



PURSUANT to Sections 28 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**

A handwritten signature in black ink, appearing to read 'Harry James Duynhoven', written over a large, stylized, abstract graphic that resembles a signature or a logo.

Minister for Transport Safety

Civil Aviation Rules

Part 109 Initial Issue

Regulated Air Cargo Agent - Certification

Docket 4/CAR/3

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Rule objective

The objective of Rule Part 109 is to establish new rules for the certification and operation of regulated air cargo agents.

This new Rule Part is proposed to ensure that security controls are applied to cargo and mail carried on international passenger aircraft in order to:

- give the appropriate degree of protection to passengers and crew of international passenger aircraft, and
- preserve New Zealand's reputation as a safe point of origin for cargo with our international aviation partners, and
- meet international treaty obligations under the Convention on International Civil Aviation Annex 17 (Security) that will assist in ensuring the security of civil aviation from and within New Zealand.

The security objective of Rule Part 109 is to prevent, as far as possible, weapons, explosives or other articles or substances being loaded as cargo or mail onto international passenger aircraft that could be used for committing an act of unlawful interference.

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 the 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 Rule Part 109 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. The submissions and comments on new Rule Part 109 were considered and as a result the following changes were made to the rule:

- the screening procedures required by rule 109.57 were amended to include a process for assessing the significance of a screening system failure and the actions to be taken regarding the effect that the failure may have on cargo that has already been screened;

- the authorisation procedures required by rule 109.59 were amended to include procedures for implementing the known customer procedures and entering a known customer into the known customer register. The rule was also amended to require authorisations for people who enter an access controlled area for purposes;
- the definition of ‘access controlled’ and rule 109.71(a)(9)(viii) were amended as a result of the amendments to rule 109.59;
- the known customer procedures required under rule 109.61 were amended to change the requirement to ensure the consignment is ‘sealed’ to ‘protected’ and the requirements for ‘sealing’ were removed;
- the requirement to update the known customer register following certain changes was amended from 21 days to as soon as practicable;
- the requirement to hold records for every item of cargo or mail prescribed by rule 109.67(1) was deleted, as was the requirement for records relating to the training provided to a known customer;
- the requirement to retain a declaration of security for at least 2 years was amended to 31 days unless required by the Director for a longer period for the purpose of a security incident investigation;
- the requirements for a declaration of security in Appendix A were amended to clarify the requirements around dangerous goods;
- the word ‘standard’ in reference to a test piece was removed from Appendix B; and
- minor editorial and grammatical amendments and small amendments to clarify the requirements were made.

As a result of further internal CAA review, the rule was also amended to:

- require the applicant under rule 109.105 to notify the CAA and gain acceptance from the Director for changes to the authorisation procedures required under rule 109.59, the

procedures and register for a known customer under rule 109.61, and the internal quality assurance procedures required under rule 109.69;

- require the statement of content to be retained for 31 days unless required by the Director for a longer period for the purpose of a security incident investigation;
- add new rule 109.109 which prescribes requirements for entry into an access controlled area;
- increase the grading levels for screening training required under Appendix C;
- make minor editorial and grammatical amendments.

The rule as amended was then referred to Parliament's Regulations Review Committee for review. As a result of comments by Regulations Review Committee, rules 109.57 and 109.63 were amended to cross-reference Appendices B and C into the relevant rule and the requirement for a screening method to meet standards acceptable to the Director was deleted from rule 109.57. A further amendment to Appendix A was made to clarify the requirements of the declaration of security. 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.

Effective date of rule

New Rule Part 109 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 109 — Regulated Air Cargo Agent — Certification

Subpart A — General

109.1 Purpose

(a) This Part prescribes rules governing the certification and operation of an organisation providing the services of a regulated air cargo agent for cargo or mail that is required to be accompanied by a declaration of security for carriage by air on an aircraft carrying passengers.

(b) In this Part, any requirement relating to cargo or mail for carriage by air only relates to cargo or mail that is intended for carriage by air on an aircraft conducting an international regular air transport passenger service.

109.3 Definitions

In this Part—

Access controlled, in relation to a particular area, means an area that is secured in a manner that prevents the entry of any unauthorised person.

109.5 Requirement for certificate

A person must not act as a regulated air cargo agent to provide a consignment of cargo or mail to an air operator for carriage by air except under the authority of a regulated air cargo agent certificate granted in accordance with this Part, if the cargo or mail is carried on an aircraft conducting an international regular air transport passenger service.

109.7 Application for certificate

An applicant for the grant of a regulated air cargo agent certificate must complete form CAA 24109/01 and submit it to the Director with—

- (1) the applicant's exposition required under rule 109.71; and
- (2) if applicable, a payment of the appropriate application fee prescribed by regulations made under the Act.

109.9 Grant of certificate

Subject to section 9 of the Act, an applicant is granted a regulated air cargo agent certificate if the Director is satisfied that—

- (1) the applicant meets the requirements of Subpart B; and
- (2) the applicant, and the applicant's senior person or persons required by rule 109.51 are fit and proper persons; and
- (3) granting the certificate is not contrary to the interests of aviation safety or security.

109.11 Privileges of certificate holder

A regulated air cargo agent certificate authorises the holder to act as a regulated air cargo agent to issue a declaration of security for a consignment of cargo or mail that is to be carried by air on an aircraft conducting an international regular air transport passenger service.

109.13 Duration of certificate

- (a) A regulated air cargo agent certificate may be granted or renewed for a maximum period of 5 years.
- (b) A regulated air cargo agent certificate remains in force until it expires or is suspended or revoked.

109.15 Renewal of certificate

An application for the renewal of a regulated air cargo agent certificate must be submitted to the Director before the application renewal date specified in the certificate or, if no such date is specified, not less than 30 days before the certificate expires.

Subpart B – Certification requirements

109.51 Personnel requirements

- (a) An applicant for the grant of a regulated air cargo agent certificate must employ, contract, or otherwise engage—
 - (1) a senior person, identified as the chief executive, who—

- (i) has the authority within the applicant's organisation to ensure that every activity undertaken by the organisation is financed and carried out to meet applicable operational requirements; and
 - (ii) is responsible for ensuring that the organisation complies with the requirements of this Part; and
 - (2) a senior person or persons responsible to the chief executive for ensuring that the applicant's organisation complies with its exposition; and
 - (3) sufficient personnel to implement the cargo and mail security control procedures detailed in the applicant's exposition.
- (b) An applicant for the grant of a regulated air cargo agent certificate must establish procedures for assessing and maintaining the competence of those personnel who are authorised to carry out work relating to security control for cargo or mail as specified in the applicant's exposition.

109.53 Facility requirements

An applicant for the grant of a regulated air cargo agent certificate must provide facilities that are appropriate for the following activities that may be applicable to the services that are to be provided by the applicant:

- (1) receiving, and applying security controls to, cargo or mail from a person who is not a known customer:
- (2) receiving a consignment of cargo or mail from a known customer and checking the consignment and associated documentation:
- (3) storing a consignment of cargo or mail that has undergone the required security controls in an access controlled area to protect the consignment from tampering:
- (4) delivering a consignment of cargo or mail from the air cargo agent's access controlled storage area to the air operator,

including a means to ensure that the consignment is not tampered with.

109.55 Cargo and mail security control procedures

(a) An applicant for the grant of a regulated air cargo agent certificate must establish security control procedures for ensuring that—

- (1) every consignment of cargo or mail that is accepted by the regulated air cargo agent for carriage by air from a person who is not a known customer has security controls applied to it in order to prevent any weapon, explosive, or other dangerous device, article or substance that may be used to commit an act of unlawful interference being carried in the consignment; and
- (2) every consignment of cargo or mail that is accepted by the regulated air cargo agent for carriage by air from a known customer is—
 - (i) accompanied by a statement of content; and
 - (ii) checked to ensure that the consignment has not been tampered with; and
- (3) the statement of content required under paragraph (2) for each consignment of cargo or mail is checked to ensure that—
 - (i) the consignment of cargo or mail does not contain any weapon, explosive, or other dangerous device, article or substance that may be used to commit an act of unlawful interference; and
 - (ii) the statement of content is identified as originating from the known customer; and
- (4) every consignment of cargo or mail that is accepted by the regulated air cargo agent and has had security controls applied to it under paragraphs (1), or (2) and (3) is held in an access controlled area until the consignment leaves the

access controlled area for delivery to the air operator who is to carry the consignment on the air operator's aircraft; and

- (5) every consignment of cargo or mail that is delivered to an air operator for carriage on the operator's aircraft is—
 - (i) accompanied by a declaration of security that meets the requirements of Appendix A.1 and is signed by a person who is authorised in accordance with rule 109.59 to sign the declaration of security; and
 - (ii) protected from any act of tampering from the time the consignment leaves the regulated air cargo agent's access controlled area until the time that the consignment is accepted by the air operator.

(b) A person who is to implement any of the security control procedures required by paragraph (a) must be appropriately trained, and hold an appropriate authorisation issued in accordance with rule 109.59.

109.57 Screening procedures

(a) An applicant for the grant of a regulated air cargo agent certificate who intends to screen cargo or mail as part of the security control procedures required under rule 109.55 must establish procedures for screening in accordance with Appendix B.

- (b) The procedures required under paragraph (a) must—
- (1) identify, and be applicable to, the particular screening method to be used; and
 - (2) detail the processes that must be followed by the person carrying out the screening; and
 - (3) require that every person must be appropriately authorised in accordance with rule 109.59 for the particular screening method; and
 - (4) include a programme and procedures for periodically testing the screening method, including the persons performing the screening; and

- (5) for screening methods that use technical equipment, include a maintenance programme for the equipment, including if applicable, procedures to periodically test the integrity of the screening equipment; and
- (6) include a process for assessing the significance of a screening method failure and the actions to be taken regarding the effect that the failure may have on cargo that has already been screened.

109.59 Authorisation procedures

(a) An applicant for the grant of a regulated air cargo agent certificate must establish procedures for the issue of an authorisation to every person who carries out any of the following security control functions that are applicable to the applicant's proposed activities:

- (1) screening cargo or mail in accordance with the procedures required under rule 109.57:
- (2) applying the security control procedures required under rule 109.55(a)(1) to cargo or mail that is accepted from a person who is not a known customer:
- (3) checking a consignment of cargo or mail, and statement of content received from a known customer in accordance with the security control procedures required by rule 109.55(a)(2) and (a)(3):
- (4) accessing a consignment of cargo or mail that is held in the applicant's access controlled area referred to in rule 109.55(a)(4):
- (5) issuing a declaration of security that is required by rule 109.55(a)(5)(i) for each consignment of cargo or mail:
- (6) delivering a consignment of cargo or mail that is accompanied by a declaration of security, but is not being transported in a 'tamper evident' manner to the air operator in accordance with the security control procedures required by rule 109.55(a)(5)(ii):

- (7) implementing the known customer procedures required under rule 109.61(a) and entering details of the known customer into the known customer register required under rule 109.61(c).
- (b) An applicant for the grant of a regulated air cargo agent certificate must establish procedures for the issue of an authorisation to every person who enters an access controlled area, other than those provided for under rule 109.109(2).
- (c) The procedures required by paragraphs (a) and (b) must include the following:
- (1) an authorisation must not be issued to a person unless—
 - (i) the person has been granted a favourable security check determination by the Director in accordance with section 77F of the Act; and
 - (ii) for an authorisation issued under paragraph (a), the person has been appropriately trained in accordance with the regulated air cargo agent's training programme that is required under rule 109.63; and
 - (iii) for an authorisation issued under paragraph (a), the person has been assessed as competent, in accordance with the regulated air cargo agent's training programme required under rule 109.63, to carry out the security control functions for which the authorisation is intended; and
 - (iv) for an authorisation issued under paragraph (b), the person has a knowledge of security requirements for air cargo:
 - (2) every authorisation must be in writing and must include—
 - (i) the name of the person to whom the authorisation is issued; and

- (ii) the security control function or other function that the person is authorised to perform; and
 - (iii) the expiry date of the authorisation:
- (3) an authorisation must not be issued for a period of more than 3 years:
- (4) an authorisation must not be reissued to a person unless the requirements of paragraphs (1), (2) and (3) are complied with.

