



**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 *Third* day of *September* 2008

by **HARRY JAMES DUYNHOVEN**

Minister for Transport Safety

A handwritten signature in black ink, appearing to read 'Harry James Duynhoven', is written over a light grey signature line. The signature is stylized and cursive.

**Civil Aviation Rules**

**Part 108, Amendment 8**

**Air Operator Security Programme**

*Docket 4/CAR/3*

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**Rule objective**

The objective of amendment 8 to Part 108 is to add rules for air operators to ensure that cargo and mail carried on international passenger flights are subjected to more robust security controls. The amendments are in support of the new Rule Part 109 – Regulated Air Cargo Agent - Certification.

**Extent of consultation**

In response to the terrorist attacks of 11 September 2001, the Minister of Transport asked agencies to urgently review a range of measures relating to aviation security. A review team was established comprising representatives from the Civil Aviation Authority, the Ministry of Transport, and the Aviation Security Service. The review team found that the lack of security controls for cargo and mail being loaded on international passenger aircraft represented a vulnerability in the New Zealand aviation security system. The review team considered four options to address this vulnerability by ensuring that controls are applied to cargo and mail loaded on these flights in order to provide the appropriate degree of protection to passengers and crew. After considering the options, the review team recommended that the security procedures and concepts already well established in the air freight industry (such as those for known and unknown customers) be developed to establish the additional procedures and processes to ensure and verify security. The review team also recommended that the Civil Aviation Authority give priority to the adoption of cargo and mail security standards prescribed by International Civil Aviation Organization.

Industry groups and organisations informally consulted during the development of these rules included the Board of Airline Representatives of New Zealand (Inc); Air New Zealand; the Customs Brokers and Freight Forwarders Federation (Inc); New Zealand Post; Conference of Asia Pacific Express Carriers; and United Airlines.

Government departments that were consulted included the Ministry of Transport, Aviation Security Service, Ministry of Agriculture and Forestry, the Food Safety Authority and the New Zealand Customs Service. Several meetings were held with these organisations to discuss the proposed rule and overlaps with existing requirements from the various agencies. A Notice of Proposed Rulemaking, NPRM 07-07,

containing the proposed amendments to Part 108 was issued for public consultation under Docket 4/CAR/3 on 03 July 2007.

The publication of this NPRM was notified in the Gazette on 05 July 2007 and advertised in the daily newspapers in the five main provincial centres on 04 July 2007. 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 42 days was allowed for comment on the proposed rule. Four submitters requested, and were granted, an extension of 18 more days to lodge their submissions.

### **Summary of submissions**

Eleven written submissions were received on the NPRM. Six submissions were received on Part 108. These submissions were considered and as a result the rule was changed to remove an exception for mail sent to or from the Armed Forces and the Ministry responsible for defence in New Zealand. A new rule was also inserted to require, if the cargo or mail is subject to a direction to screen made by the Minister or the Director under sections 77A or 77B of the Act respectively, the cargo or mail has to be screened in accordance with the direction and has to be maintained in a secure state.

As a result of further internal CAA review, the rule was also amended to include reference to a 'security enhanced area' into rules 108.53(b)(4) and 108.55(b)(4) as a consequential amendment arising from the Civil Aviation Amendment Act 2007, which came into force on 18 January 2008. Minor grammatical and editorial amendments were also made.

The rule as amended was then referred to Parliament's Regulations Review Committee. As a result of comments from the Regulations Review Committee, the transition provision for air operators was clarified. The rule was then signed by the Minister for Transport Safety.

### **Examination of submissions**

Submissions 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 revocation of existing rules and insertion of amended rules.

