



PURSUANT to Sections 28, 29, and 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, stylized 'H' and 'D'.

Minister for Transport Safety

Civil Aviation Rules

Part 135, Amendment 18

Air Operations — Helicopters and Small Aeroplanes

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

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Rule objective

The objective of amendment 18 to Part 135 is to editorially update the rules as a consequence of new rule Part 95 coming into force.

Background

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 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 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.

NPRMs 98-7 and 98-8 did not include any proposed amendment to Part 135.

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 legislative 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 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 respondees 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 135.

The consequential amendments to Part 135 including some editorial changes to update the rule in accordance with current legislative 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 18 to Part 135 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 135 Amendments

Subpart C — Operating Limitations and Weather Requirements

Rule 135.157 is revoked and replaced by the following new rule:

135.157 Meteorological conditions – IFR flight

A pilot-in-command of an aircraft performing an air transport operation must not commence an operation under IFR unless current meteorological reports, or a combination of current meteorological reports and forecasts, indicate that conditions will, at the estimated time of arrival, be at or above the minimum published in the applicable AIP for the instrument procedure likely to be used at the applicable destination aerodrome.

Rule 135.159 is revoked and replaced by the following new rule:

135.159 Aerodrome operating minima – IFR flight

(a) A pilot-in-command of an aircraft must not continue an instrument approach to an aerodrome past the final approach fix or, if a final approach fix is not used, the final approach segment of the instrument approach procedure if, before passing the final approach fix or the final approach segment, current meteorological information indicates the visibility at the aerodrome is less than the visibility published in the applicable AIP for the instrument approach procedure being used.

(b) For the purpose of paragraph (a), the final approach segment begins—

- (1) at the final approach fix or facility specified in the instrument approach procedure; or
- (2) if a final approach fix is not specified in the instrument approach procedure and the procedure includes a procedure turn, at the point where the procedure turn is completed and

the aircraft is established on the final approach course within the distance specified in the instrument approach procedure.

Rule 135.163 is revoked and replaced by the following new rule:

135.163 Reduced take-off minima

- (a) A holder of an air operator certificate may operate an aircraft at lower take-off minima than that prescribed in rule 91.413(g) if the certificate holder ensures that the operation is conducted in accordance with the reduced minima take-off procedure specified in the certificate holder's exposition.
- (b) The reduced take-off minima procedure must require that—
- (1) every flight crew member is qualified for reduced minima take-offs; and
 - (2) the runway to be used has 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) if the aircraft is a two-engine propeller-driven aeroplane, the aircraft is equipped with an operative auto-feather or auto-coarse system; and
 - (5) the runway visibility is established using RVR; and
 - (6) the method for observing and confirming that the required visibility exists for that take-off is acceptable to the Director.

Rule 135.165 is revoked and replaced by the following new rule:

135.165 IFR procedures

- (a) A pilot-in-command of an aircraft performing an air transport operation under IFR must conduct the operation on a route published in the applicable AIP except when—
- (1) it is necessary to avoid potentially hazardous conditions; or

- (2) operating under radar control from an ATS; or
 - (3) operating under an off-route clearance obtained from an ATC unit; or
 - (4) otherwise specified in the exposition of the holder of the air operator certificate that authorises the operation.
- (b) Unless a clearance has been obtained from the appropriate ATC unit, in controlled airspace, a pilot-in-command must comply with any IFR departure and approach procedures published in the applicable AIP for the aerodrome being used.
- (c) In uncontrolled airspace a pilot-in-command must comply with any IFR departure and approach procedures published in the applicable AIP for the aerodrome being used.

Consultation Details

(This statement does not form part of the rules contained in Part 135. It provides details of the consultation undertaken in making the rules.)

The editorial changes to Part 135 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.