109.61 Procedures and register for a known customer

(a) An applicant for the grant of a regulated air cargo agent certificate who intends to accept cargo or mail for carriage by air from a known customer must establish procedures for ensuring that—

- (1) the known customer has a knowledge of security matters that relate to the carriage of the known customer's cargo or mail by air; and
- (2) the known customer has appropriate systems and procedures in place for ensuring that—
 - (i) only the intended items of cargo or mail are contained in the customer's consignment of cargo or mail that is forwarded to the applicant's organisation for carriage by air; and
 - (ii) every consignment of cargo or mail that is forwarded to the applicant's organisation is accompanied by a statement of content that can be identified as originating from the known customer; and
 - (iii) every consignment of cargo or mail that is forwarded to the applicant's organisation is protected in a manner that enables the applicant's organisation to readily identify whether the consignment has been tampered with; and

- (iv) the cargo or mail is not tampered with when sent by the known customer to the applicant's organisation.
- (b) The procedures required under paragraph (a) must include the means for the applicant's organisation to ensure that the requirements under paragraph (a) continue to be met.
- (c) An applicant for the grant of a regulated air cargo agent certificate who intends to accept consignments of cargo or mail for carriage by air from a known customer in accordance with the procedures required by paragraph (a) must establish a register of known customers and record for each known customer:
 - (1) the customer's current name (and/or business name if appropriate);
 - (2) the current name and details of the principal contact person;
 - (3) the customer's current address, and applicable facsimile, email and telephone numbers.

109.63 Training of personnel

- (a) An applicant for the grant of a regulated air cargo agent certificate must establish a training programme for ensuring that—
 - (1) every person who has access to a consignment of cargo or mail that has been accepted by the applicant's organisation for carriage by air has the appropriate training in the security control procedures for the storage and transportation of the consignments; and
 - (2) every person who carries out a security control function in relation to cargo or mail that is accepted by the applicant's organisation for carriage by air is appropriately trained and assessed as competent to carry out the security control function.
- (b) The training programme required under paragraph (a) must contain—
 - (1) applicable segments for —

- (i) initial training; and
 - (ii) recurrent training; and
 - (iii) competency assessment; and
- (2) syllabi for each applicable security control function and segment of training.
- (c) The training programme required by paragraph (a) must ensure that every person who is required to be trained undertakes the recurrent training segment of the training programme at an interval of not more than 3 years.
- (d) The training programme for a person who carries out a security control function that includes screening must include the standards prescribed in Appendix C.

109.65 Cargo security incident

An applicant for the grant of a regulated air cargo agent certificate must establish procedures—

- (1) for notifying, investigating and reporting, any cargo security incident that is associated with the applicant's activities, in accordance with Part 12, and
- (2) for implementing corrective actions to eliminate the cause of a cargo security incident and prevent its recurrence.

109.67 Records

(a) An applicant for the grant of a regulated air cargo agent certificate must establish procedures for identifying, collecting, indexing, storing, maintaining, and disposing of the records that are necessary to provide an accurate record for—

- (1) every consignment of cargo or mail that is delivered under the authority of a declaration of security to an air operator for carriage by air, including a copy of the declaration; and
- (2) every person who is required under rule 109.63 to be trained, including details of each segment of training that is undertaken; and

- (3) every person who is issued with a written authorisation under rule 109.59, including details of the person's training and competency assessment, authorisation, and the security check determination required under rule 109.59(c)(1)(i); and
 - (4) every known customer who is entered in the register required by rule 109.61(c), including details of continued compliance as required by rule 109.61(b); and
 - (5) every investigation relating to a cargo security incident investigation carried out under rule 109.65; and
 - (6) every internal quality assurance review that is carried out under rule 109.69.
- (b) The records required under paragraph (a) must be—
- (1) accurate, legible and of a permanent nature; and
 - (2) in the interest of aviation security—
 - (i) for records required by paragraphs (a)(2) and (3), retained for a maximum period of 2 years from the date that the affected person ceases to work for or be associated with the regulated air cargo agent; and
 - (ii) for a statement of content or declaration of security, retained for at least 31 days unless required by the Director for a longer period for the purposes of a security incident investigation.

109.69 Internal Quality Assurance

- (a) An applicant for the grant of a regulated air cargo agent certificate must establish an internal quality assurance system for ensuring compliance with, and the adequacy of, the procedures required under this Part.
- (b) The internal quality assurance system must include—
- (1) a security policy and security policy procedures, including corrective action procedures for eliminating the cause of any cargo security incident that is investigated under rule 109.65 to prevent a recurrence; and

- (2) a procedure for ensuring that quality indicators including rates of security control breaches, and personnel and customer feedback, are monitored to identify existing problems or potential causes of problems within the internal quality assurance system; and
 - (3) a procedure for corrective action for ensuring that a problem that has been identified within the internal quality assurance system is corrected; and
 - (4) a procedure for preventive action for ensuring that a potential cause of a problem that has been identified within the internal quality assurance system is remedied; and
 - (5) an internal audit programme for the applicant's organisation for ensuring conformity with the procedures in the applicant's exposition and to achieve the goals set out in the security policy; and
 - (6) management review procedures, that include the use of statistical analysis if appropriate, to ensure the continuing suitability and effectiveness of the internal quality assurance system in satisfying the requirements of this Part.
- (c) The senior person who is responsible for internal quality assurance must have direct access to the chief executive on matters affecting the security of cargo or mail for carriage by air.

109.71 Organisation exposition

- (a) An applicant for the grant of a regulated air cargo agent certificate must submit to the Director for acceptance, an exposition containing—
- (1) a statement signed by the chief executive on behalf of the applicant's organisation confirming that—
 - (i) the exposition defines the organisation and demonstrates its means and methods for ensuring ongoing compliance with this Part; and
 - (ii) the exposition, and every associated manual, and operating, and security control procedure, must be

complied with by the organisation's personnel at all times; and

- (2) the titles and names of the senior person or persons referred to in rule 109.51(a)(1) and (2); and
- (3) the duties and responsibilities of the senior person or persons referred to in paragraph (2), including matters for which they have responsibility to deal directly with the Director on behalf of the organisation; and
- (4) an organisation chart showing lines of responsibility of the senior persons referred to in paragraph (2) and covering each location referred to in paragraph (6); and
- (5) a summary of the organisation's staffing structure at each location referred to in paragraph (6); and
- (6) a summary of the scope of activities at each location where the organisation's personnel are based for carrying out security control functions relating to cargo and mail; and
- (7) a summary of the facilities provided at each location referred to in paragraph (6) that meets the requirements of rule 109.53; and
- (8) the detailed procedures required under rule 109.69 regarding internal quality assurance; and
- (9) the detailed procedures, or an outline of the procedures including information that identifies the documentation that contains the detailed procedures, that are required under—
 - (i) rule 109.51(b) regarding the competence of personnel; and
 - (ii) rule 109.55(a)(1) regarding the acceptance and application of security controls to cargo or mail received from a person who is not a known customer; and

- (iii) rule 109.55(a)(2) and (3) regarding the acceptance of consignments of cargo or mail from a known customer; and
 - (iv) rule 109.55(a)(4) regarding the holding of a consignment of cargo or mail in an access controlled area; and
 - (v) rule 109.55(a)(5)(i) regarding the provision of a declaration of security for a consignment of cargo or mail that is delivered to an air operator; and
 - (vi) rule 109.55(a)(5)(ii) regarding the protection of a consignment of cargo or mail from an act of tampering during the delivery of the consignment to the air operator; and
 - (vii) rule 109.57 regarding the screening of cargo or mail; and
 - (viii) rule 109.59 regarding the issue of an authorisation to personnel; and
 - (ix) rule 109.61 regarding the requirements for a known customer; and
 - (x) rule 109.63 regarding the training programme; and
 - (xi) rule 109.65(1) regarding the notification, investigation and reporting of a cargo security incident; and
 - (xii) rule 109.65(2) regarding the implementation of a corrective action to eliminate the cause of a cargo security incident and prevent its recurrence; and
 - (xiii) rule 109.67 regarding the identification, collection, indexing, storage, maintenance and disposal of records; and
- (10) Details of procedures for—

- (i) controlling, amending, and distributing the exposition; and
 - (ii) ensuring that the exposition meets the applicable requirements of this Part; and
 - (iii) ensuring that the Director is provided with a copy of every amendment to the exposition as soon as practical after the amendment is incorporated into the exposition.
- (b) The exposition must remain acceptable to the Director.

Subpart C Operational requirements

109.101 Continued compliance

The holder of a regulated air cargo agent certificate must—

- (1) continue to meet the standards and comply with the requirements of Subpart B prescribed for certification under this Part; and
- (2) comply with every procedure referred to in the certificate holder's exposition; and
- (3) hold at least one complete and current copy of the certificate holder's exposition at each location where a senior person is based; and
- (4) make each applicable part of the certificate holder's exposition available to personnel who require those parts to carry out their duties; and
- (5) maintain the register of known customers with current information for each of the certificate holder's known customers; and
- (6) subject to rule 109.103, suspend or remove the name of a known customer from the certificate holder's register of known customers if so requested in writing by the Director; and

- (7) notify the Director in writing of any change of address for service, telephone number, or facsimile number within 28 days of the change; and
- (8) ensure that a person does not perform a security control function under the authority of the holder's certificate unless the person holds an appropriate authorisation issued in accordance with the procedures required under rule 109.59.

109.103 Suspend or remove name of known customer from register

(a) Subject to paragraph (c), the Director may request in writing that the holder of a regulated air cargo agent certificate suspend or remove the name of a known customer from the certificate holder's register of known customers, if the Director is satisfied that—

- (1) the known customer has failed to comply with—
 - (i) a requirement relating to the cargo and security control procedures required by rule 109.55(a)(2), or (3); or
 - (ii) a requirement relating to the procedures and register for known customers required by rule 109.61; and
- (2) it is in the interest of aviation security to suspend or remove the name of the known customer.

(b) The suspension or removal of the name of a known customer from the certificate holder's register of known customers may be for a period specified by the Director or until the Director is satisfied that every requirement that the customer failed to comply with is met.

(c) Subject to paragraph (d), before requesting the suspension or removal of a known customer's name under paragraph (a), the Director must, if the Director proposes to take into account any information that is or may be prejudicial to the known customer, disclose the information to the known customer, and allow the known customer to refute or comment on it, within 30 days of disclosing the information.

(d) The Director is not required to disclose information—

- (1) which may endanger the safety of any person:
- (2) which is not in the interest of aviation security, if disclosed.

109.105 Changes to certificate holder's organisation

(a) Subject to paragraph (b), the holder of a regulated air cargo agent certificate must—

- (1) ensure that its exposition is amended as required, to remain a current description of the certificate holder's organisation, and air cargo security services; and
- (2) ensure that any amendment made to its exposition meets the applicable requirements of this Part; and
- (3) comply with the exposition amendment procedure contained in its exposition; and
- (4) provide the Director with a copy of each amendment to its exposition, as soon as practicable after the amendment is incorporated into the exposition; and
- (5) make such amendments to its exposition as the Director may consider necessary in the interests of aviation security.

(b) If the holder of a regulated air cargo agent certificate changes, or proposes to change, any of the following, the certificate holder must notify the Director prior to the change or as soon as practicable if prior notification is not possible, and the change must be accepted by the Director, including applicable fit and proper person criteria under section 10 of the Act, before being incorporated into the certificate holder's exposition:

- (1) the person identified as the chief executive:
- (2) the title or name of any senior person specified in the exposition as required by rule 109.71(a)(2):
- (3) the cargo and mail security procedures required by rule 109.55:

- (4) the screening procedures required by rule 109.57:
 - (5) the authorisation procedures required by rule 109.59:
 - (6) the procedures for a known customer required by rule 109.61:
 - (7) the internal quality assurance procedures required by rule 109.69.
- (c) The Director may impose conditions under which the holder of the regulated air cargo agent certificate may operate during or following any of the changes specified in paragraph (b).
- (d) The holder of an air cargo agent certificate must comply with any condition imposed by the Director under paragraph (c).
- (e) If any of the changes under paragraph (b) requires an amendment to the air cargo agent certificate, the certificate holder must forward the certificate to the Director as soon as practicable for endorsement of the changes.

109.107 Persons to issue declaration of security

A person must not issue a declaration of security to an air operator for a consignment of cargo or mail to which this Part applies unless—

- (1) the person holds a valid written authorisation from the holder of a regulated air cargo agent certificate to issue the declaration; and
- (2) the person issues the declaration of security—
 - (i) under the authority of the regulated air cargo agent certificate; and
 - (ii) in accordance with the certificate holder's procedures for issuing the declaration; and
- (3) the consignment of cargo or mail has been subjected to the security control procedures detailed in the certificate holder's exposition.

109.109 Entry to access controlled area

The holder of a regulated air cargo agent certificate must not permit a person to enter, and a person must not enter an access controlled area unless—

- (1) the person holds a valid written authorisation issued in accordance with the procedures required under rule 109.59(b); or
- (2) the person is accompanied by a person who holds an authorisation referred to in paragraph (1).

