



Summary of Public Submissions Received on

NPRM 16-01 — Omnibus Rule 2016

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General

Notice of Proposed Rule Making (NPRM) 16-01 was issued for public consultation on 2 June 2016, with a submission close-off of 28 June 2016. The purpose of NPRM 16-01 was to:

- Correct grammatical and editorial errors;
- Update rule wording where it is not consistent with current rule drafting conventions;
- Update rule wording and rule references so that they are in line with relevant rule changes;
- Update various rules in accordance with current International Civil Aviation Organization (ICAO) standards, definitions, and abbreviations;
- Include and correct required rule documentation; and
- Revoke expired transitional arrangements.

A copy of the NPRM was sent to:

- The Ministry of Transport
- The Aviation Community Advisory Group (ACAG)
- Internal CAA stakeholders

The NPRM was also published on the CAA website on 2 June 2016 and notified to the industry by automatic email alerts.

Summary of Submissions

A total of six submissions were received. Of these, two submissions were from organisations, and four were from individuals.

Two submissions were received concerning the definition of Instrument runway; two submissions were received in relation to the proposal regarding the definition of Special VFR flight; one submission was received concerning the testing and inspection of ELTs at 100 hours (Rule 91.605(e)(4)(i)); and one submission was received concerning the Right of Way Rules (Rule 91.229(f)(1)).

Definition of Instrument Runway

A submitter stated:

“NPRM 4.1.2 proposes: Revoke and replace the definition of “instrument runway” in Part 1.....

Although the proposed rule change closely follows the definition in ICAO Annex 14, it refers to ‘instrument approach operation Type A’ and ‘instrument approach operation Type B’. Neither of these terms are defined in the New Zealand Civil Aviation Rules.

Position:

NZ Airports supports the intent to align the Instrument Runway definition with ICAO documents.

NZ Airports requests that two further definitions be added to CAR Part 1:

Instrument Approach Operation Type A means an instrument approach procedure with a minimum descent height or decision height at or above 75m (250ft).

Instrument Approach Operation Type B means an instrument approach procedure with a decision height below 75m (250ft).

Reasoning:

The proposed definition for ‘Instrument Runway’ is incomplete without Type A and Type B operations being described in the rules. The terms ‘instrument approach procedure’ and ‘decision height’ are already defined in CAR Part 1. The wording proposed here for defining Type A and Type B is consistent with ICAO Annex 6 Part 1 paragraph 4.2.8.3.

This will also address the same issue in NPRM 4.1.3 proposing a definition for ‘Non-precision approach procedure’ and referring to ‘Instrument Approach Operation Type A’.

Definition of Instrument Approach operation types (A and B) by using existing defined terms completes the proposed definition of Instrument Runway.”

Another submitter stated:

“The proposed amendment to Part 1 is to incorporate the revised definition of an Instrument Runway from Annex 14 Volume 1. However this could be further enhanced and more easily understood, if a description of a Type A and Type B approach were included similar in sentence structure to Annex 6 Part 1 paragraph 4.2.8.3 e.g. preceding numeral (1) of the proposed new definition, include the words:

- “
- a) Type A: a minimum descent height or decision height at or above 75m (250ft); and
 - b) Type B: a decision height below 75m (250ft).”

In its present state, the definition can still be unclear due to the absence of description of these two approach types.”

CAA Response

The CAA agrees with the submission to insert new definitions of “Instrument Approach Operation Type A” and “Instrument Approach Operation Type B” in the form suggested by NZ Airports, for the reasons given. This corrects an oversight in the NPRM.

Definition of Special VFR flight

A submitter stated:

“The current rule does not align with what is stated in the NZAIP and, also, the Airways Corporation Manual of Air traffic services. Did the CAA actually get it right when they decided to disagree with ‘Airways’ and change the wording from ‘controlled airspace’ to ‘control zone’. I have checked with Airways Policy and Standards, since this change was incorporated into the rule, and the reply was that this was a CAA decision error, and that it would revert back to the previous ‘Controlled airspace’”.

CAA Response

The CAA does not agree with the submission.

The Minister makes rules under the Civil Aviation Act 1990 and a rule specifies the standards or restrictions that aviation document holders have to follow. An AIP only disseminates aeronautical information of an ongoing nature essential for air navigation.

The Airways Manual of Air Traffic Services (MATS) forms part of Airway’s exposition and must remain acceptable to the Director under the Rules. A rule change is a trigger for amendment to the exposition and supporting documents such as the Manual.

The CAA does not consider there is any error with the proposed amendment.

As indicated in the NPRM there is no impact on current users, particularly the NZDF, from the proposed change.

Given this, the CAA considers that there is no need for special VFR clearance in a control area.

The reasons for the rule change limiting Special VFR application to control zones, rather than a wider control area, have previously been explained in CAA’s response to submissions on the the Omnibus 2014 14/CAR/1. In short, the CAA has determined that there are significant safety issues with allowing special VFR in much larger and distant control areas intended for IFR operations and the practice is out of step with international standards and practices as defined and specified in ICAO Convention Annexes 2 and 11 and doc 4444.

In summary, the CAA sees this issue as the fixing of an anomaly rather than a departure from airspace policy. Fundamentally, issuing Special VFR flight clearances is inappropriate in a wider control area.

Following rule amendment in the 2014 Omnibus 14/CAR/1, CAR 91.303 now authorises VFR operations below VFR meteorological minima in control zones only (it formerly

referred to controlled airspace that included control zone and controlled areas). Although titled “Special Flight weather minima”, CAR 91.303 makes no explicit reference to “Special VFR flight” and therefore CAA takes the view that it is not restricted by the current Part 1 definition of “Special VFR flight”. However the situation could cause confusion and the Part 1 definition needs to be amended.