**Effective date of rule**

Amendment 8 to Part 108 comes into force on 9 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 108 Amendments

### Subpart A — General

*Rule 108.3 is revoked and the rule number is reserved.*

#### 108.3 Reserved

### Subpart B — Air Operator Security Programme Requirements

*Rule 108.53 is revoked and replaced with the following new rule 108.53:*

#### **108.53 Security requirements — domestic**

- (a) An air operator security programme for a domestic regular air transport passenger service must have security procedures for flights within New Zealand to safeguard passengers, crew, ground personnel, aircraft, and facilities, against an act of unlawful interference.
- (b) The security procedures required in paragraph (a) must set out the means by which—
- (1) the requirements of rule 91.9 are complied with in relation to the carriage of firearms on board an aircraft; and
  - (2) danger to the air operator's passengers, crew, and ground personnel is minimised if a hijacking, bomb threat, or any other threat of unlawful interference occurs; and
  - (3) access to the air operator's unattended aircraft is controlled at all times to prevent unlawful interference with the aircraft; and
  - (4) access to a security area or security enhanced area of a security designated aerodrome and to an operational area at any other aerodrome within New Zealand that is through the air operator's facilities or through any other access used by the air operator for passengers, personnel, baggage, cargo, freight or aircraft supplies is controlled; and

- (5) appropriate security controls are applied to baggage, cargo, courier, and mail, aircraft supplies, stores, and air operator's supplies intended for carriage on the air operator's aircraft; and
- (6) the safe conduct of a flight is achieved and the pilot-in-command notified, if 1 or more persons on board the aircraft are required to travel on the aircraft because they are in lawful custody, or are subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and
- (7) the air operator and the pilot-in-command are to assess the risk and decide whether a passenger's baggage that is on board an aircraft is to be carried on the flight if the passenger has failed to board the aircraft; and
- (8) before boarding an air operator's aircraft, every passenger, crew member, and the carry on baggage of the passengers and crew members is screened in accordance with rule 108.63 if the Minister or the Director requires screening in order to prevent a weapon, explosive, or other dangerous device, article or substance that may be used to commit an act of unlawful interference being taken onto the air operator's aircraft; and
- (9) before being loaded onto an air operator's aircraft, all baggage that is not carry on baggage is screened in accordance with rule 108.63 if the Minister or the Director requires screening in order to prevent a weapon, explosive, or other dangerous device, article or substance that may be used to commit an act of unlawful interference being loaded onto the air operator's aircraft; and
- (10) temporary security measures will be implemented to upgrade the security of the air operator's services if the Director finds or suspects an increased level of security risk to a person on an aircraft, or to an aircraft or an aerodrome and requires the additional security measures for a domestic operation; and

- (11) an unauthorised person is prevented from entering the flight deck of the air operator's aircraft during flight.
- (c) The procedures required by paragraph (b)(6) must include procedures to ensure that in relation to the carriage of a person in lawful custody on a regular air transport passenger service—
- (1) the person is escorted; and
  - (2) the escort confirms that the person is not carrying any item that may be used as a weapon; and
  - (3) the escort is equipped with adequate devices for restraining the person; and
  - (4) the pilot-in-command and senior flight attendant are notified of the location of, and the security arrangements for, the person; and
  - (5) alcoholic beverages are not served to the person or the person's escort; and
  - (6) metal utensils are not provided for the person's use; and
  - (7) the person is not seated in a seat or seat row next to an emergency exit; and
  - (8) the person is seated appropriately to ensure safe conduct of the flight is achieved; and
  - (9) no more than 1 person in custody is carried on an aircraft with a certificated passenger seating capacity of 29 seats or less and no more than 1 additional person in custody is carried for each additional 25 seats of certificated passenger seating capacity.

***Rule 108.55 is revoked and replaced with the following new rule 108.55:***

**108.55 Security requirements – international**

(a) An air operator security programme for an international regular air transport passenger service must have security procedures for flights within or from New Zealand to safeguard passengers, crew, ground personnel, aircraft, and facilities, against an act of unlawful interference.

