



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, MARK GOSCHE, Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *18th* day of *December* 2001

by **MARK GOSCHE**

Minister of Transport

Civil Aviation Rules

Part 91

General Operating and Flight Rules, Amendment 6

Docket 1/CAR/1359

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Objective

Part 91 prescribes general operating and flight rules for the operation of civil aircraft. The objective of amendment 6 to Part 91 is to implement a simplified, low cost VFR flight planning service.

Extent of consultation

In October 2000 the CAA formed a Civil Aviation Industry Rules Advisory Group Technical Study Group (CIRAG TSG) to examine proposals made by the Airways Corporation of New Zealand and the Aviation Industry Association in respect to changes to VFR flight planning. This TSG examined and discussed the various issues raised and accepted the wording of a draft Notice of Proposed Rule Making.

A Notice of Proposed Rulemaking 01-1 containing the proposed amendments to VFR flight planning was subsequently issued for public consultation under Docket 1/CAR/1359 on 13 March 2001.

The publication of this NPRM was notified in the *Gazette* on 15 March 2001 and advertised in the daily newspapers in the five main provincial centres on 17 March 2001. 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 rules.

Summary of comments

The submissions and verbal comments were considered and where appropriate the proposed rules were amended to take account of the comments made. There were no significant changes made to the proposal as a result of the comments received.

Examination of comments

Comments may be examined by application to the Docket Clerk at Aviation House 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 the existing rules and insertion of the amended rules.

Effective date of rule

Amendment 6 to Part 91 comes into force on 24 January 2002.

Availability of rules

Civil Aviation Rules are available from–

CAA web site: <http://www.caa.govt.nz/> or from:
Freephone: 0800 GET RULES (0800 438 785)

Part 91 Amendments

Subpart D — Visual Flight Rules

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 prior to the start of 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; and
- (2) the type of aircraft to be used; and
- (3) the route including, where practicable for each route segment, aerodromes of departure and intended landing, estimated elapsed times, and time on the ground at each intermediate aerodrome; and
- (4) the SARTIME; and
- (5) fuel endurance; and
- (6) the total number of persons in the aircraft; and

- (7) the name and telephone contact details of the pilot-in-command; and
 - (8) the name of the aircraft owner or operator; and
 - (9) any additional information that may assist search and rescue operations.
- (d) Where 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; or
 - (2) terminate the flight plan by advising an appropriate ATS unit before the flight plan SARTIME.

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.)

Notice of Proposed Rule Making

To provide public notice of, and the opportunity for comment on the proposed new rules for VFR flight planning, Notice of Proposed Rule Making 01-1 was issued under Docket Number 1/CAR/1359 on 13 March 2001. This Notice proposed amendments to Part 91 *General Operating and Flight Rules*, and consequential amendments to Part 1 *Definitions and Abbreviation*, Part 119 *Air Operator-Certification*, Part 121 *Air Operations-Large Aeroplanes*, Part 125 *Air Operations-Medium Aeroplanes*, Part 135 *Air Operations-Helicopters and Small Aeroplanes*, and Part 172 *Air Traffic Service Organisations-Certification*.

Summary of Comments on Docket Number 1/CAR/1359 NPRM

1. General comments on the NPRM

A total of eight submissions were received. One commenter considered the rule changes were confusing and suggested amended wording, five commenters fully supported the changes, and two commenters suggested minor editorial changes.

1.1 One commenter felt the proposed changes to 91.307, 119.121 and 135.57 were confusing, seemingly contradictory in part and rather difficult to follow. This commenter believed that the rule changes should be re-worded in simple terms without overlapping items, and grouped together as much as possible. The commenter suggested amended wording for these rules.

Two commenters were pleased with the practical approach to the flight plan issue and with the presentation of the NPRM.

The Guild of Air Pilots and Air Navigators agreed with the proposed changes to Part 91 and enhancement of safety in flight following, and considered the document well thought out and practical.

CAA Comment: The CAA appreciates the efforts of the commenter in proposing alternative wording for the rules in question. While the CAA has made some minor editorial changes as a result of comments received, the CAA does not agree that these rules are confusing, seemingly contradictory in part or difficult to follow to the extent claimed by the commenter. The CAA also makes the point that representatives of the aviation industry (including GA) had been involved in the development of these rules under the CIRAG consultative process, and these representatives were satisfied with the draft NPRM.

1.3 Gliding New Zealand was concerned that Part 91 was being amended again while some aspects of previous proposals to amend Part 91 under NPRM 98-1 have yet to be completed and published.

CAA Response: The CAA acknowledges the comment but advises that some previous amendments covered under NPRM 98-1 have now been overtaken by this proposal and in those instances, this proposal takes precedence. The remainder of the proposals in NPRM 98-1 are currently being finalised.

