

The altitude, climb, and descent portions of § 91.127 pertaining to IFR operations in the event of two-way radio communications failure have been in existence essentially unchanged since May 1962. The FAA has received letters and telephone calls indicating a misunderstanding of the altitude, climb, and descent portion of that rule in the event that a pilot operating an aircraft that is enroute to its destination under an IFR flight clearance sustains radio failure. Persons commenting on the rule believe that after climb to an MEA higher than the altitude that is assigned to the flight by ATC, the higher altitude must be maintained for the balance of the flight until reaching the fix from which the approach is to begin. The commentators stress the point that although climb instructions to achieve the appropriate altitude are spelled out in the rule, the rule is silent as to whether the pilot should descend to achieve or maintain an MEA or assigned altitude during the course of his flight when these levels become the appropriate altitude.

The intent of the rule is that the pilot who has experienced two-way radio failure should, during any segment of his route, fly at the appropriate altitude specified in the rule for that particular segment. The appropriate altitude is whichever of the following three is highest in each given phase of flight: (1) The altitude or flight level last assigned; (2) the MEA; or (3) the altitude or flight level the pilot has been advised to expect in a further clearance. The appropriate altitude for the route segment being flown is to be maintained regardless of whether the pilot finds it necessary to climb or descend to achieve that altitude. The rule does not contemplate that a pilot, once he has climbed to satisfy the rule for one segment of his route, may not descend so as to satisfy the rule in some later phase of his flight.

To illustrate the rule, if a pilot sustaining radio failure had an assigned altitude of 7,000 feet, and while en route to his destination came to a route segment for which the MEA was 9,000 feet, he would climb to 9,000 feet at the time or place where it became necessary to comply with that MEA. If later, while he was proceeding to his destination, the MEA dropped from 9,000 feet to 5,000 feet, the pilot would descend to 7,000 feet (the last assigned altitude), because that altitude is higher than the MEA.

It is apparent that the portion of the rule delineating climb requirements has been the major source of confusion in the rule. The FAA has determined that this portion of the rule is not required for accomplishing observance of appropriate radio failure procedures, and may be rescinded in the interest of clarity in understanding the provisions of the basic rule.

Since this amendment is clarifying in nature, and imposes no burden on the public, notice and public procedure thereon are unnecessary and good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, § 91.127 of the Federal Aviation Regulations is amended as follows, effective February 5, 1971; paragraph (c) (2) is revised, paragraph (c) (3) is revoked, and the heading for paragraph (c) (5) is revised. As amended § 91.127 reads as follows:

**§ 91.127 IFR operations; two-way radio communications failure.**

\* \* \* \* \*

(c) \* \* \*

(2) *Altitude.* At the highest of the following altitudes or flight levels for the route segment being flown: \* \* \*

(3) [Revoked]

\* \* \* \* \*

(5) *Descent for approach.* \* \* \*

\* \* \* \* \*

(Secs. 307(c), 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(c), 1354(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on January 29, 1971.

J. H. SHAFFER,  
Administrator.

[FR Doc.71-1611 Filed 2-4-71; 8:48 am]

[Docket No. 10805; Amdt. 91-86]

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

**IFR Operations; Two-Way Radio Communications Failure**

The purpose of these amendments to the Federal Aviation Regulations is to clarify the altitude, climb, and descent requirements when two-way radio communications failure is experienced under IFR operations.

AT