(b) The security procedures required in paragraph (a) must set out the means by which—

- (1) the requirements of rule 91.9 are complied with in relation to the carriage of firearms on board an aircraft; and
- (2) danger to the air operator's passengers, crew, and ground personnel is minimised in the event of a hijacking, bomb threat, or any other threat of unlawful interference; and
- (3) access to the air operator's unattended aircraft is controlled at all times to prevent unlawful interference with the aircraft; and
- (4) access to a security area or security enhanced area of a security designated aerodrome and to an operational area at any other aerodrome within New Zealand that is through the air operator's facilities or through any other access used by the air operator for passengers, personnel, baggage, cargo, freight, or aircraft supplies is controlled; and
- (5) temporary security measures will be implemented to upgrade the security of the air operator's services within and from New Zealand if the Director finds or suspects an increased level of security risk to a person on an aircraft, or to an aircraft or an aerodrome and requires additional security measures; and
- (6) subject to paragraph (c), appropriate security controls are applied to baggage, cargo, courier parcels and mail intended for carriage on the air operator's aircraft; and

- (7) the safe conduct of a flight is achieved and the pilot-in-command notified, if 1 or more persons on board are required to travel on that aircraft because they are in lawful custody, or subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and
- (8) a transit or transfer passenger and the passenger's carry on baggage is controlled to prevent an unauthorised article being taken on board the air operator's aircraft by the passenger; and
- (9) if the flight is under an increased level of threat of an act of unlawful interference, a disembarking passenger is not permitted to leave an item on board the air operator's aircraft; and
- (10) appropriate security controls are applied to cargo, baggage, mail, aircraft supplies, stores, and air operator's supplies which are moved within an aerodrome for carriage on the air operator's aircraft; and
- (11) every consignment of a package that is not cargo or mail but is intended for carriage on an air operator's aircraft, (whether unaccompanied or using commercial courier services) is screened; and
- (12) before boarding an air operator's aircraft, every passenger, crew member, and the carry on baggage of the passengers and crew members is screened in accordance with rule 108.63 in order to prevent a weapon, explosive, or other dangerous article or substance that may be used to commit an act of unlawful interference being taken onto the air operator's aircraft; and
- (13) baggage from a passenger who is not on the aircraft is prevented from being carried unless the baggage is authorised as required under paragraph (17); and
- (14) pre-flight checks of originating aircraft are undertaken, including procedures for discovering any suspicious object or

anomaly that can conceal a weapon, explosive, or any other dangerous article or substance that may be used to commit an act of unlawful interference; and

- (15) security control is provided for baggage from the point where it is checked in until it is placed on board the air operator's aircraft, if the baggage is for carriage on a passenger flight and has originated from a place other than an airport check-in counter; and
  - (16) except as provided for in paragraph (h), before being loaded onto an air operator's aircraft, every item of baggage is screened in accordance with rule 108.63 in order to prevent a weapon, explosive, or other dangerous article or substance that may be used to commit an act of unlawful interference being loaded onto the air operator's aircraft; and
  - (17) only baggage that is authorised by the air operator is carried; and
  - (18) an unauthorised person is prevented from entering the flight deck of the air operator's aircraft during flight.
- (c) An air operator must not allow cargo or mail to be loaded onto an aircraft carrying passengers unless—
- (1) the cargo or mail is received from a regulated air cargo agent and the consignment of cargo or mail is—
    - (i) accompanied by a declaration of security issued by the regulated air cargo agent; and
    - (ii) checked by the air operator to ensure that the consignment has not been tampered with; or
  - (2) if the air operator accepts the cargo or mail from a person who is not a regulated air cargo agent, the cargo or mail is subjected to appropriate security controls, in accordance with paragraph (d); or

- (3) in spite of paragraphs (1) and (2), if the cargo or mail is subject to a direction to screen made by the Minister or the Director under sections 77A or 77B of the Act respectively, the cargo or mail has been screened in accordance with the direction and has been maintained in a secure state.

