



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 172, Amendment 4

Air Traffic Service Organisations – Certification

Docket 98/CAR/1304

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Consultation Details

Rule objective

The objective of amendment 4 to Part 172 is to:

- amend various rules as a consequence of the re-issue of Part 71 and the revocation of Part 73
- relocate the definition of Special VFR flight to Part 1
- amend the rule relating to deviation from an ATC clearance to align with procedures for pilots manoeuvring in response to an ACAS resolution advisory or GPWS or TAWS alert.

The consequential amendments arising from the re-issue of Part 71 and the revocation of Part 73 include:

- changing the references to Part 73 to read Part 71
- changing levels of air traffic services required to be provided for classes D and E airspace
- changing the reference to area QNH to read area QNH zone
- changing the references to controlling authority to read administering authority.

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. One written submission commented on 172.103(2) regarding the need for ATS to repeat the altimeter setting on initial radio contact if the pilot already has the correct information.

The comment has been considered and 172.103(2) has been amended as suggested.

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.

Effective date of rule

Amendment 4 to Part 172 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 172 Amendments

Subpart A — General

Rule 172.1 is revoked and the following new rule inserted:

172.1 Purpose

- (a) This Part prescribes rules governing—
- (1) the certification and operation of organisations providing an air traffic service in—
 - (i) the New Zealand Flight Information Region; and
 - (ii) the Auckland Oceanic Flight Information Region; and
 - (2) the operating and technical standards for providing an air traffic service by those organisations.
- (b) Subparts A, B, and C apply to air traffic services specified in paragraphs (1) to (6) of the definition of *air traffic service*.
- (c) Subpart D and this rule apply to services referred to as air traffic services in paragraph (7) of the definition of *air traffic service*.
- (d) In this Part, references to the Auckland Oceanic Flight Information Region exclude those portions of airspace within the flight information region that are designated under Part 71 as sectors where an ICAO Contracting State other than New Zealand is providing the air traffic service.

172.3 Definitions

The definition of Special VFR flight is revoked

Subpart B — Certification Requirements

Rule 172.75 is revoked and the following new rule inserted:

172.75 Area and approach control services

(a) An applicant for the grant of an air traffic service certificate in respect of an area or approach control service must establish systems and procedures to—

- (1) determine from information received, the positions of known aircraft relative to each other; and
- (2) provide for the issue of ATC clearances, instructions, and information in accordance with the airspace classification and type of flight for the purpose of preventing collisions between aircraft under the control of the unit, and for expediting and maintaining a safe and efficient flow of traffic; and
- (3) co-ordinate clearances with other ATC units as necessary; and
- (4) display information on aircraft movements together with a record of clearances issued, in a manner that permits ready analysis of such information.

(b) Except as provided in paragraph (d) and rule 172.91, the procedures required by paragraph (a)(2) must specify that vertical or horizontal or composite separation in accordance with paragraph (c) must be provided between—

- (1) all flights in classes A and B airspace; and
- (2) IFR flights in classes C, D, and E airspace; and
- (3) IFR flights and VFR flights in class C airspace; and
- (4) IFR flights and Special VFR flights in classes B, C, and D airspace; and
- (5) Special VFR flights in classes B, C, and D airspace when the flight visibility is reported to be less than 5 km.

(c) The separation required by paragraph (b) must be in accordance with the applicable criteria and minima prescribed by—

- (1) Subpart E; or
- (2) Annex 11; or
- (3) Document 4444; or
- (4) Document 7030.

(d) In Class D or E airspace, the ATC separation required by paragraph (b)(2) does not apply to an IFR flight if the pilot has been cleared to maintain own separation from other IFR flights. The clearance must not be issued unless—

- (1) the clearance is in response to a specific request from the pilot of the aircraft; and
- (2) the flight is during the day and visual meteorological conditions exist; and
- (3) a radar control service is not available; and
- (4) the clearance is for a specific portion of the flight; and
- (5) the pilots of all flights that will be essential traffic agree with the application of the procedure; and
- (6) essential traffic information is passed to the pilots of all affected flights; and
- (7) the flights concerned are on the same ATC frequency.

Rule 172.79 is revoked and the following new rule inserted:

172.79 Special use airspace

An applicant for the grant of an air traffic service certificate in respect of an air traffic control service must establish systems and procedures to ensure that separation in accordance with 172.293 is provided between controlled flights and active special use airspace designated under Part 71, except when—

- (1) the pilot has approval from the administering authority to operate in the airspace; or
- (2) in the case of a danger area or a volcanic hazard zone, the pilot has notified an express intention to operate in the danger area or the volcanic hazard zone, as the case may be; or
- (3) it is known, or reasonably believed, that the pilot of a VFR flight or an IFR flight navigating by visual reference is aware that the airspace is active; or
- (4) on a request by the pilot, the flight is cleared to maintain its own separation from the airspace.

Rule 172.83 is revoked and the following new rule inserted:

172.83 Priorities

(a) An applicant for the grant of an air traffic service certificate in respect of an air traffic control service must establish procedures to ensure that, providing safety is not jeopardised, ATC units apply the following priorities:

- (1) an aircraft known or believed to be in a state of emergency or impaired operation has priority over all other aircraft:
- (2) an aircraft landing, or in the final stages of an approach to land, has priority over a departing aircraft:
- (3) an aircraft landing or taking off has priority over taxiing aircraft.