Appendix A — Declaration of Security

A.1 Declaration of security

A declaration of security must relate to a particular consignment of cargo or mail and include the following information:

- (1) the identity of the regulated air cargo agent under whose certificate the declaration is issued:
- (2) the destination of the consignment:
- (3) the identity of the air operator to whom the consignment is delivered:
- (4) the date that the consignment is delivered to the air operator:
- (5) a declaration that the consignment has been subjected to the security controls specified both in Civil Aviation Rule Part 109 and in the regulated air cargo agent's exposition and these have not detected any weapon, explosive, or other dangerous goods except for those listed under paragraph (8):
- (6) the identity of the person who is authorised to issue the declaration, by name and signature:
- (7) an acknowledgement that a false declaration is an offence:
- (8) a list of any weapon, explosive or other dangerous good contained within the consignment.

Appendix B — Screening Standards

B.1 Screening methods

(a) Cargo or mail that is screened or is required to be screened may be screened by use of 1 or more of the following methods:

- (1) conventional x-ray equipment:
- (2) advanced technology x-ray explosives detection system (AT-EDS):
- (3) explosive trace detection (ETD) systems:
- (4) explosive detection dogs:
- (5) computed tomography:
- (6) physical inspection:
- (7) any other screening technology or method acceptable to the Director.

(b) Screening equipment must be situated in an access controlled area.

B.2 Periodic testing

(a) Every method of screening must be subject to periodic testing using a test piece to ensure the ongoing integrity of the screening process.

(b) A test piece must be—

- (1) appropriate for the particular screening method being tested; and
- (2) representative of an unauthorised article that the screening method is intended to detect; and
- (3) acceptable to the Director.

(c) If a periodic test is intended to test the proficiency of a person performing the screening, the test must be carried out—

- (1) without prior notice to the person who is performing the screening; and
- (2) by placing the test piece used for the test among other items of cargo or mail being screened; and
- (3) in a manner that gives the person being tested reasonable opportunity to detect the test piece.

Appendix C — Training Standards

C.1 Grading system and training

(a) The grading system of the level of competence specified in paragraph (b) is as follows:

- (1) grade 1 denotes awareness of the subject:
- (2) grade 2 denotes a basic knowledge of the subject:
- (3) grade 3 denotes the ability to apply a basic knowledge of the subject in a situation that is likely to arise in the course of the person's duties:
- (4) grade 4 denotes the ability to apply a thorough knowledge of the subject in a situation likely to arise in the course of the person's duties:
- (5) grade 5 denotes the ability to apply a thorough knowledge of the subject and to exercise sound judgement in situations likely to arise in the course of the person's duties.

(b) The topics that personnel who undertake screening functions are required to be trained on are as follows:

- (1) **Screening and search of cargo or mail:**
 - (i) to outline the general principles governing the screening and search of cargo, to grade 4; and
 - (ii) to be familiar with and proficient in the use of the screening equipment provided by the certificate holder, to grade 5; and
 - (iii) to have practical experience with the procedures and methods for screening and search of cargo, to grade 5.
- (2) **Improvised explosive devices** as they affect civil aviation to give a person who carries out screening an understanding of improvised explosive devices likely to be encountered in cargo or mail, to grade 3.

- (3) **The threat factor** to update a person who carries out screening on the current terrorist and criminal trends, to grade 2.
- (4) **Historical background and statistics of acts of unlawful interference** to provide personnel with knowledge of the evolution of aviation security and the extent of occurrences, to grade 1.

Consultation Details

(This statement does not form part of the rules contained in Part 109. It provides details of the consultation undertaken in making the rules.)

Notice of Proposed Rule Making (NPRM) 07-07 was issued for public consultation on 3 July 2007 with a submission close-off date of 13 August 2007. Four organisations requested, and were granted, an extension to 31 August 2007.

The purpose of NPRM 07-07 was to:

- establish a new Rule Part 109 for the certification and operation of regulated air cargo agents (RACAs); and
- establish additional rules for air operators to ensure that cargo and mail carried on international passenger flights are subjected to appropriate security controls.

The new Rule Part and amendments to existing Rule Parts were proposed to ensure that security controls are applied to cargo and mail carried on international passenger aircraft in order to:

- give the appropriate degree of protection to passengers and crew of international passenger aircraft, and
- preserve New Zealand's reputation as a safe point of origin for cargo with our international aviation partners, and
- meet international treaty obligations under the Convention on International Civil Aviation Annex 17 (Security) that will assist in ensuring the security of civil aviation from and within New Zealand.

A copy of the NPRM was sent to:

- Air New Zealand
- Aviation Industry Association
- Aviation Security Service

- Board of Airline Representatives New Zealand (Inc)
- Conference of Asia Pacific Express Carriers
- Customs Brokers & Freight Forwarders Federation of New Zealand
- DHL Express (Australia) Pty Ltd
- DHL Express (NZ) Ltd
- Directorate of Legal Services
- Environmental Risk Management Authority NZ
- Export New Zealand
- Fedex Express
- Hellmann Worldwide Logistics Ltd
- International Forwarders Association Inc
- Legal Deposit Office
- Ministry of Agriculture and Forestry
- Ministry of Transport
- New Zealand Customs Service
- New Zealand Post Ltd
- Pacific Blue
- Qantas Airways Ltd
- Singapore Airlines Cargo
- TNT Express Worldwide (NZ) Ltd

The NPRM was published on the CAA website on 4 July 2007.

A total of 11 submissions were received. Submissions were received from:

- Air New Zealand
- Aviation Security Service
- Board of Airline Representatives New Zealand (Inc) and Air Cargo Council
- Conference of Asia Pacific Express Carriers
- Customs Brokers & Freight Forwarders Federation of New Zealand
- DHL Global Forwarding (NZ) Ltd
- Environmental Risk Management Authority NZ
- New Zealand Defence Force
- New Zealand Post Ltd
- Panalpina
- Qantas Airways Ltd

Two submissions made no comment on the draft rule.

Three submitters said the proposal was acceptable but would be improved with the changes they suggested.

One submission was received that stated the proposal was unacceptable but would be acceptable if the changes they suggested were made.

Five submitters stated that they agreed in principle with the introduction of the proposed Part 109 and the Regulated Air Cargo Agent (RACA) concept.

This summary of submissions is divided into three parts:

1. the general subject areas which submitters commented on,
2. specific rules addressed by submitters, and
3. additional changes made by the CAA after further review.

The following abbreviations have been used in the summary:

Act means the Civil Aviation Act (1990):

Annex 17 means the Convention on International Civil Aviation Annex 17 (Security) 8th Edition incorporating Amendment 11:

Avsec means the Aviation Security Service:

CAA means the New Zealand Civil Aviation Authority:

IATA means the International Air Transport Association:

ICAO means the International Civil Aviation Organization:

RACA means Regulated Air Cargo Agent.

Summary of Submissions

Subject area

Air Operators

One submitter suggested that the air operators should become RACAs and share the responsibility for aviation security with the government. The submitter further suggested that the CAA should introduce tightened security regulations that comply with Annex 17 for air operators.

CAA Response

The CAA disagrees that air operators should become RACAs, although there is nothing in Part 109 to prevent them from becoming so. It should be noted however, that as part of the introduction of Part 109, the Part

108 – Air Operator Security Programme has been amended to require that air operators establish appropriate facilities and procedures that are equivalent to those required of RACAs under Part 109, if they accept cargo or mail from a person who is not a RACA. Air operators are therefore required to meet similar standards to RACAs and share the responsibility for the security of cargo and mail with the RACAs and the known customers.

Part 109 has been specifically developed in a manner that allows New Zealand to ensure its ongoing compliance with Annex 17.

‘Applicant’s organisation’

One submitter deemed that it was unclear whether the ‘applicant’s organisation’ was the RACA itself or, if the RACA was a branch of a multi-location organisation, whether the term referred to the larger organisation of which it may be a part.

CAA Response

The term ‘applicant’s organisation’ occurs in many places in Part 109, as well as in the other aviation organisation certification rules. In this case it refers to the entity holding the RACA certification. This could be the parent organisation or a branch of that organisation. See the comments on the definition of a Regulated Air Cargo Agent in this section for further clarification of this issue.

Aviation threat size

One submission was received regarding the concept of ‘aviation threat size’ that is, the size of individual articles that may pose a security risk to aviation. The submitter suggested that it would be useful for the industry if CAA provided some guidance on what this size is in order to design processes and select technology.

CAA Response

The actual size of articles or substances that constitute a threat to aviation cannot be publically released as it is both confidential and

variable. The Security Unit of the Civil Aviation Authority will provide guidance to the RACAs in this respect and work with them to ensure that their technology and processes, as outlined in their expositions, meet the requirements of Part 109.

Audits of known customers

One submitter stated that it is not proper, practical nor appropriate to expect or require RACAs to security 'audit' their customers, especially when the RACA might have several thousand known customers.

CAA Response

RACAs are not necessarily required to formally audit their known customers under Part 109, however in order to meet the rule requirements they must gain assurance that the known customer is complying with its established procedures and this may entail visiting the known customer's premises from time to time. Rule 109.61(b) requires that the RACA ensures that the requirements of 109.61(a) - such as the known customer has procedures for ensuring that only the intended items of cargo or mail are contained in the customer's consignment of cargo or mail - continue to be met. It is up to the RACA to specify in their exposition how they will comply with the requirements in a way acceptable to the CAA.

If the RACA cannot verify that a known customer is complying with the requirements, the RACA must remove the customer from its known customer register and treat its cargo as unknown.

Chief Executive: See comments in the rule reference section on rule 109.51.

Co-loading by forwarders

One submitter had several questions about co-loading:

- What is the situation whereby one forwarder who is not a RACA co-loads to a RACA?

CAA Response

Should a forwarder have a relationship with the shipper or originator of the goods and not be a RACA, then the air cargo agent who is the RACA will have to authorise that forwarder to undertake the known customer registration on their behalf. The forwarder will be responsible for implementing the known customer procedures and will be operating under the authority of the RACA's certificate when dealing with those known customers. The RACA will be responsible for the freight forwarder's activities in dealing with the known customers and the freight forwarder will have to be provided with the relevant details of the RACA's exposition for registering the known customer. The forwarder will also have to be granted a favourable security check determination by the Director in accordance with 77F of the Act.

In order to clarify the requirements, new rule 109.59(a)(7) has been added to require that the RACA has procedures for issuing authorisations to every person implementing the known customer procedures under 109.61(a) and entering details of the known customer into the known customer register under 109.61(c).

- Can the RACA still undertake the known shipper check and pass the information?

CAA Response

Provided the RACA has authorised a person, whether that person is part of the RACA's organisation or not, the RACA would be ultimately responsible for the known customer/shipper procedures.

- Would the non RACA co-loader be required to be a known shipper to the RACA?

CAA Response

A non RACA co-loader is unable to be a known customer/shipper as they have not packed the consignment themselves therefore they would not be able to certify that the statement of content was correct.

- What is the situation if one RACA co-loads to another RACA?

CAA Response

The Rule does not prevent the normal movement of air cargo from one RACA to another or directly from RACA to the air operator. Provided the security controls have been applied to the cargo or the cargo has come through the known customer procedures and has remained in a secure environment or sealed in a tamper evident manner at all times the cargo can move through a number of RACAs prior to acceptance by the air operator. The originator RACA would be required to complete the declaration of security. As long as the cargo remains in the same state another declaration of security is not required.

If the consignment is consolidated with other consignments into one container/consignment along the supply chain, it is the final consignment/container that has to be covered by a declaration of security from the RACA who is delivering the consignment to the air operator. That final RACA will have to have a reliable statement of contents for the consolidated consignment and that will need to include any individual statements of content for individual consignments within the consolidated consignment.

- What documentation would be required under Part 109?

CAA Response

The documentation required from the known customer is the statement of content. The format or the wording required in the statement of content is not determined by the Rule, however it must provide a description of the content of the cargo sufficient to enable the RACA to verify that it does not contain any weapon, explosive or other dangerous device, articles or substances which may be used to commit an act of unlawful interference.

When a RACA has applied security controls to the cargo or accepted the cargo from a known customer then a declaration of security would be issued by the RACA. The actual format of the declaration of security is up to the RACA to determine but it must include the information prescribed in Appendix A.

Costs

Seven submissions were received on the subject of the cost to industry of the proposed rule. Three submitters provided rough initial cost estimates for implementing and operating under the requirements of Part 109, including costs of various security control methods.

Two submitters commented that other countries have not levied costs on the industry for similar schemes.

CAA Response

There are examples of other States charging for certain services with regards to similar scheme, for example the UK charges known customers £400 for initial registration and £200 for any subsequent visit for enabling registration and South Africa also charges for RACA certification. The purpose of Part 109 however, is to bring air cargo agents into the New Zealand civil aviation system to enable State oversight and regulation of the air cargo supply chain. It is a principle of the aviation system in New Zealand that aviation document holders (as RACAs will be) meet the costs of participation in this system.