(d) If the air operator is to accept cargo or mail from a person who is not a regulated air cargo agent, the air operator must establish appropriate facilities and procedures that are equivalent to those required under the following rules to ensure that the security controls required in paragraph (c)(2) meet the requirements of Part 109:

- (1) rule 109.53 (Facility requirements):
- (2) rule 109.55 (Cargo and mail security control procedures):
- (3) rule 109.57 (Screening procedures):
- (4) rule 109.59 (Authorisation procedures):
- (5) rule 109.61 (Procedures and register for a known customer):
- (6) rule 109.63 (Training of personnel):
- (7) rule 109.65 (Cargo security incidents):
- (8) rule 109.67 (Records).

(e) Details of the facilities and procedures required under paragraph (d) must be included in the air operator's security programme required under rule 108.65, Part 119 or Part 129.

(f) The procedures required by paragraph (b)(7) must include procedures to ensure that, in relation to the carriage of a person in lawful custody on a regular air transport passenger service,—

- (1) the person is escorted; and
- (2) the escort confirms that the person is not carrying any item that may be used as a weapon; and

- (3) the escort is equipped with adequate devices for restraining the person; and
  - (4) the pilot-in-command and senior flight attendant are notified of the location of, and the security arrangements for, the person; and
  - (5) alcoholic beverages are not served to the person or the person's escort; and
  - (6) metal utensils are not provided for the person's use; and
  - (7) the person is not seated in a seat or seat row next to an emergency exit; and
  - (8) the person is seated appropriately to ensure safe conduct of the flight is achieved; and
  - (9) no more than 1 person in custody is carried on an aircraft with a certificated passenger seating capacity of 29 seats or less and no more than 1 additional person in custody is carried for each additional 25 seats of certificated passenger seating capacity.
- (g) If a domestic air operator undertakes passenger or baggage check-in on behalf of an international air operator, or for transshipment onto an international regular air transport passenger service, the international air operator must ensure that the domestic air operator complies with the international air operator's security programme.
- (h) Paragraph (b)(16) does not apply to international transfer and transit baggage unless the Minister or the Director requires such baggage to be screened.
- (i) The requirements of paragraph (c)(1) and (2) do not apply to—
- (1) diplomatic mail that is carried in a diplomatic bag that is externally marked to identify its character and is accompanied by signed documentation from an official of the dispatching diplomatic agency; or
  - (2) international transfer and transit cargo or mail.

(j) The requirements of paragraphs (c)(1) and (2), (d) and (e) do not apply to an air operator until 9 April 2009.

## **Consultation Details**

*(This statement does not form part of the rules contained in Part 108. It provides details of the consultation undertaken in making the rules.)*

Industry groups and organisations informally consulted during the development of amendments to Part 108 included: the Board of Airline Representatives of New Zealand (Inc); Air New Zealand; the Customs Brokers and Freight Forwarders Federation (Inc); New Zealand Post; Conference of Asia Pacific Express Carriers; and United Airlines.

Government departments that were consulted included the Ministry of Transport, Aviation Security Service, Ministry of Agriculture and Forestry and the New Zealand Customs Service. Several meetings were held with these organisations to discuss the proposed rule and any overlaps with existing requirements from the various agencies.

A Notice of Proposed Rulemaking, NPRM 07-07 Part 109 – Regulated Air Cargo Agent - Certification, containing the proposed amendments to Part 108 was issued for public consultation under Docket 4/CAR/3 on 03 July 2007.

Eleven responses to the NPRM were received. All of the submissions were from organisations. The CAA considered the submissions and comments and as a result amended the rules where appropriate. The details relating to the submissions received and the CAA responses are contained in the primary Rule Part 109. The submissions and all background material used in developing the rules are held on the docket file and are available for public inspection at Aviation House, 10 Hutt Road, Petone. Persons wishing to view the docket should contact the Docket Clerk on Phone (04) 560 9603 and ask for docket 4/CAR/3.