and Instrument Procedures for Flight Under IFR, and 98-8 for Part 173 Air Navigation Service Organisations – Certification, containing the proposed rules prescribing

the criteria and the processes for the establishment of visual and instrument procedures for flight under IFR and prescribing requirements for the certification of organisations providing IFR procedure design services were issued for public consultation under docket 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.

NPRMs 98-7 and 98-8 did not include any proposed amendment to Part 172.

The rule development project for Parts 95 and 173 was recommenced in 2003 under docket 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.

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 but none of the comments relate to the changes required in Part 172.

The consequential amendments to Part 172 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 on Parts 95 and 173 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 insertion of amended rules.

Effective date of rule

Amendment 6 to Part 172 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 172 Amendments

Subpart B — Certification Requirements

Rule 172.67 is revoked and replaced by the following new rule:

172.67 Co-ordination requirements

(a) An applicant for the grant of an air traffic service certificate must establish systems and procedures for ensuring, if applicable, co-ordination between each ATS unit listed in the applicant's exposition and the following agencies—

- (1) each holder of an aeronautical telecommunication service certificate issued in accordance with Part 171; and
- (2) each holder of an instrument flight procedure service certificate issued in accordance with Part 173; and
- (3) each holder of a meteorological service certificate issued in accordance with Part 174; and
- (4) each holder of an aeronautical information service certificate issued in accordance with Part 175; and
- (5) aircraft operators; and
- (6) the New Zealand Defence Force; and
- (7) search and rescue authorities; and
- (8) if the listed ATS unit is an aerodrome control or aerodrome flight information unit—
 - (i) the aerodrome operator; and
 - (ii) the apron management service, if the service is not provided by the aerodrome control unit.

(b) An applicant must establish procedures for ensuring that an ATS letter of agreement is in place between each ATS unit listed in the applicant's exposition and—

- (1) each ATS unit responsible for adjoining airspace, and
- (2) any other ATS unit with which regular operational co-ordination is required.

(c) An applicant must establish procedures for ensuring that each ATS letter of agreement—

- (1) details matters that are necessary for effective co-ordination between the units party to the agreement; and
- (2) is kept current; and
- (3) is signed by senior representatives of the participating units; and
- (4) is part of the applicant's operations manual.

(d) An applicant must provide systems and procedures for facilitating communications between those ATS units that have an operational requirement to communicate with each other.

(e) An applicant must provide systems and procedures for ensuring that ATS units, aircraft operators, and aviation meteorological service providers, if they require the information, are provided, through the exchange of ATS messages, with details of —

- (1) the intended movement of each aircraft for which a flight plan has been filed, and any amendments to the flight plan; and
- (2) current information on the actual progress of the flight.

(f) An applicant must establish procedures for ensuring that ATS messages are prepared and transmitted in accordance with procedures detailed and cross-referenced in Document 4444 (Part IX – Air Traffic Services Messages), except that the term *CAVOK* must not be used.

Subpart E — Separation criteria and minima

Rule 172.261 is revoked and replaced by the following new rule:

172.261 Lateral separation

- (a) GPS distance may be used, instead of DME distance, in the provision of lateral separation when—
- (1) both aircraft are flying tracks based on the same navigation aid; and
 - (2) the GPS distance reported is from the same navigation aid on which the lateral separation is based.
- (b) Lateral separation may only be applied in accordance with criteria and minima—
- (1) approved by the holder of an instrument flight procedure service certificate issued in accordance with Part 173; or
 - (2) approved under rule 19.155(b) that was in force before 23 October 2009.

Rule 172.293 is revoked and replaced by the following new rule:

172.293 Separation from active special use airspace

- (a) Except as provided in paragraph (b), when applying the separation required by rule 172.79, the minimum separation must be—
- (1) when aircraft within the active special use airspace may be operating in IMC—
 - (i) 1000 feet vertical separation up to FL290; or
 - (ii) 2000 feet vertical separation above FL 290; or
 - (iii) 5 nm radar separation; or
 - (2) when aircraft within the active special use airspace are operating in VMC—
 - (i) 500 feet vertical separation up to FL290; or

- (ii) 1000 feet vertical separation above FL290; or
 - (iii) radar separation of 1 nm plus the accuracy tolerance of the radar system in use; or
- (3) achieved by the use of minima or instrument flight procedures—
- (i) approved by the holder of an instrument flight procedure service certificate issued in accordance with Part 173; or
 - (ii) approved under rule 19.155(b) that was in force before 23 October 2009; or
- (b) When no separation minimum or procedure is specified under subparagraphs (a)(1), (2), or (3), separation must be achieved by keeping controlled flights clear of active special use airspace.

Consultation Details

(This statement does not form part of the rules contained in Part 172. It provides details of the consultation undertaken in making the rules.)

The editorial changes to Part 172 are consequential to the introduction of new Rule Parts 173 and 95.

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

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

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

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

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