Four submitters were concerned that the significant costs involved in becoming a RACA might be a disincentive to getting RACA certification, which has the potential to weaken the overall security outcomes desired. One of the submitters stated that many medium or smaller air cargo agents will not be able to afford the costs associated with certification.

CAA Response

Part 109 certification is not mandatory for air cargo agents; they can choose whether to become certificated under Part 109 or not. If they choose not to become RACAs, the air operators will assume the responsibility of applying the security controls to the 'unknown' cargo or mail. The security outcome required by this rule and rule amendments - that all cargo and mail that is loaded onto international passenger carrying flights has some form of security control applied to

it - will therefore still be met even if air cargo agents decide not to become RACAs under Part 109.

One submitter maintained that the costs identified by the CAA for certification should include the individual security check determination by Avsec which is \$40 per applicant.

CAA Response

Agreed. The CAA will amend the Regulatory Impact Statement section on costs to include this charge.

One submitter noted that the fees identified seemed incongruous when the differences between airline operators and RACAs are taken into account.

CAA Response

The costs identified in the preamble to the draft rules are estimates based on the known costs of certification for other organisations in the aviation system. The costs of compliance for air operators are estimated to be less than those for RACAs because the air operators already have expositions under Part 121 which only need amending, whereas the RACA will have to develop an exposition from scratch. This will require more time for the RACA and input from the CAA, thereby costing the RACA more for certification than the air operators for exposition amendment.

One submitter asserted that given that any assessed threat is against the state and not the industry, it is reasonable and fair that the New Zealand government take up the associated costs of this security programme.

CAA Response

Disagree. Rule Part 109 brings air cargo agents into the civil aviation system to enable State oversight and regulation of the air cargo supply chain. Whilst it is true that this is for security reasons as well as to meet

international security obligations, it is a principle of the aviation system in New Zealand that aviation document holders (as RACAs will be) meet the costs of participation in this system.

Dangerous Goods

CAA received five submissions stating that the requirement for action to be taken when a weapon, explosive or other dangerous device is detected needs to be changed as weapons and explosives can and are carried legitimately as air cargo. This provision occurs in rules 109.55(a)(1) and (3)(i), 12.3(2) Cargo Security Incident and Appendix A 'Declaration of Security' and others. One submitter suggested changing the rule wording so that it focuses on detecting articles or substances that may be used to commit an act of unlawful interference, other than if carried under Part 92.

CAA Response

*While dangerous goods can and are legitimately carried on passenger carrying air operations, the rule requires that security control procedures are applied and action to be taken on those items that **may be used to commit an act of unlawful interference**. This would exclude goods carried under Part 92 – Carriage of Dangerous Goods as they are carried in a controlled and regulated environment. It is still important that any weapons, explosives or goods carried in accordance with Part 92 are detected by the security controls and notified on the declaration of security.*

For clarification, the wording of the declaration of security in Appendix A.1(5) is amended to state 'a declaration that the consignment does not contain any weapon, explosive or other dangerous goods except for those listed below'. In addition, another line (8) is added to state 'a list of any weapon, explosive or other dangerous goods contained in the consignment'.

Dangerous devices: One submitter noted that dangerous devices would include knives, aerosols, etc which while being considered as being potentially dangerous, do not in reality fall under dangerous goods in

the sense of incendiary or explosive devices which is the focus of Annex 17 requirements.

CAA Response

While the CAA agrees that there are some ‘dangerous devices’ that may not fall under the definition of dangerous goods, it is important that any security controls applied to cargo or mail find these items to determine that they are in fact being carried legitimately. Therefore the wording will remain unchanged in the main section of Part 109, however the term ‘dangerous device’ has been removed from the Declaration of Security (see above).

Database of RACAs

CAA received three submissions requesting that the CAA to publish and maintain a database of RACAs.

CAA Response

Agree. The CAA will publish and maintain a database of RACAs which will be publically available on its website: www.caa.govt.nz.

Harmonisation with other States

One submitter questioned whether efforts were made to harmonise New Zealand’s rules with those of the United States.

CAA Response

Yes, where relevant and appropriate.

Known Customer Register

Three submitters considered that maintaining a ‘known customer register’ is not practical and creates difficulties as well as potential liabilities. One submitter thought that the details of known customers should be maintained centrally rather than with each individual RACA,

while another submitter recommended that agents should be required to maintain their own list of known customers rather than a register.

CAA Response

Disagree. The CAA is not involved in approving known customers (other than approving and then monitoring a RACA's known customer management process via certification and ongoing surveillance) and cannot explicitly or implicitly endorse these organisations. Maintaining a central register of known customers would also be inconsistent with the regulatory oversight role of the CAA in the New Zealand aviation system as an appropriate degree of separation from the industry being regulated must be maintained. It may also impact adversely on a RACA's client-vendor relationships which are critical within the cargo supply chain system.

The requirement under Part 109 for a RACA to develop a register of known customers, maintain this as necessary, and ensure appropriate records are kept and made available to the CAA during audit is salient to the security outcomes required and consistent with the approach taken in Australia.

Notwithstanding the above, if a RACA submitted an exposition that included a process for acknowledging an organisation's concurrent or previous acceptance as a known customer by another RACA as part of the means by which it would comply with this rule, then this would be assessed on a case-by-case basis.

One submitter recommended that centralised customer registration through the NZ Customs Secure Export Partner Scheme be made compulsory. The submitter posed that this would make it easier for the customer to change from one agent to another and would also be of benefit for the agents as security breaches could be better captured and updated from a central point.

CAA Response

Disagree. The Customs Secure Exports Scheme is a voluntary scheme for exporters designed to provide assurances to regulatory authorities and importers that their goods are protected against tampering,

sabotage or smuggling. Membership of the scheme is intended to reduce the time taken for Customs inspection/intervention at the border and provide overseas markets with increased confidence in the security of the exports.

This scheme is therefore not designed to address the specific aviation security risk that Part 109 has been developed to mitigate. Further, it is not appropriate to make a scheme compulsory for RACAs when it is voluntary for exporters. The CAA will however, on a case-by-case basis, accept membership of the scheme as meeting some of the requirements of Rule Part 109.

Known customer relationship with RACA

One submitter recommended that a customer should be classified as 'known' based upon the business relationship with the RACA, which may include having an established shipping account and history, and provision of an undertaking to meet some basic handling requirements.

CAA Response

How and on what basis the RACA's relationship with the known customer is established is very much up to the RACA. The RACA must be able to satisfy the CAA that the known customer has knowledge of security matters that relate to the known customers cargo and has appropriate systems and procedures in place to meet the requirements of 109.61(a)(2).

One submitter was concerned about the implications the 'known customer' concept would have on the interaction between exporters and air cargo agents. The submitter deemed that the checking, training, and inspection of their premises required by the rule was inappropriate, impractical and anti-competitive given that the customer has to have this relationship with each of the air cargo agents they use.

CAA Response

As noted above, the RACA must be able to satisfy CAA of the relationship between the known customer and the RACA. The Advisory

Circular provides guidance on an acceptable means of compliance which may require the RACA to visit the known customer's premises. The means by which a RACA is able to satisfy the requirements of 109.61 without visiting the known customer premises would be recorded in the RACA exposition.

The Rule is amended to remove the record keeping requirement of 109.67(a)(5)(i) referring to the training provided for the known customer as the Rule does not require the RACA to train the known customer.

Outcomes based approach

One submitter commented that the CAA's preference for an outcomes-based approach does little to provide clarity and uniformity across the industry and will place pressure on carriers, including putting them at a commercial disadvantage as standards are not always met by all carriers. The submitter further noted that other State regulators such as DOTARs, TSA and DoT set down minimum levels of security measures for industry to follow, with compliance ensured through an audit process which covers the airlines and regulated agents, and recommended that New Zealand adopt a similar approach.

CAA Response

Noted. The outcomes-based methodology is not unique to Part 109; it is a principle of Civil Aviation certification rules. This is in recognition of the fact that prescriptive rule requirements can cause practical difficulties for industry as the participants use different business models and have different, but quite legitimate, ways to achieve the outcomes required.

Compliance by relevant organisations with the requirements contained in the Rule will ensure that an appropriate level of protection is applied to cargo being carried on international passenger aircraft consistent with current international requirements contained in ICAO Annex 17.

In addition, an outcomes based methodology assists in ensuring that airlines operating in the international aviation system are not faced with a potentially duplicative, costly and complex scenario that could result if

New Zealand's rules were unduly prescriptive and not aligned with those applied by other States into whose airspace they are operating. Such a methodology provides air operators with the opportunity to more easily ensure the application of common and mutually recognisable measures that meet both New Zealand and any State of destination requirements.

One submitter fully supported the outcomes based methodology as the approach 'gives maximum flexibility to industry to find the most effective and efficient processes for achieving aviation security requirements, while not compromising on the outcomes that need to be achieved'.

CAA Response

Noted.

RACAs, air operators and CTOs

Two submitters questioned the relationship between Cargo Terminal Operators (CTOs), RACAs and air operators. For example, could a CTO become a RACA as well as an air operator (as the air operator can contract their CTO to accept the responsibilities of the air operator)? If so, would they need to issue a declaration of security to themselves? The submitter further questioned whether the Declaration of Security was a key element in this system.

CAA Response

Where the CTO is contracted by the air operator to undertake the requirements of Rule Part 108 - Air Operator Security Programme, the CTO would not be required to be a RACA. Rule Part 108.51 currently states where any work relating to the air operator security programme is contracted to any other person the contractual provisions must ensure the contractor complies with the air operator's security requirements.

Should a CTO wish to accept cargo from known customers or apply security controls to the cargo and not act on behalf of the air operator but in an independent manner then the CTO could be certified as a RACA.

A declaration of security is required to be completed where the cargo has been subjected to security controls by a RACA, or has come from a known customer or as part of the air operator security programme under rule 108.55. The declaration of security is a key element in notifying the air operator that the cargo has been subjected to the appropriate security controls. It is also used in other ways, for example at overseas ports to provide assurance that the cargo or mail is secure.

In other words, the CTO will have to issue a declaration of security for all cargo or mail that it has screened or applied other security controls to, and so would be issuing this document effectively to itself if it was operating on behalf of an air operator.

Screening of Cargo and Mail

One submitter considered that the proposed legislation was contrary to the government's statutory decision to place all aviation security screening and search functions with Avsec. The submitter outlined the relevant legislation and expressed concern that by allowing other organisations to provide technical security screening, a fragmentation of standards and an increased security risk would result.

CAA Response

The CAA disagrees that the government has made a statutory decision to place all screening and search functions with Avsec.

The Minister has issued a Gazette notice to direct that only Avsec may be granted a certificate to provide 'aviation security services' on security designated aerodromes and security designated navigation installations can only be provided by Avsec. However, aviation security services are not defined in the Act.

It is clear from Annex 17 that ICAO considers that many people have responsibility for aviation security. This seems reasonable when it is considered that many parties have a vested interest in keeping the aviation system, in its entirety, secure. It would not be practical or reasonable if this was the sole responsibility of the government.

It is therefore, logical to assume that the term ‘aviation security services’ cannot be all encompassing but must be a sub-set of the overall activity to achieve a secure aviation system, and that Avsec cannot be solely responsible for this.

Rule Part 109 will allow New Zealand to comply with the ICAO requirements and increase the security of air cargo; the statute should not be interpreted in a way to impede this.

It is noted that the Act allows for the Minister or the Director to require Avsec to screen any thing to be carried by an aircraft. There is currently no direction under section 77A or 77B of the Act to Avsec to screen cargo and mail so this function is not currently assigned to Avsec under the Act. Rule Part 108 is amended to clarify that if a direction is issued under s77 of the Act, it will take precedence over Part 109.

The CAA considers that the implementation of the RACA system is a sensible approach to dealing with low risk, high volume cargo. Internationally this kind of system has worked well, and the submitter’s concerns relating to quality of screening and its privatisation will be dealt with through the CAA’s regulatory oversight of the regime. The formal oversight of RACAs and their processes will ensure that any screening undertaken as part of the security controls applied to unknown cargo/mail meet the appropriate security standards.

One submitter was concerned that the proposed screening processes would be an obstacle to air cargo agents becoming RACAs as they appear to ultimately require the purchase of x-ray machines and the redevelopment of premises to allow for high security areas. The submitter believed this would ultimately have a negative effect on economic development.

