



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, MAURICE WILLIAMSON, Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *5* day of *May* 1999

by **MAURICE WILLIAMSON**

Maurice Williamson
Minister of Transport

Civil Aviation Rules

Part 91, Amendment 5

General Operating and Flight Rules

Docket 97/CAR/1255

**Civil Aviation Rules
Part 91, Amendment 5**

General Operating and Flight Rules

RULE OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

The objective of Amendment 5 to Part 91 is to introduce a revision to 91.301 VFR meteorological minima. This amendment is derived from—

- (1) an exemption granted by the Director to permit a reduced distance from cloud while operating within a control zone; and
- (2) comments received about the application of Tables 5 and 6; and
- (3) the introduction of Class B and Class F airspace by Part 71.

A Notice of Proposed Rulemaking (NPRM) 98-1 contained the proposed amendment to 91.301 and was issued under Docket 97/CAR/1255 on 11 March 1998.

The publication of this NPRM was advertised in the daily newspapers in the five main provincial centres on 14 March 1998. The NPRM was mailed to industry members and to other parties, including overseas Aviation Authorities and organisations, who were considered likely to have an interest in the proposal.

A period of 36 days was allowed for comment on the proposed rule.

The submissions and verbal comments were considered and where appropriate the proposed rule was amended to take account of the comments made.

The rule as amended was then referred to and signed by the Minister of Transport.

Amendment 5 to Part 91 comes into force 28 days after notification in the *Gazette*.

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Part 91 Amendments

Part 91 is amended by revoking 91.301 and substituting the following rule:

91.301 VFR meteorological minima

- (a) Except as provided in 91.135(a)(1), 91.303, and paragraphs (b) and (c), a pilot-in-command shall not operate an aircraft under VFR—
- (1) when the flight visibility is less than that prescribed for the corresponding class of airspace in Table 4; or
 - (2) at a distance from clouds that is less than that prescribed for the corresponding class of airspace in Table 4.
- (b) Except as provided in 91.303, a pilot-in-command shall not take-off or land an aircraft, or fly in the vicinity of an aerodrome, under VFR when the flight visibility, or the cloud ceiling, is less than—
- (1) at aerodromes within a control zone, that prescribed in Table 5; and
 - (2) at aerodromes in uncontrolled airspace, that prescribed in Table 6.
- (c) Each pilot-in-command of—
- (1) a helicopter may operate in Class G airspace with a visibility of less than 5 km if manoeuvred at a speed that will give adequate opportunity to observe other traffic or any obstructions in order to avoid collisions; and
 - (2) an aircraft performing agricultural aircraft operations may operate in Class G airspace with a flight visibility of less than 5 km but not less than 1500 m; and
 - (3) an aircraft performing flight instruction may operate within a designated low flying area prescribed under Part 73 with a flight visibility of less than 5 km but not less than 1500 m.

Table 4. Airspace VFR meteorological minima

Class of airspace		Distance from cloud	Flight visibility
B		Clear of cloud	
C, D, and E		2 km horizontally 1000 feet vertically outside a control zone 500 feet vertically within a control zone	8 km at or above 10 000 feet AMSL 5 km below 10 000 feet AMSL
F and G	Above 3000 feet AMSL or 1000 feet above terrain whichever is the higher	2 km horizontally 1000 feet vertically	
	At or below 3000 feet or 1000 feet above the terrain whichever is the higher	Clear of cloud and in sight of the surface	5 km

Table 5. VFR minima at aerodromes within a control zone.

		Ceiling	Visibility
All aircraft	Day and Night	1500 feet	5 km

Table 6. VFR minima at aerodromes in uncontrolled airspace.

		Ceiling	Visibility
All aircraft	Day	600 feet	1500 m
All aircraft	Night	1500 feet	8 km

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.)

Background to the Rules

The new rules are structured in a manner similar to the Federal Aviation Regulations (FAR) of the FAA, and aim to achieve maximum harmonisation whilst allowing for national variations. Close co-operation is also being maintained with the Civil Aviation Safety Authority of Australia to ensure maximum harmonisation with their regulatory code. NZ legislation is being generated where necessary for the areas not presently covered.