Another submitted stated:

“Airways wish to note this change has no ATC impact apart from changes to Airways procedures. The SVFR change will impact operators particularly military operations.”

CAA Response

The CAA notes this submission, and in relation to impact on military operations, refers to its response above.

Testing and Inspection of ELTs at 100 hours (Rule 91.605(e)(4)(i))

A submitter stated:

“NZAAA seeks to have one further change made and that is to CAR Part 91.605 (e)(4)(i).

Many fixed wing agricultural aeroplanes are now maintained to maintenance programmes that require 150 hour scheduled inspections. Because these operators do not have programmes that comply with 91.605(f) they are required to have their ELTs tested and inspected every 100 hours. In many cases this means that at least once a month (and sometimes twice) the operator has to engage an engineer to check and certify the ELT. NZAAA believes that this is an expensive and onerous requirement that serves no useful purpose in contributing to aviation safety. The evidence that leads us to this conclusion is that since the ELT G switch issue has been overcome, we are unaware of any ELT maintenance defects discovered at the 100 hour testing and inspection period.

In addition we note that Part 43 Appendix F was written back in the day when remote switches were optional and the self test was simpler. In our view the rule should reflect the 406 units, not the 121.5 units that the existing rules and the FAA rules cover. The TSO91 and 91A ELTs are gone.

NZAAA also asks that you note that the 406 ELT manufacturer’s maintenance instructions call up only an annual inspection and we ask CAA to consider adopting this practice as it does with other Manufacturer’s instructions. If CAA is determined to require ELT testing and inspection at every scheduled airframe inspection then the rule needs to accommodate aircraft whose inspection cycle exceeds 100 hours.

Further NZAAA believes that not only has CAR Part 91.605(e)(4)(i) not kept pace with the 406 units, it has not kept pace with changes in the industry and that Omnibus 2016 provides the opportunity to amend the rule to better reflect aviation good practices.

NZAAA further submits that from a risk perspective, making the amendment we seek would actually reduce risk.”

CAA Response

The CAA notes that NZAAA has concerns that the existing prescribed requirement in rule 91.605 (e)(4)(i) for testing and inspection of ELTs every 100 hours of aircraft time in service is too restrictive and does not take account of maintenance programmes that require 150 hour scheduled inspections.

From the regulator’s viewpoint the safety issue is not one that solely relates to battery but is concerned with the overall condition of the ELT system and the effect that the regular flights and particular environment may have on the system. For instance, in topdressing aircraft there is a risk of fertiliser dust creeping into the inside of the aircraft covering, and in this case, the ELT installation. Combined with dampness, there is a risk of corrosion on the ELT and connectors. Regular inspections in accordance with Part 43 Appendix F should eliminate any potential issues. In the CAA’s view the prescribed inspection in Part 43 Appendix F is appropriate as currently defined. However it accepts that the present requirement for testing and inspection every 100 hours time in service minimum may be too restrictive and that more flexibility may be needed in rule requirements. It therefore proposes an amendment to rule 91.605(e)(4)(i) providing for ELTs to be tested and inspected under Part 43 Appendix F within the previous 12 months, 100hr aircraft servicing or at manufacturer’s equivalent inspection, whichever is sooner.

Right of Way Rules (Rule 91.229(f)(1))

A submitter stated:

“I very much support the proposed change to 91.229(f)(1) Right of Way Rules. This is because there is a belief among some IFR pilots that once they have passed the final approach fix on an IFR approach (which can be many miles away from the aerodrome), they have right of way over aircraft in the aerodrome circuit who are not on final approach. This has led to numerous conflicts in VMC conditions where IFR aircraft is not willing to integrate into the existing circuit traffic, but simply pushes in...I think the problem will now go away, thanks to this sensible change.

The instructor privileges and limitations, should, in my opinion, be contained in AC61-18. However, some of them are contained in AC61-3 and AC61-5. Examples of privileges and limitations on instructors that are NOT in AC61-18 are who can authorise a cross country training flight, or who can perform terrain & weather awareness/basic mountain flying training. Even if the location for this information was not going to change, could a note please be inserted saying, “For information on instructor qualifications needed to perform Terrain and Weather Awareness training, see AC61-3, Appendix IV.”

CAA Response

The CAA notes the submission’s support for the change to the “right of way” rules in rule 91.229(f)(1). However, it considers that instructor privileges and limitations should be in

the rule set consistent with those of other aviation document holders. It will review the adequacy of the particular advisory circulars at the next opportunity.

NPRM 4.15 Correction of Transitional provisions relating to safety Management Systems

A submitter stated:

“NPRM changes 4.15.43 and 4.15.54 should both be worded for the date in accordance with paragraph (e)(2) and not (c)(2).

NZ Airports supports the change provided it references the correct clause.”

CAA Response

The CAA notes the submission’s support for the correction of the SMS transitional provisions. It agrees that the particular wording in section 4 of the NPRM incorrectly refers to the date in accordance with paragraph “(e)(2)” which should to “(c) (2)”. However it notes that the wording in the draft rule in section 7 of the NPRM is in the correct form.

Incorrect quotation of current rule 139.417

A submitter stated:

“The text on page 73 of the NPRM ...is intended to be the existing CAR 139.417 with the NPRM proposed edits highlighted.

However the existing CAR 139.417 (as consolidated including Amendment 12) does not have an (e) or (f) so it may be that this is an error in the NPRM!....”

CAA Response

The submission is correct. The text of the rule as shown in the NPRM was incorrect as it contained extraneous text not in the consolidated rule (paragraphs (e) and (f) that should not have been there). This has been corrected in the draft rule wording.