CAA Response

Air cargo agents have a choice whether to become RACAs or remain as they are and send their cargo either to a RACA or an air operator as unknown cargo. If they choose to become RACAs they must comply with all of the requirements of Part 109, including applying security controls to all unknown cargo and providing access controlled storage for the

cargo that has undergone the required security controls to protect the cargo from tampering.

Screening by x-ray is only one of a range of screening methods (see Appendix B of the NPRM). A RACA can screen - by x-ray or other methods - unknown cargo themselves, or sub-contract that function to a third party. In this way, the RACA can decide what the most efficient way of running their business would be; this may or may not involve the purchase of x-ray machines.

The outcome sought by Part 109 is that a form of security control is applied to all cargo and mail carried on international passenger flights. The responsibility for ensuring those security controls, which may include screening, are applied to the cargo or mail will fall on the RACA or the air operator.

It should be noted that the access control requirements are internationally accepted best practice for the protection of cargo from the time that security controls have been applied. This Rule requirement brings New Zealand in line with those international practices.

Two submitters noted that while these requirements are mandated only for passenger carrying aircraft, in reality the forwarders will have to apply them to all cargo as they cannot necessarily rely on the cargo or mail being carried on cargo-only freighters.

CAA Response

Noted. The aircraft on which cargo or mail is carried depends entirely on the commercial arrangements within the industry.

Successful RACA schemes

One submitter requested that the CAA provide some guidelines or examples from overseas as to what a successful scheme could look like from a practical point, including what percentage of RACA saturation within the industry works well, and what options exist to resolve any screening issues. The submitter would also like clarification around

facilitation benefits or other incentives as envisaged by the CAA in return for RACAs commitment to increased security levels.

CAA Response

The purpose of this rule is to achieve the outcome of increased security of cargo and mail carried on international passenger flights in order to provide the appropriate level of protection to passengers and crew. The actual degree of RACA saturation in the industry or provision of benefits/incentives is not relevant to achieving this outcome as the security controls required will have to be applied by the air operators if air cargo agents choose not to become RACAs.

Training: See comments on Appendix C.

Transshipments: See comments on rule 108.55(i)(4).

Preamble

The CAA received four comments on the preamble. The comments dealt with:

- Noting that all outgoing international air mail is currently being screened by Avsec prior to loading on passenger aircraft;
- Wording in the air security diagram;
- The meaning of ‘operational cooperation’; and
- The phrase ‘whole of government approach’

As the issues raised are minor and relate solely to the preamble (which is not included with the final rules) they are not reproduced here.

Rule Reference

Part 1 – Definitions and Abbreviations

Regulated air cargo agent: The CAA received one submission whereby the submitter believed that the proposed definition of ‘regulated air cargo agent’ could be interpreted to mean that it is the organisation as an entity that becomes the RACA rather than a specific location or branch. The submitter posed that this could cause problems in a large multi-location organisation where only one or some of its branches wished to become RACAs, and recommended that the definition be amended to make it clear that an organisation can nominate branches/operations within its organisation as being those to which the company’s RACA applies. The submitter also suggested that the definition clarifies that a licence covers branches with a wholly owned company or entity, not separate operations within a joint venture arrangement.

CAA Response

The organisation holding the regulated air cargo agent certificate could be the organisation as a whole or it could be a branch of the parent organisation. If the parent organisation holds the RACA certificate then it can identify in the exposition under 109.71(a)(6) which of its branches carry out the cargo security control functions. The parent organisation certificate does not have to include all branches of the organisation if they are not delivering cargo or mail to an air operator for carriage on an international passenger flight.

This is consistent with other Rule Parts covering certification for participants in the civil aviation system such as air operators and maintenance organisations. If one of the branches of a multi-location organisation holds the RACA certification, it must meet all of the outcomes and requirements of Part 109, including having a person nominated as a Chief Executive who is responsible for the financing of the organisation and ensuring it complies with its exposition.

The CAA disagrees that the definition of regulated air cargo agent should be amended, however the Advisory Circular will be updated to clarify the requirements, including clarification of rule 109.71(a)(6) which states that the exposition can contain a summary of the scope of the activities in each location where personnel are based.

Exemptions: One submitter maintained that the wording of the legislation must include ‘exemptions’ which are defined in ICAO Annex 17. The submitter listed these items and also suggested a few more items that should be exempt such as perishable products where examination would cause damage to that product or dangerous goods where the examination of those goods would expose the examiner to unreasonable risk of injury or harm.

CAA Response

CAA agrees that certain items are not required to be subjected to security screening due to the nature of those items but they may still require other security control measures to be applied. International guidelines have been set in regards to the exact nature of the items that are not required to be screened and the publication of those items. As the list of the items is security sensitive information it will be not be published in publicly available documentation but will be made available to RACAs on a restricted basis.

Note that ‘exemption’ has a specific meaning under section 37 the Civil Aviation Act 1990 therefore the CAA uses the word ‘exceptions’ with reference to the Rules.

Security control: One submitter recommended that the words ‘or at an aerodrome’ should be deleted as there is no need to ban dangerous goods or weapons at aerodromes – the rules should apply to airside where they can be loaded onto aircraft.

CAA Response

Disagree. The definition of the term security control is taken from ICAO Annex 17 Standards and Recommended Practices for Safeguarding International Civil Aviation Against Acts of Unlawful Interference. The term relates to the prevention of the introduction of weapons etc to aircraft and aerodromes that may be used to commit an act of unlawful interference. Where a weapon or explosive etc is legally permitted to be in the aircraft or aerodrome the requirements of those legal provisions

such as Rule Part 92 or the Arms Act 1983 prevent the items from being used to commit an act of unlawful interference.

Unlawful interference: One submitter stated that this definition must be in accordance with internationally accepted standards.

CAA Response

As noted in the preamble to the NPRM, the Aviation Crimes Act 1972 and the Civil Aviation Act 1990 already prescribe some of the acts of unlawful interference which are identified in the ICAO definition. Those Acts take precedent over the Rules so the definition of 'unlawful interference' for Part 109 must align with the Acts rather than with ICAO. However all of the elements of the ICAO definition of 'unlawful interference' are prescribed in New Zealand legislation between the Aviation Crimes Act 1972, the Civil Aviation Act 1990 and Rule Part 109.

Part 12 – Accident, Incident and Statistics

12.3 Definitions

Cargo Security Incident: One submitter noted that this rule as currently worded would include every shipment that has evidence of damage and/or pilferage. The submitter commented that this would be too onerous and recommended the wording be changed to '...there is evidence of tampering or suspected tampering with the cargo or mail which could be suspected to be an act and/or attempted act of unlawful interference with aviation security'.

CAA Response

Agreed. The Rule has been amended to include after mail "which could be suspected to be an act or an attempted act of unlawful interference".

Part 108 – Air Operator Security Programme

108.55(c)

Uploading cargo and mail: One submitter was concerned that this rule does not expressly state that it relates only to international flights.

CAA Response

The title of rule 108.55 is Security Requirements – International so the individual paragraphs underneath the rule do not need to reiterate this.

108.55(d) and (e)

One submitter suggested that instead of requiring the air operator to meet the same requirements as RACAs without being certificated, a more suitable approach would be to require air operators certified under Parts 119 or 129 to demonstrate to the CAA (and document in their Air Operator Security Programme) that sufficient security controls are in place to accept, handle and load cargo onto passenger carrying aircraft.

CAA Response

Disagree. The current air operator security controls required under the existing Part 108 do not provide an adequate regulatory oversight and security outcome that is consistent with international regulatory requirements and guidelines. By requiring an air operator to undertake the same security controls as a RACA if the air operator accepts cargo direct from originators, the CAA can be assured that consistent practices are applied to cargo or mail and that the appropriate level of protection is provided to passengers and crew on international passenger aircraft.

108.55(i)(1)

Exemption of mail sent to New Zealand Forces: One submitter viewed this exemption as creating an unnecessary gap in security as the process for sending mail to the New Zealand Forces is very similar to the processes for sending mail to other places, and recommended that mail to Defence Force personnel overseas should not be exempt from

Part 109. The submitter therefore recommended that mail to Defence Force personnel overseas should not be exempt from Part 109.

CAA Response

Agreed and the rule amended accordingly, in consultation with the New Zealand Defence Force.

108.55(i)(4)

Three submitters questioned whether the provisions of 108.55(i)(4) override 108.55(c), i.e. that the provisions of the clause do not apply to transfer of cargo (tail to tail), particularly from domestic to international flights. One submitter considered that there should be no need to subject pre-flown shipments to further screening as long as these are kept secure when they are trans-loaded from/to international/domestic carriers and they are securely handled under an approved programme.

CAA Response

Rule 108.55(i)(4) relates to international transfer and transit cargo that has been carried on a flight into New Zealand and is to be on-shipped to another international destination.

Where cargo has been carried on a domestic flight that is then to be transferred to an international flight the requirements of 108.55(c) apply. Therefore the cargo must be accompanied by a declaration of security that has either been issued at point of original domestic origin or at the point of international departure. The domestic sector of the flight is regarded as transporting the cargo to the air operator. All those requirements that are applicable to the transport of cargo that has had security controls applied to by an air operator apply. The transport requirements include a condition that the cargo is to be transported in a tamper evident manner (109.55(a)(5)).

Cargo that has arrived in New Zealand and is transferred onto a domestic operation to be carried to its final destination does not require any security controls other than those of rule 108.53(b)(5). This requirement is a current Part 108 security control and is not being altered as part of the Part 109 project.

Part 109 – Regulated Air Cargo Agents - Certification

109.3 Definitions

One submitter was concerned that the current wording restricts access to an ‘access controlled area’ to persons holding authorisations under rule 109.59(a)(4) and denies access to air operator staff holding a CAA Airport ID Card who also need access to these areas.

CAA Response

Airport identity cards are issued for various aviation security purposes that are quite separate from the functions of a RACA. If air operator staff require access to a RACA’s access controlled area, they will have to be issued with a separate authorisation from the RACA. If the RACA chooses to accept the airport identity card as proof that the air operator staff has gained a favourable security determination from the Director, the RACA can outline that procedure in their exposition. The advisory circular contains more guidance material on this issue.

109.9 Grant of Certificate

Part 140 certification: One submitter recommended that a clause be added to this rule stating that screening, if not the sole responsibility of Avsec, should only be conducted by bona fide RACAs, or a Rule Part 140 Aviation Security Organisations – Certification certificate should be mandatory.

CAA Response

Disagree. The RACA may screen unknown cargo themselves, or they may contract that function out to an organisation. In either case, there are prescribed requirements for screening which are outlined in the Rule. These requirements must be met by the applicant and approved by the CAA for initial RACA certification, and must be complied with on an on-going basis.

Fit & proper person: One submitter sought clarification around subparagraph (3) and questioned how the certification can be contrary to the interest of aviation safety when subparagraph (2) already establishes that the applicant is a ‘fit and proper person’.

CAA Response

The provisions of rule 109.9 relate directly back to section 9 of the Civil Aviation Act 1990 which is reproduced below. These requirements apply to the granting of all aviation documents.

9 Grant or renewal of aviation document

- (1) After considering any application for the grant or renewal of an aviation document, the Director shall, as soon as is practicable, grant the application if he or she is satisfied that—
- (a) All things in respect of which the document is sought meet the relevant prescribed requirements; and
 - (b) The applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—
 - (i) Either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under subsection (2) of this section; and
 - (ii) Is a fit and proper person to have such control or hold the document; and
 - (iii) Meets all other relevant prescribed requirements; and
 - (ba) in the case of a New Zealand AOC with ANZA privileges,—
 - (i) the requirements in section 11G(2) are met; and
 - (ii) the applicant meets or will meet the conditions in section 11G(4); and
 - (c) It is not contrary to the interests of aviation safety for the document to be granted or renewed.

109.51 Personnel requirements

Chief Executive: Two submitters commented that because the CEO of large international forwarder/logistics companies is generally based overseas, the rule should identify the senior person in New Zealand as being the person responsible in this position.

One submitter suggested the wording should be amended to ‘authorised officer’ instead of ‘identified as the chief executive’ as many of these persons are located overseas and it would be inappropriate to nominate them.

One submitter proposed changing the wording of the rule and advisory circular to refer to the *New Zealand based* Chief Executive and *New Zealand based* person or persons responsible.

CAA Response

Overseas chief executives, or chief executives of the organisation as an entity, are not required to be the person identified as the chief executive of the RACA. In the Civil Aviation Rules, the ‘chief executive’ is the person responsible for the financing and resourcing of the organisation holding the certificate. The organisation holding the RACA certificate could be the whole organisation or a branch of the parent organisation. In this way, ‘chief executive’ is simply the title given to the person identified in this position for the purposes of certification rather than the Chief Executive of the parent organisation, or the organisation as a whole. For example if company ‘A’ is a multi-national organisation, the person identified as the Chief Executive for the RACA may be the General Manager of the New Zealand branch of company ‘A’. However, this person must be in control of, and able to make executive decisions about, the financing and resourcing of the RACA organisation, and ensure the RACA’s exposition complies with the rule.