1.4 Airways Corporation of New Zealand stressed the importance of pilot education to ensure that the correct 4-letter aerodrome location indicator is entered when filing a flight plan.

CAA Response: The CAA agrees with the comment and a combined education programme is planned with Airways. The CAA anticipates that Airways will develop their software to provide a 'pull down menu' to assist pilots in selecting the correct location indicators.

1.5 The Helicopter Division of AIA supports the rule changes proposed.

One commenter supported the proposal for Part 135 operators to utilise a flight following service in lieu of submitting a flight plan to ATS, when operating under VFR

2. Specific comments on the NPRM

Part 1 Definitions

Air traffic services unit

2.1 Airways Corporation of New Zealand considered that the definition should include Aerodrome Flight Information Service (AFIS).

CAA Response: The CAA points out that the definition includes specific reference to ‘air traffic service’ which is already defined in Part 1 to include ‘any aerodrome flight information service’. However, a minor editorial amendment is made to make this clearer.

Flight plan

2.2 Aviation Theory Centre (NZ) Ltd believes that the definition of ‘flight plan’ is clear and concise, and any subsequent reference to ‘flight plan’ should delete all reference to ATS because the term implies information submitted to ATS. The commenter makes reference to 135.57(f) which states that a flight plan is not required to be submitted to an ATS unit under certain conditions. The commenter makes the point that if a flight plan by definition is information submitted to an ATS unit, then it is a contradiction to talk about a flight plan not required to be submitted to an ATS unit.

CAA Response: The CAA accepts the comment and the definition of flight plan has been amended to clarify the intent of the rules as there are rules requiring the preparation of a flight plan, and there are other rules specifying what has to be done with the flight

plan i.e. in most but not all cases, a flight plan has to be submitted to an ATS unit but where this is not required the information in the flight plan has to be provided to the person providing a flight following service.

Part 91

91.307 – VFR flight plan

2.3 Aviation Theory Centre (NZ) Ltd suggested that 91.307(d)(1) be amended to include ‘any change to the details etc’

CAA Response: The CAA agrees and has amended the subparagraph to read ‘any change to the details in the flight plan, and of any change to the flight plan SARTIME etc’.

Part 119

119.73 and 119.121 - Flight following service

2.4 Gliding New Zealand believes that the requirements of 119.73 and 119.121 contradict the requirements of 135.57(f)(4) in respect to maintaining a listening watch on an appropriate ATS frequency if the flight is operating in an area where communications are not available, on the assumption that there is no viable ATS communication available to the PIC. The commenter also maintains that these rules will impose an unnecessary financial and maintenance imposition by requiring two radios: one to maintain a watch on company frequencies and one for a possible non-existent ATS service.

CAA Comment: The intent of the flight following service rules is to recognise that under certain circumstances an aircraft may at times not have communications on either an ATS frequency or a company (flight following service) frequency. It is for this reason that 135.57(f)(4) does not require a *continuous* listening watch on an ATS frequency under such circumstances. In addition, the communications method selected for a flight following service may not necessarily be by VHF radio. However, regardless of the

method of communication selected, the rules do not require a listening watch on the flight following service frequency, as the emphasis is placed on the pilot making contact with the flight following service. Accordingly, the CAA does not consider that the changes proposed in this NPRM require two radios.

2.5 Aviation Theory Centre (NZ) Ltd considers that 119.121(a) implies that the requirement for a flight following service when a flight plan has not been submitted, or an air operation which does not require the submission of a flight plan, is an all-embracing requirement for both CTO and ATO regardless of where to.

CAA Response: The CAA confirms that this rule *requires* a flight following service to be provided for any air operation –CTO or ATO- conducted without a flight plan being submitted to ATS.

2.6 Aviation Theory Centre (NZ) Ltd asks if the “operation completion time” in 119.121(b)(2) could not be included in the required information for the flight following person in 119.121(b)(1), as in the flight plan where a SARTIME is stated.

CAA Comment: The SARTIME is only officially required to be acted on by an ATS provider certificated under Part 172. Rule 119.121(b)(2) has been included to ensure that the flight following person will know when to commence emergency notification.

2.7 Aviation Theory Centre (NZ) Ltd believes that 119.121(c)(2) appears to be subject to the whims of the appointed CAA auditor. The commenter asks what standardisation has been adopted within the CAA to ensure that all operators are given the same “latitude”.

CAA Response: The CAA does not agree. The rule refers to the operators’ procedures which will be the procedures for flight following if the operator is going to conduct such operations. These procedures will be considered as part of their certification process and will need to be acceptable at that time. The CAA relies on operators taking responsibility for the safety of their operation.