(b) The applicant must establish procedures to ensure that, if practical, and on request from the pilot, an aircraft involved in, or positioning for, the following activities is granted priority:

- (1) ambulance or mercy missions:
- (2) search and rescue:
- (3) civil defence or police emergencies:

- (4) carriage of heads-of-state, heads-of-government, or equivalent dignitaries.
- (c) The applicant must establish procedures to ensure that an aircraft at a cruising level has priority over other aircraft requesting that level except that within the Auckland Oceanic FIR—
 - (1) an aircraft may be given priority for a cruising level in accordance with procedures published in Document 7030, or an ATS letter of agreement; and
 - (2) an aircraft occupying a cruising level may be reassigned another level to maintain separation.
- (d) The applicant for an air traffic service certificate for an air traffic control service may also establish procedures regarding priorities to be applied in RNP or RVSM airspace designated under Part 71.
- (e) Subject to the requirements of paragraphs (a) and (b), the applicant may put in place schemes for the determination of priorities for arriving and departing flights, but only if consultation with interested parties is undertaken before implementing the scheme.
- (f) The applicant must establish procedures to ensure that, providing safety is not jeopardised, due regard is given to those priorities determined in conjunction with the aerodrome operator for—
 - (1) aircraft arriving and departing that aerodrome; and
 - (2) other operations in any control zone associated with that aerodrome.
- (g) The applicant must establish procedures to ensure that if priorities are established under paragraphs (d) or (e), relevant information including details regarding the handling of complaints is published in the NZAIP.
- (h) The applicant must establish procedures to ensure that priority for arriving and departing flights is allocated on a first-come first-served basis except when applying priority in accordance with other provisions of this rule.

(i) The applicant must establish procedures to ensure that the provision of an ATC service takes priority over—

- (1) the provision of a flight information service whenever the situation so requires; and
- (2) the performance of any other non-ATS tasks.

Rule 172.91 is revoked and the following new rule inserted:

172.91 Deviation from an ATC clearance

(a) Subject to paragraph (b), an applicant for the grant of an air traffic service certificate in respect of an air traffic control service must establish procedures to ensure that instructions issued by ATC to restore a loss of separation do not hinder the responses of a pilot to—

- (1) an ACAS resolution advisory; or
- (2) a GPWS or TAWS alert; or
- (3) a weather, or other emergency situation that necessitates a deviation from an ATC clearance.

(b) The procedures required by paragraph (a) must specify that if any separation has been lost it is restored once the emergency situation has been resolved.

Rule 172.93 is revoked and the following new rule inserted:

172.93 Flight information service

General

(a) An applicant for the grant of an air traffic service certificate must establish procedures to ensure that a flight information service is provided to the following:

- (1) each aircraft being provided with an ATC service that is likely to be affected by the information in paragraph (b):

- (2) each aircraft being provided with an aerodrome flight information service that is likely to be affected by the information in paragraph (b):
 - (3) each aircraft operating IFR that is likely to be affected by the information in paragraph (b):
 - (4) any aircraft operating VFR for which the pilot has submitted a VFR flight plan to an ATS unit:
 - (5) any aircraft operating VFR if the pilot makes a specific request to an ATS unit for flight information.
- (b) The applicant must ensure that the procedures required by paragraph (a) for the provision of the flight information service includes the provision of available and relevant—
- (1) SIGMET information; and
 - (2) information on weather conditions reported or forecast at departure, destination, and alternate aerodromes; and
 - (3) information concerning pre-eruption volcanic activity, volcanic eruptions, and volcanic ash clouds; and
 - (4) information concerning the release into the atmosphere of radioactive materials or toxic chemicals; and
 - (5) information on changes in the serviceability of navigation aids; and
 - (6) information on changes in the condition of aerodromes and associated facilities, including information on the state of the aerodrome movement areas when they are affected by snow, ice, or water; and
 - (7) information on unmanned free balloons; and
 - (8) other information likely to affect safety.
- (c) An applicant for the grant of an air traffic service certificate for an aerodrome control service or aerodrome flight information service

must establish procedures to ensure that, whenever water is present on a runway, a description of the runway surface conditions on the centre half of the width of the runway is made available using one of the following terms:

- (1) DAMP – the surface shows a change of colour due to moisture:
- (2) WET – the surface is soaked but there is no standing water:
- (3) WATER PATCHES – significant patches of standing water are visible:
- (4) FLOODED – extensive standing water is visible.

(d) An applicant for the grant of an air traffic service certificate for an aerodrome control service, approach control service, or aerodrome flight information service must establish procedures to ensure that, if practical, local aircraft operators likely to be affected by the information are advised of short-notice changes to published hours of service if they are unlikely to have the information from any other source.

Traffic Information

(e) An applicant for the grant of an air traffic service certificate for an air traffic control service must establish procedures to ensure that essential traffic information is passed to all affected traffic.

(f) An applicant for the grant of an air traffic service certificate must establish procedures to ensure that each ATS unit operating under that certificate provides traffic information to flights that are known to the ATS unit and are likely to be affected by the information as follows:

- (1) in class C airspace, between VFR flights, together with traffic avoidance advice on request:
- (2) in class D airspace, between IFR and VFR flights, and between VFR flights, together with traffic avoidance advice on request:
- (3) if practical, in class E airspace, between IFR and VFR flights, and between VFR flights on request:

- (4) in class G airspace, between IFR flights, and, if practical, between other flights on request.

Rule 172.103 is revoked and the following new rule inserted:

172.103 Altimeter setting procedures

An applicant for the grant of an air traffic service certificate must establish a procedure to ensure that—

- (1) QNH altimeter settings are in hectopascals rounded down to the nearest whole hectopascal; and
- (2) 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; and
- (3) ATS units provide to an aircraft on request, the current applicable aerodrome QNH altimeter setting or area QNH zone altimeter setting.

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 consultation details relating to amendment 4 to Part 172 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.