109.53(4) Facility requirements

Delivering a consignment: Two submitters considered that the emphasis of the rule should be on the detection of tampering upon receipt at the terminal rather than prevention against tampering, as the

agent can never absolutely guarantee that tampering will not occur. The submitters requested clarification of the rule, including why known cargo needs to be segregated from unknown cargo given that all cargo will be held in access controlled areas and be subjected to security checks.

Transport: One submitter noted that there are impracticalities with the requirements, including the management of truck flow between different parts of the warehouse which under the new rule would require totally separate components within the building, something not currently the norm.

CAA Response

Part 109 requires both preventative and detection measures as the combination provides a greater security outcome than solely relying on the air operator being able to detect that tampering may have taken place on receipt at the terminal.

As the Rule is outcomes based, it is up to the RACA to outline in their exposition the procedures they intend to use to protect the cargo or mail from tampering before delivery to the air operator.

The requirement under rule 109.53 does not prescribe that cargo that has undergone a security control is to be kept separately from other cargo. The Advisory Circular provided with the Rule does state, in guidance, that maintaining the access control to known cargo or mail that has security controls applied to it is by way of storing the cargo separately. The Advisory Circular mentions that “the exact nature of the facilities required may depend on the nature and scale of the RACA’s operations and the scope of the services they intend to provide”. Provided the outcome of preventing the cargo from being tampered with after it has had security controls applied is met, the RACAs have freedom to develop systems that are commensurate with the scope and complexity of their operations.

One submitter noted that often items get uplifted from different premises of different air cargo agents and such transfers can pose a security threat. The submitter questioned whether a third party delivery company would

have to employ extra staff to allow for full time supervision of loaded goods, and what this would do to costs.

CAA Response

The submitters question relates to the management of cargo from the time it has been supplied by either a known customer or has had security controls applied it. The outcome sought by the Rule is that the cargo is managed in a manner that will ensure its security from time of acceptance from a known customer or having security controls applied until delivery to an air operator. This requirement is consistent with internationally accepted best practice. How the RACA will ensure that this outcome is met, including the use of any third parties, is up to the individual entity and will be contained in the RACA's exposition.

109.55 Cargo and mail security control procedures

One submitter believed that the onus and liability of this section should rest with the known customer, and be managed by way of a 'customer undertaking' similar to that which is used in Australia. The submitter suggested that these undertakings should be valid for a minimum of 2 years.

CAA Response

Disagree. The RACA is the document holder under Part 109 and is therefore the regulated party within the Civil Aviation system. The onus and liability for establishing procedures for the acceptance of the statement of content from the known customer must be the responsibility of the RACA. As has been stated earlier in CAA responses, the Rule is outcomes based thereby allowing the RACA to demonstrate to CAA how and under what basis the RACA is aware of the known customers appropriate systems and procedures in place to meet the requirements of 109.61(a)(2).

109.55(a)(1)

One submitter questioned the requirement for the RACA to establish security control procedures for *ensuring* that every cargo or mail that is accepted...has security controls applied to it to *ensure* that it does not contain any weapon...as it is difficult to achieve that level of certainty.

CAA Response

The rule wording has been amended slightly to align with a similar requirement in Part 108 – Air Operator Security Programme. The security outcome required is essentially the same however, as a very high level of confidence in the RACA’s security control procedures is required.

Two submitters noted that the word ‘consignment’ may be missing from the opening words of this rule.

CAA Response

Agreed and rule amended accordingly.

One submitter questioned whether there should be in this section (or elsewhere) a requirement for a procedure to follow where an improvised explosive device (IED) is found.

CAA Response

As Part 109 is outcomes-based, a more appropriate place for the requirement of a procedure to follow in the case of the discovery of an IED would be in the RACA’s exposition rather than in the rule itself. The Advisory Circular material will provide guidance to the RACAs as to the procedures which should be followed if an IED is discovered.

One submitter suggested that the wording in this section should include exemptions to mail etc.

CAA Response

Disagree. Although some items due to their nature are not required to be screened by physical or technical means, they must still be subjected to some form of security control such as being stored in access controlled area to prevent the introduction of any weapon, explosive, or other dangerous device, article or substance.

International guidelines have been developed by ICAO and IATA with regards to the exact nature of items that may be excepted from screening requirements. As the list of these items is security sensitive information it will not be published in publicly available documentation. The list will be made available to RACAs on a restricted basis.

One submitter recommended that the following wording be included in this rule ‘...accepted by the regulated air cargo agent for carriage by air from a person who is not a known customer has security controls applied to prevent an unlawful act of interference through the unauthorised carriage of an explosive device’.

CAA Response

Disagree. The security controls applied to cargo from an unknown customer are intended to prevent the introduction of a weapon, explosive, or other dangerous device, article or substance that may be used to commit an act of unlawful interference onboard an international passenger aircraft. Cargo containing items that are being legitimately shipped under Rule Part 92 should still be subject to security controls to ensure the proper documentation is completed. In ensuring that the proper documentation is completed the RACA is undertaking a security control to prevent an act of unlawful interference.

Dangerous Goods: The CAA received three submissions about the wording surrounding dangerous goods in this rule and others. These are noted in the ‘subject area’ section above.

109.55(a)(4)

Accepted by the RACA: The CAA received two submissions suggesting that wording in this rule be amended to require security procedures and storage after security controls have been applied, rather than after initial receipt.

CAA Response

The intention of this rule is, as the submitters suggest, for the RACA to accept the consignment, subsequently apply security controls, and then securely store the consignment prior to being delivered to the air operator. The wording of this rule has been amended to clarify the requirement.

Transportation outside access controlled areas: One submitter suggested that the requirement for the cargo or mail to be held in an access controlled area until the consignment is *delivered* to the air operator may not be in line with the intention of the rule, if the intention is to keep cargo and mail in an access controlled area while it is on the RACA's premises and then to ensure that it is protected from tampering once it has left the RACA's premises and is delivered to the air operator. The submitter also pointed out that the requirement for protection from tampering is contained in the next paragraph in the rule.

CAA Response

The intention of this rule is to ensure that the cargo or mail is held in an access controlled area until it leaves the RACA's premises for delivery to the air operator. Once it is in the process of delivery then rule 109.55(a)(5)(ii) comes into play. For clarity, the rule has been amended to 'until the consignment leaves the access controlled area for delivery to the air operator.'

109.55(a)(5)(ii)

One submitter suggested inserting 'regulated air' prior to 'cargo agent's access...'.

CAA Response

Agreed and rule amended accordingly.

109.57 Screening Procedures

Monopoly situation: Two submitters sought confirmation that a RACA is permitted to screen or subcontract the screening function under this rule, i.e. that a monopoly situation would not be created under which a RACA only has the option of using a single monopoly provider (Avsec) to do the screening.

CAA Response

Under Part 109 RACAs are permitted to screen unknown cargo themselves or subcontract that function to another organisation (Avsec or any other) provided the requirements for screening as approved by the CAA are complied with, and continue to be met.

Part 140 certification: One submitter questioned whether the RACAs or their subcontractors will be required to become certified under Part 140 – Aviation Security Organisations - Certification.

CAA Response

Neither RACAs nor their subcontractors will be required to gain Part 140 certification as they are not aviation security providers as described under the Civil Aviation Act 1990.

Conditional rule: One submitter suggested that rule 109.57 be conditional on a RACA only if they intend not presenting cargo for screening by an established security service organisation certified under Part 140 (i.e. Avsec).

CAA Response

Disagree. Part 109.57 prescribes the procedures a RACA must establish when intending to conduct screening of the cargo as part of the

security controls required under Part 109.55. If a RACA is going to use screening as a security control process for a consignment of cargo then the RACA must have procedures that meet the requirement of the rule. Regardless of who actually carries out the screening, the RACA remains responsible for the screening procedures to be followed. If the RACA contracts out the screening to an organisation that is already recognised under the rules as meeting the screening requirements then the RACA's procedures will reflect this. If a RACA is not going to screen cargo then 109.57 will not apply to them and the cargo will be 'unknown' cargo.

X-ray screening: One submitter considered that multiple x-ray screening of items should not take place, from the view of Health, Safety and Employment issues for employees and the quality of the goods.

CAA Response

Health and Safety issues do not form part of Part 109 however the CAA agrees that it is appropriate to screen items by way of x-ray only once. This is the normal practice, and a declaration of security can be issued once screening has established that the item does contain any threat objects. However, the number of times that an item of cargo may require X-Ray screening will depend entirely on the RACA's screening process and the ongoing security controls.

109.57(b)(4)

One submitter thought that this section requiring a programme and procedures for testing the screening system should contain the same level of detail as Rule Part 140 Aviation Security Organisations – Certification, Appendix A.

CAA Response

Disagree. Part 109 is an outcome-based Rule concerned with the certification of regulated air cargo agents. In general, providing prescriptive requirements within the Rule itself for the screening procedures would have the effect of negating the outcome based nature

of the Rule. More specifically, the main difference in the testing requirements under Part 109 and Part 140 is in defining the exact time period of the tests. The CAA view is that an acceptable time period can be included within the acceptable means of compliance information contained in the advisory circular supporting the rule rather than in the rule itself.

One submitter recommended that this rule (and perhaps also 109.57(b)(5)) include procedures for when equipment fails tests.

CAA Response

Agreed and the rule amended accordingly.

109.59 Authorisation Procedures

Out-sourced contractors: Three submitters were concerned that the rule could prohibit a RACA from using authorisations from other organisations, for example:

- if they, as a RACA, used contractors from Avsec for security control functions who already had their own authorisations, they would be required to re-train those staff and issue their own authorisations; or
- if two or more RACAs were working with the same sub-contractor, who would be responsible for training.

CAA Response

Each RACA is responsible for the security control functions carried out under the authority of the RACA certificate, and for the personnel who are carrying out those security control functions. As part of their exposition, each RACA must outline a training programme which details how they are going to train their personnel who carry out security control functions. The RACA could provide the training themselves, out-source the training to be provided in accordance with the RACA's

training programme, or identify the training of other organisations if it meets their requirements.

Personnel may not need to be trained by the RACA themselves, however the training must be in accordance with the RACA's training programme, and every person who performs a security control function identified in 109.59(a) for a RACA must have a separate authorisation from that RACA. The Director must be satisfied that a training programme, no matter who provides it, meets the individual RACA's scope of security control functions.

Authorisation procedures for visitors: One submitter requested that the rule be changed to allow for guests such as overseas dignitaries, inspectors, auditors or contractors who have not been security cleared to visit the RACA site under supervision.

CAA Response

Agreed. New rules 109.59(b) and (d) are added to allow for a person to enter an access controlled area for functions other than security control functions. This is to cater for special guests of the RACA who might want to view the RACA's access controlled area and cleaners. The people entering the access controlled area for functions other than security control functions will be required to have a background check unless they are issued with a temporary authorisation and are accompanied by a person authorised under 109.59(a). The old rule 109.59(b) will change its number to 109.59(c).

Costs: One submitter stated that the costs and time implications of this section will be impracticable for industry to meet.

CAA Response

The security outcome of Part 109 is to ensure that security controls are applied to all cargo carried on international passenger aircraft consistent to a level considered appropriate by the international community and as expressed in ICAO Annex 17. To provide a framework for that outcome four options were considered by the CAA

(see page 7 of the Notice of Proposed Rule Making (NPRM) 07-07). During the policy process, the CAA established that for a known customer programme to be effective, those persons who implement the security controls or have access to access controlled areas must have a favourable security check determination completed.

This is consistent with Annex 17 recommendations and it is standard practice internationally that all persons who undertake a security control are subject to a background check.

109.59(a)(3)

Checking a consignment: One submitter thought there might be confusion over the reference to ‘checking a consignment of cargo received from a known customer’. Rule 109.55(a)(3) makes it clear that it is the ‘statement of content’ that is to be checked and so the submitter suggested aligning the wording of 109.59(a)(3) with 109.55(a)(3).

CAA Response

Disagree. Rule 109.59(a)(3) is clear that procedures must be established for checking both a consignment of cargo or mail as required by 109.55(a)(2)(ii), and checking the statement of content as required by 109.55(a)(3) for cargo or mail received from a known customer.

109.59(a)(6)

Transporting in a secure ‘tamper evident’ manner: One submitter stated that the rule implied cargo and mail could sometimes be accompanied by a declaration of security but not transported in a secure ‘tamper evident’ manner. The submitter believed that if the cargo and mail is required to have a declaration of security, then the rules should require that it also be transported in a secure ‘tamper evident’ manner.