New Zealand's revised legislation is published as Civil Aviation Rules (CAR) which is divided into Parts. Each Part contains a series of individual rules which relate to a particular aviation activity.

Accompanying most Parts will be at least one associated Advisory Circular (AC) which will expand, in an informative way, specific requirements of the Part and acceptable means of compliance. For instance an AC may contain examples of acceptable practices or procedures which would meet the requirements of a particular rule.

The objective of the new rules system is to strike a balance of responsibility between the State authority and those who provide services and exercise privileges in the civil aviation system. This balance must enable the State authority to set standards for, and monitor performance of, aviation participants whilst providing the maximum flexibility for the participants to develop their own means of compliance.

Section 12 of the Civil Aviation Act 1990 requires participants in the aviation system to carry out their activities safely and in accordance with the relevant prescribed safety standards and practices. Section 28 of the Act empowers the Minister to make ordinary rules.

Notice of Proposed Rule Making

To provide public notice of, and opportunity for comment on the proposed new rules, the CAA issued Notice of Proposed Rule Making (NPRM) 98-1

under Docket 97/CAR/1255 on 11 March 1998. This Notice proposed amendments to 91.301.

Supplementary Information

The comments made on the Notice of Proposed Rule Making are available in the rules docket for examination by interested persons. A report summarising each substantive contact with the Civil Aviation Authority contact person concerning this rule making has been filed in the docket.

Availability of the Document

Any person may view a copy of these rules at Aviation House, 1 Market Grove, Lower Hutt or on the CAA web page at www.caa.govt.nz Printed copies may be obtained from Publishing Solutions Ltd, PO Box 983, Wellington 6015, Telephone 0800 800 359.

Summary of Comments on 91.301

91.301 VFR meteorological minima

ACNZ agrees to the amendment subject to the following comment:

Table 4, middle column, fourth line, "vertical" should be "vertically". Table 6, right column, bottom line, this visibility figure is higher than that in table 5, and higher than the visibility requirement for class G airspace. Is this an error or is it intentional?

CAA response: The CAA accepts the comment that "vertical" should read "vertically" and has amended the rule accordingly. The reference to 8km visibility in Table 6 is intentional. The higher level of visibility is required for night operations at uncontrolled aerodromes to maintain the equivalent level of safety present during the day.

Taupo Air Services states that this rule is prescribing two meteorological minima for the same ['G'] airspace without being clear as to the boundary between them. Table 4 gives the G airspace minima for below 3000ft as '...clear of cloud and in sight of surface' with a visibility of '5km'. Paragraph (b) uses the term '...in the vicinity of an aerodrome' and Table 6 gives the minima as '600ft' ceiling and '1500m' visibility. The definition of 'vicinity' changes according to its context. The rule needs to be clarified.

CAA of NZ

CAA response: The CAA accepts that the term "vicinity" has a wide meaning. However, specifically defining when an aircraft is in the "vicinity" of a particular aerodrome is difficult. A definition may suit the situation at one aerodrome but may not be suitable for another. For example, the "vicinity" at Auckland airport would be very large considering the size and speed of aircraft that operate into and out of the aerodrome. A distance of 10 nm might be a suitable distance for the "vicinity" of that aerodrome. However, the "vicinity" at Pikes Point would be considerably smaller considering the size and speed of aircraft operating in and out of that aerodrome. A distance of 3 nm may be a more suitable distance for the "vicinity" at Pikes Point. The CAA believes that airmanship should be used to determine the vicinity of the aerodrome depending on the particular circumstances existing at that aerodrome.

Transitional arrangements

No transitional arrangements are necessary for this amendment.

Regulatory activities

No additional regulatory activities are necessary for this amendment.

Conclusion

The CAA concludes from this consultation that the aviation industry participants favour the direction of the amended rule. The rule also meets New Zealand's international obligations under ICAO Annex 2 Rules of the Air. The comments and all the background material used in developing the rule are held on the docket and are available for public scrutiny. Persons wishing to view the docket should call at Aviation House, 1 Market Grove, Lower Hutt and ask for docket 97/CAR/1255.