Each operation can be quite different and therefore the operator's procedures need to ensure that the appropriate safety systems are in place. These issues will be covered in an Advisory Circular and during safety education programmes.

2.8 Aviation Theory Centre (NZ) Ltd is of the view that further thought needs to be given to the safety of the carriage of passengers as distinct from freight, during commercial transport operations in 119.121(c)(2). The commenters' view is that these passengers in many cases are members of the public who wish to be transported into the bush for recreational purposes. As such, these people are no different from passengers on air transport operations in regard to having access to rescue services.

CAA Response: The CAA does not agree with the comment. These persons are different from those on air transport operations in that they wish to go into non-air transport operation locations where there are probably no communications available, which is one of the reasons why rules for commercial transport operations were developed – a commercial transport operation is not just for freight. In addition, the CAA already has rules in place regarding the carriage of an ELT. The use of satellite phones, cell phones etc is covered in an Advisory Circular.

Part 121

121.59 – Flight preparation

2.9 One commenter suggested that 121.59(g) and the corresponding sections of Part 125 and Part 135 should be amended as the second requirement appears to attach to the permissive 'may' which is probably not intended.

CAA Response: The CAA agrees with the comment and has amended 121.59(g) and the corresponding sections of Part 125 and Part 135 by inserting "must" before "advise".

Part 135**135.57 – Flight preparation and flight planning**

2.10 Aviation Theory Centre (NZ) Ltd believes that 135.57(b) contradicts 119.121(b)(1) in regard to preparing and submitting flight plans. The commenter also states the situation is further complicated by 135.57(b)(1) and (2) which identify two operations, whereas 119.121(b)(1) did not differentiate. In addition, the commenter states that if 135.57(b) is meant to include both VFR and IFR operations, then the commenter submits that IFR operations are required to be subject to an IFR flight plan regardless of where they go.

CAA Response: The CAA does not agree. Rule 135.57(b) deals with the submission of a flight plan while 119.121 deals with the provision of a flight following service. The two are distinct and the relevant rule corresponding to 119.121 in Part 135 would be rule 135.57(b). In addition, in reference to VFR and IFR operations the CAA points out that rule 91.407 addresses IFR flight plans and requires all IFR flights to have an IFR flight plan submitted to ATS, including any CTO that may be conducted under IFR.

2.11 Aviation Theory Centre (NZ) Ltd is of the opinion that 135.57(d)(1) uses the term ‘flight plan’ incorrectly. The commenter states that if a flight plan was indeed the intent then the requirement in 135.57(d)(1) is superfluous as the issue is already covered in 119.121(b) and (c).

CAA Comment: The definition of ‘flight plan’ has been amended. (refer **2.2**). Rule 135.57(d)(1) relates to ATS and is distinct from a flight following service under 119.121. It should also be noted that 119.121 only applies if a flight plan has not been submitted to ATS.

135.87 – Flights over water

2.12 Two Commenters raised issues regarding gliding distances and multi-engine aircraft.

CAA Comment: These particular issues are outside the scope of this NPRM. However, the CAA plans to establish a separate project to address matters relating to flights over water and the issues raised by these commenters will be addressed then.

Part 172

172.93 – Flight information service

2.13 Airways Corporation of New Zealand notes that the reworded 172.93(b)(2) provides for broadcast information for VFR flights but suggests this subparagraph be applied to VFR flights only and that an additional subparagraph be inserted to provide for directed information for IFR flights.

CAA Response: The CAA agrees and has amended 172.93(a) to differentiate between those flights that require information to be provided on an individual basis, and those flights that can be provided with information by broadcast methods. The CAA also sees the need for some guidance/advisory material to be included in a subsequent Advisory Circular regarding broadcast and directed flight information

2.14 CAA Comment: NPRM 01-1 contained a proposed amendment to 172.93(b)(2) that was intended to clarify the application of the rule regarding the provision of aerodrome weather conditions. The proposed amendment would have required an ATS provider to provide information on weather conditions only at aerodromes for which an air traffic service was provided. As a result of issues raised with CAA management outside of the NPRM process and, following further discussions with Airways Corporation, it was decided to not proceed with this proposed amendment as part of the VFR flight planning project. The matter is

being dealt with separately as part of the wider issue regarding the availability of meteorological information.

172.97 – Alerting service

2.15 Airways Corporation of New Zealand notes that 172.97(f)(1)(ii) specifies the criteria for a domestic VFR flight plan however no provision has been made for flights on an ICAO international flight plan. The commenter suggests adding subparagraph (iii) ‘ a VFR aircraft on an international VFR flight plan for which a SARTIME has not been provided fails to arrive within 30 minutes of the estimated time of arrival’.

CAA Response: The CAA accepts the comment and has inserted the additional subparagraph with the suggested wording with the exception of ‘international’.