CAA Response

The rule allows for cargo or mail that has a declaration of security to be transported in non-secure tamper evident manner in order to allow

some flexibility, however the RACA must have procedures in place for this form of transportation and the person doing the transporting must be authorised.

For clarity, the rule has been amended to delete the word 'secure'. The consignment can either be delivered in a non secure environment but packaged so that any tampering or suspected tampering can be clearly evident, i.e. a tamper evident manner, or the consignment does not need the tamper evident packaging and can be delivered within a secure environment, e.g. a Chubb Security van by a person duly authorised by the RACA to take care of the consignment and deliver it to the air operator.

109.59(b) (now 109.59(c))

Security Checks: One submitter contended that the prescriptive nature of the rule regarding the process for the security checks may impact on the efficient operation of their business if the government security agency providing the service cannot process them quickly enough in times of peak demand. The submitter suggested that if no assurance could be gained that checks would be completed in a timely manner that the rule should allow for alternative security processes for temporary staff, such as ensuring CCTV coverage in all secure areas.

CAA Response

Disagree. The requirement for RACA staff performing security control functions to have a favourable security determination forms an integral part of the Rule in order to achieve the security outcomes required. The application of alternative and less robust security processes would not provide the assurance required.

Part 109 is consistent with the requirements of ICAO Annex 17 Security Standard 3.4.1 in that all those persons who are responsible for applying security controls are to be subjected to a background check.

Employment processes: One submitter asserted that employment screening measures for authorised persons should not be mandated by

the government and that standard company employment processes should be acceptable.

CAA Response

Disagree. The RACA and the CAA must have robust assurance that the RACA's personnel are fit and proper to undertake security control functions. Standard company employment screening procedures are unlikely to uncover the type of information that will be uncovered by the full security determination provided for in section 77F of the Act necessary to allow an informed decision as to whether or not an individual may pose a threat to aviation security.

Airside access: One submitter maintained that only authorised persons that require 'airside access' should be required to undertake this level of background check.

CAA Response

Disagree. The intention of the Rule is to ensure that all persons who enter an access controlled area, or apply security controls to air cargo hold a favourable security determination in accordance with the Civil Aviation Act, unless they hold a temporary authorisation and are accompanied by an authorised person. Rule Part 109 is consistent with international best practice and the requirements of ICAO Annex 17 Security Standards in this regard.

109.59(b)(1)

Standardisation: One submitter questioned how the standards required of and being applied to the Aviation Security Service relating to passenger, carry-on and hold baggage are being consistently implemented for air cargo.

CAA Response

The security outcome sought by Part 109 is to ensure that air cargo carried on passenger aircraft is subject to security controls. The Rule achieves this outcome by regulating air cargo agents who will apply those security controls. One of those security controls is the screening of unknown cargo. Where that screening involves the use of technical methods of screening the intention of Part 109 is to ensure that the screening will be undertaken in accordance with guidelines that meet internationally accepted best practice. Guidance material on those international acceptable best practices will be provided to RACA on a restricted basis.

It should be noted that screening of passengers and their baggage poses differing operational challenges to the screening of unknown cargo or mail. It can therefore be expected that the rules prescribing the requirements for screening of passengers and their baggage will vary in some aspects.

109.59(b)(1)(ii)

Working under supervision: One submitter commented that people should be able to work for a RACA under supervision prior to having completed the training programme, in order to align with current industry hiring practises where casual staff are hired for peak periods.

CAA Response

Disagree. If the staff member is going to perform a security control function and therefore requires training to gain their authorisation to do

so, then the training must be completed prior to the person performing those functions.

Supervision in itself does not provide an adequate level of assurance that an individual has acquired the knowledge, skills and competency necessary and required of them as an authorised person. Ensuring staff training and competency in relevant situations is also vital in assisting the maintenance of an appropriate security culture within relevant organisations.

109.59(b)(3)

Validity period: One submitter questioned whether an individual's authorisation will cease if the RACA's certification is cancelled or lapses, given that the validity period for RACA certification is 5 years and the validity period for an authorised person is 3 years.

CAA Response

Yes. An individual can only use their authorisation under the RACA's certification, so if that certification lapses or is cancelled, the individual's authorisation is no longer valid.

One submitter suggested that the successful completion of a periodic competency assessment should be a condition of the continued authorisation, at 150 day intervals.

CAA Response

The authorisations required by rule 109.59 cover a range of tasks which include the screening of cargo. If a RACA screens cargo or mail, then under 109.57(b)(4) the screening procedures must include procedures for periodically testing the persons performing the screening. Also under 109.63 the training programme must include segments for assessing the competence of personnel and for the recurrent training of personnel. Information on the acceptable means of complying with the rules, including that of ongoing personnel competency assessment is contained in the Advisory Circular supporting the Rule.

One submitter noted that there is no specific requirement to record a testing failure or remove a person from screening duty as in Rule Part 140, sA24.

CAA Response

Rule 109.63 requires a RACA to have a training programme to ensure that every person who carries out security control functions is appropriately trained and competent to carry out the security control function. The competency procedures and the procedures required under 109.57(b)(4) for testing persons doing screening should detail some processes to be followed if a person fails a screening functional test. The rule prescribes the security outcomes sought by the CAA, however advisory material with acceptable means of complying with the rule will be provided to RACAs on a restricted basis.

109.61 Procedures and register of a known customer

One submitter asserted that the onus and liability should rest with the known customer and should be managed by way of a ‘customer undertaking’ similar to that which is used in Australia.

CAA Response

Disagree. The responsibility for meeting the requirements of Part 109 fall on the RACA as the certificate holder and the “person” issuing the declaration of security. A known customer is the RACA’s known customer and therefore the RACA is responsible for ensuring that the known customer understands and fulfils their responsibilities regarding the security requirements relating to their goods that are forwarded to the RACA for carriage by air. If the RACA wished to request such an undertaking from their known customers, there is nothing in the Rule to prevent them from doing so.

109.61(a)

One submitter believed that the draft document does not make clear that the security controls only apply to the cargo of unknown customers, and

requested a wording change to: “An applicant for the grant of a regulated air cargo agent certificate who intends to accept cargo or mail for carriage by air from a known customer **without first applying such security screening methods as applicable to cargo of an unknown customer** must establish procedures for ensuring that –“

CAA Response

Disagree. The cargo and mail security control procedures are contained in 109.55 and set out the various requirements for accepting cargo from a known customer, and different requirements for accepting unknown cargo. There are only two types of cargo and mail; that from a known customer, and that from a person who is not a known customer (unknown cargo). Rule 109.61 sets out additional requirements if a RACA wishes to establish arrangements with a known customer.

As Rule 109.61(a) makes it clear that the requirements of this rule only apply to cargo or mail from a known customer, the CAA believes the submitter’s suggested wording would actually make the rule less clear.

109.61(a)(2)

One submitter commented that this rule implies that the shipper is the supplier, but in many instances this may not be the case, for example in a situation of several original equipment manufacturers (OEMs) supplying to one customer, the shipper. The submitter commented that under this rule, the RACA must not only ensure the supplier (customer) has appropriate security procedures but it would also transfer down a level to many OEM’s which would be extremely difficult to apply, administer and regulate.

CAA Response

The definition of known customer is ‘a shipper of cargo or mail who has an established association with a regulated air cargo agent or an air operator for the carriage of the shipper’s cargo or mail by air and who is registered with the regulated air cargo agent or the air operator’. ICAO and IATA advisory material defines a known customer/shipper as

“the originator of property for transportation by air for his own account”.

The known customer (shipper) must know exactly what is in the cargo or mail supplied to the RACA, regardless of who has supplied the cargo or mail to them, and must take responsibility for this by issuing a statement of content. Should a known customer/shipper not have in place procedures for ensuring that only the intended items of cargo are contained in the customers’ consignment, and therefore not be able to provide a Statement of Content to the RACA, the consignment would be regarded as unknown.

One submitter noted that the same known customer may use several RACAs and this would mean that many RACAs are undertaking the same activity/audit for that one shipper. The submitter queried whether there was a more efficient way.

CAA Response

The outcome sought by the CAA with regard to this rule is that the RACAs have assurance that their known customers continue to comply with the procedures outlined in rule 109.61(a). Should the known customer use multiple RACAs there is nothing in the rule to prevent the RACAs coming up with a joint initiative that meets this outcome to the satisfaction of the CAA and reduces the compliance burden for RACAs. However, each RACA is responsible for their own known customers and must be able to show that their known customers are meeting the RACA’s requirements.

109.61(a)(2)(ii)

One submitter maintained that the wording ‘in writing’ should be deleted from the text as this is too onerous for day to day courier operations.

CAA Response

Disagree. The requirement for the known customer to authorise in writing a person to sign the statement of content only needs to happen once. It is then the responsibility of the RACA to ensure that the person

who has signed the statement of content is on the list of those people authorised by the known customer to do so. See also the comments listed under 'authorisations' in next section.

109.61(a)(2)(iii) and (iv)

Requirement to seal a consignment: Three submitters noted that some items of air cargo (such as engines, machinery or a consolidated consignment in a container or on a pallet) cannot be 'sealed'. One submitter suggested an approach which requires 'control' over consignments would be more appropriate and another suggested standard industry practises such as standard tape or adhesive on existing packaging should be acceptable.

CAA Response

Agreed. The word 'seal' in 109.61(a)(2)(iii) is amended to read 'protected' in order to provide flexibility within the rule while still meeting the security outcome required.

One submitter suggested that 109.61(a)(2)(iv)(A) and (B) be removed as the requirements are already encompassed in sub sections (ii) and (iii). The submitter noted that from industry's perspective it will be impracticable to impose the requirements of (A) and (B).

CAA Response

Agreed. 109.61(a)(2)(iv) is deleted accordingly.

Authorisations: One submitter maintained that it should not be a requirement for large companies who have hundreds/thousands of customers to retain and check authorisations from known customers who may nominate many employees to sign declarations. The submitter recommended it should only need to be determined that the person signing the documentation is in fact a representative of the known customer, for example a store person.

The submitter recommended that the wording be changed for 109.61(2)(ii) to read ‘...every consignment of cargo or mail that is forwarded to the applicant’s organisation is accompanied by a statement of content that is signed by a person who is authorised by the known customer to sign the statement of content...’.

One submitter believed that this subsection is too onerous and should only require the name of the person who is responsible for ensuring the known customer is complying with the requirements of 109.61(1) and (2).

CAA Response

Disagree. The statement of content forms a key part of the security of the cargo supply chain under Part 109. As such, the RACA must have assurance that the person who signs a statement of content is authorised in writing by the known customer to do so.

109.61(d)

One submitter commented that 21 days to amend details in the register is too long.

CAA Response

Agree. The rule has been amended to require that any changes to the known customer must be amended as soon as practicable. The change is consistent with other certification rules.

109.67 Records

109.67(a)(1) Records for every item or consignment of cargo or mail

Three submitters commented that the rule requirement for identifying, collecting etc records for every item or consignment of cargo or mail accepted by the organisation created significant difficulties and was too onerous. One submitter noted that there is no way to track which mail

from accepted consignments ends up in which dispatched consignments, whereas the standard record-keeping measure of international mail is the “dispatch”, which is the collection of mail dispatched on one day to one overseas destination and suggested that this is a more appropriate record to retain.

CAA Response

Agree. The rule has been amended to delete the requirement to provide a record for every item or consignment of cargo or mail that is accepted by the applicant’s organisation for carriage by air under rule 109.55(a).

Another submitter questioned why this rule refers to ‘items’ of cargo when elsewhere in the draft Rule the reference is to ‘consignments’. The submitter suggested that as there could be many items within a consignment, ‘consignments’ should be referred to.

CAA Response

Agree, however this rule, which made reference to ‘items’, has been deleted as per the submission above.

109.67(a)(5)(i) Records of training provided to known customers

One submitter considered that this subsection should be removed as it should not be the responsibility of the RACA to train known customers.

One submitter was concerned that knowing what training has been provided by known customers seems excessive.

One submitter deemed this rule to require the RACA to train known customers and questioned whether there could be recognition of training of customers by one RACA as sufficient to prevent duplication of training.

CAA Response

As there is no requirement under Part 109 for the RACA to provide training to the known customer, rule 109.67(a)(5)(i) has been amended to delete the requirement to record the details of the training provided for the known customer.

109.67(b)(1) Accurate, legible records of a permanent nature

One submitter sought assurance that the records could be in electronic form.

CAA Response

Yes, electronic records are acceptable as long as they are accurate, retrievable in a legible format and are of a permanent nature.

Two submitters considered that the requirement to retain records for 2 years seems excessive as most flight documents are only held for 31 days.

CAA Response

Agree. Further research has established that the accepted practice internationally is to require statements of content and declarations of security to be kept for 31 days. The rule is therefore amended to state that statements of content and declarations of security are to be kept for at least 31 days from the date of departure of the aircraft unless required by the Director for a longer period for the purposes of a security incident investigation.

One submitter agreed that some electronic records need to be retained for a reasonable period, and this requirement should be based on internationally accepted standards.

CAA Response

See above. The rule is to be amended so that statements of content and declarations of security are only required to be kept for 31 days. The CAA has also added ‘unless required by the Director for a longer period for the purposes of a security incident investigation’. This is to align the rule with similar requirements in other rules.

Other records (for verifying a known customer etc) should be retained for the length of the relationship with the known customer.

109.67(b)(2) Retention of records

One submitter thought that 109.67(b)(2)(i) and (ii) could be clearer as to the specific records required by 109.67(a) that each clause referred to.

CAA Response

Agreed and the rule amended accordingly to link the provisions of 109.67(b) to the appropriate subparagraphs in 109.67(a).

One submitter questioned whether 109.67(b)(2)(ii) was consistent with other legislation such as the employment and public records legislation.

CAA Response

The rule is consistent with other legislation prescribing requirements for the retention of records, including the Public Records Act 2005 and the Privacy Act 1993. Note: the wording of this rule has been amended as a result of other submissions.

109.69(b)(5)

One submitter suggested a wording change to read ‘...and to achieve the goals set **out** in the security policy.’

CAA Response

Agreed and rule amended accordingly.

109.71(a)(1)

One submitter suggested that the words ‘chief executive’ be replaced with ‘authorised officer’.

CAA Response

Disagree. The RACA must have a Chief Executive (CE) who is in control of the financing and resourcing of the organisation and who ensures that the RACA continues to meet the requirements of Part 109 as outlined in their exposition. The CE of the RACA is not necessarily the Chief Executive of the parent organisation as an entity. See comments on 109.51 for further information.

109.71(a)(1)(ii)

One submitter suggested a wording change to read ‘...the exposition, and **all** associated **manuals**.’

CAA Response

Disagree. In legal drafting the singular includes the plural so ‘every associated manual’ would include just one manual or many manuals.

109.71(b)

One submitter suggested the wording: ‘The exposition must be continuously maintained to a standard acceptable to the Director.’

CAA Response

Disagree. The current wording is consistent with current legal drafting standards.

109.101(a)(3)

One submitter questioned why a senior person needs to be based in each location where the certificate holder's exposition is based.

CAA Response

The rule requires a complete and current copy of the exposition to be held at each location where a senior person is based. It does not say that each base has to have a senior person but if there is a senior person there then there should also be an exposition. The rule wording has been amended to clarify the requirement.

109.103(a) Suspend or remove name of known customer from register

Three submitters commented that some known customers will be on the register of several RACAs and suggested that the CAA should advise all RACAs if a known customer is to be deleted from the register.

CAA Response

The decision to notify all RACAs of a Director's decision to suspend or remove a known customer from a RACA's register would depend on the nature of the suspension or removal. If the grounds for action were based on a specific circumstance, for example the relationship between the RACA and the known customer, then the CAA would not notify other RACAs. If, on the other hand, the grounds were such that the known customer in question needed to be prevented from being on the known customer register of any RACA, then the CAA would notify all RACAs of the decision to suspend or remove the customer from their registers.

109.103(b)

One submitter suggested a wording change to read ‘...until the Director is satisfied that **the known customer can demonstrate compliance with the requirements**’.

CAA Response

Disagree. The CAA legal opinion is that the current wording is more direct and specific by prescribing that the ‘Director is satisfied that every requirement that the customer failed to comply with is met’. This makes it clear that the known customer must comply with every single requirement that he/she has not complied with in the past, whereas the proposed wording “demonstrate compliance with the requirements” does not make it as clear. Further, the suggested word ‘demonstrate’ is problematic in a legal sense.

109.105(b)(1) Chief Executive

One submitter sought clarification as to why this is a requirement and how it affects, and is needed, to ensure security.

CAA Response

In accordance with section 9(3) of the Act, every person exercising control over the functions for which an aviation document is granted must continue to satisfy the fit and proper person criteria. Therefore if a new CE is to be appointed that person must be assessed as fit and proper by the Director before the Director can accept the person into the position.

Further, the Chief Executive (CE) is the key person in an organisation with regards to establishing and maintaining a strong security culture. As such, if the CE is changed it is important that this person is fit and proper to hold the position.

109.107 Persons to issue a declaration of security

One submitter noted that a RACA can authorise a third party to issue a declaration of security and questioned whether a RACA can authorise a

known customer to issue a declaration of security as well as a list of contents.

CAA Response

A RACA can authorise a third party to issue a declaration of security under rule 109.59, but if the RACA issues an authorisation to a person who is not a direct employee of the RACA, that authorised person must be aware of when they are operating as a known customer and when they are working for the RACA.

Should the RACA issue such an authorisation to a known customer, that person is only a known customer up until the time that they start to undertake any activities under the RACA's authorisation. When they begin to use that authorisation, e.g. when they check a statement of content, confirm that nothing untoward is in the consignment and sign the declaration of security, they are effectively operating as the RACA and must comply with all the RACA requirements under rule 109.55 and the processes in the RACA's exposition.

To be issued an authorisation to undertake security controls as part of the RACA, the known customer must meet all the requirements of rule 109.59, including being granted a favourable security determination and being assessed as competent in accordance with the RACA's training programme.

Appendix A – Declaration of Security

Two submitters considered that the requirement under (5) to declare that the consignment does not contain any weapon etc that may be used to commit an act of unlawful interference was unreasonable as it is not possible to *ensure* that this is the case and imposes an unacceptable level of liability on the RACA.

CAA Response

Disagree. A very high level of assurance must be gained that there are no explosives or other dangerous devices or substances that could be used to commit an act of unlawful interference in the cargo or mail.

Signing a declaration of security to this effect is consistent with international best practise as benchmarked by the CAA.

As noted in the 'dangerous goods' section in the subject area above, the wording of the Declaration of Security in Appendix A.1(5) is amended to state 'a declaration that the consignment does not contain any weapon, explosive or other dangerous goods except for those listed below'. In addition, another line (8) is added to state 'a list of any weapon, explosive or other dangerous goods contained in the consignment'.

One of the submitters recommended that the RACA be required to make a declaration that all processes and security checks have been applied in accordance with the processes outlined in the exposition and that no weapon, explosive or other dangerous device, article or substance which may be used to commit an act of unlawful interference was identified.

One submitter maintained that paragraph (5) should be removed and replaced with 'this cargo has been handled in accordance with the RACA's approved exposition'.

CAA Response

By signing the declaration of security the person authorised by the RACA is confirming that all the requirements of 109.107 have been met and the RACA's approved processes have been followed. If the industry wishes to add further information to the declaration of security, this is acceptable provided the requirements of Appendix A are met.

It should be noted that rule 109.107 will have an associated offence regulation to prescribe the penalty for a person who signs a declaration when all the requirements, including complying with the RACA procedures and applying the appropriate security controls, have not been met.

Other submissions on this subject are addressed by the comments above and also the 'dangerous goods' section on page 7.

Appendix B – Screening Standards

B.1: One submitter suggested a wording change to read ‘...by use of **one** or more...’.

CAA Response

Disagree. It is standard legal drafting practice to use numerals instead of letters for numbers in rules.

Another submitter commented that this paragraph does not specify precisely whether external examination alone is sufficient or internal examination as well must be undertaken in absence of x-raying or other mechanical or electronic detection methods.

CAA Response

It is not in the interests of aviation security to prescribe precisely how the cargo or mail is to be screened. The specifics of the screening methods and advisory material on the acceptable methods of cargo or mail examination will be provided by the CAA to RACAs on a restricted basis. Any physical search of cargo must be sufficient to determine that the cargo does not contain an unauthorised explosive device capable of causing unlawful interference with an aircraft.

One submitter questioned whether a ‘stand down’ or ‘cooling off’ period of 48 hours in a quarantined secure area of a RACA’s premises is considered an approved security measure for unknown commercial cargo or unknown personal effects shipments.

CAA Response

The stand down or cooling off of cargo is not an accepted means of applying security controls in the current security environment. This reflects international benchmarking undertaken by the CAA which established that “stand down or cooling or hold” is increasingly no longer considered as representing a credible protective measure, given the sophistication of the terrorist threat and the technical prowess which modern terrorists have been able to demonstrate.

One submitter stated that B.1 does not specify precisely whether external examination alone or internal as well must be undertaken in the absence of x-raying or other mechanical or electronic detection methods.

CAA Response

As noted above, the specifics of the screening methods and advisory material on the acceptable methods of cargo or mail examination will be provided to RACAs on a restricted basis.

B.2: One submitter considered that the wording of B.2(a) needs amending as test pieces only exist for the x-ray technology listed. The submitter suggested amending the rule to state ‘Every method of screening must be subject to periodic testing, using if appropriate, a standard test piece to ensure the ongoing integrity of the screening process’.

CAA Response

After review of the rule the word ‘standard’ has been deleted as all screening systems should be periodically tested using some form of test piece that under paragraph (b)(3) must be acceptable to the Director.

Another submitter suggested ‘...using **an approved** standard test piece...’ and also noted that the section does not make mandatory the periodic testing of persons.

CAA Response

Disagree. Paragraph (b)(3) requires that the test piece be acceptable to the Director so the suggested wording is not required.

The periodic testing of persons performing the screening is to be included in the RACA’s procedures under rule 109.57(b)(4) so the requirement does not need to be repeated within the Appendix.

Appendix C – Training Standards

Three submitters questioned whether trainers will need to be certified as competent to undertake the training required and stated a strong preference that this should be the case.

CAA Response

Disagree. It is up to the individual RACAs to outline to the CAA how they are going to comply with the requirements of the rule through their training programme, including what trainers they are going to use. As stated in the supporting Advisory Circular to Part 109, 'any training required under this Rule is to be carried out by a security instructor who has demonstrated competency to the satisfaction of the Chief Executive or a person nominated by the Chief Executive'. This is the same requirement for air operators under Part 108 and no evidence of a security risk has been provided to justify changing this position.

Standardised Training: Three submitters considered that there should be an assessment of, or benchmarking of training to ensure consistency and full compliance to industry standards and Part 109 requirements.

CAA Response

Disagree. As part of the certification process the CAA will assess the training programme put forward in the RACA's application to be satisfied that it meets an acceptable standard. Then, through the ongoing auditing of the RACA, the CAA will assess the application of the accepted training programme to ensure that the ongoing training remains acceptable.

It is not appropriate for the CAA to develop training programmes as it is not the role of an independent regulator; otherwise the CAA could end up approving, via the certification process, its own work.

Levels of training: One submitter considered that the requirements allow for too many levels of training and they are too loose in their definition.

CAA Response

Disagree. The levels of competency are consistent with other CAA Rules for the training of staff involved with the security functions of providing screening and search of passengers and baggage. Amendments have however been made to Appendix C.1(b); see below for details.

C.1(b)(3)

Two submitters disagreed that ‘the threat factor’ is a critical factor in the initial or ongoing training of screeners as the primary factor consuming the greater part of the training ought to be the detection of IED and other explosive devices, as well as general security awareness. One of the submitters also applied their submission to C.1(b)(4). The submitters further noted that this requirement implies an ongoing and regular briefing on these complex and confidential issues which may be security classified, and questioned if the Authority will provide all RACAs with regular aviation specific declassified briefings that can be utilised for this purpose.

CAA Response

Agreed. The level of competency required under C.1(b)(3) - the threat factor - is amended to a grade 2 which denotes a basic knowledge of the subject. The level of competency required for Appendix C.1 (b)(4) is amended to grade 1 which denotes an awareness of the subject.

In reviewing the levels of competency for each subject matter in Appendix C.1(b) it has also been decided to amend Appendix C.1 (b)(1)(ii)&(iii) to grade 5 to reflect the important nature of the screening function.

Regulatory Impact Statement

One submitter was concerned that the RIS does not recognise that outgoing international air mail going into the hold of passenger aircraft is currently screened by Avsec under contract to NZ Post.

CAA Response

Agreed and the RIS is amended accordingly.

One submitter thought that the RIS should state that the CAA (along with MAF, Customs and the NZ Food Safety Authority) has processes in place to provide assurance as to the management of different security risks, in this case applying to air operators through Rule Part 108.

CAA Response

Agreed and the RIS is amended to make a brief mention of the CAA's management of aviation security risk through Part 108.

One submitter noted that the RIS does not reflect the estimated costs for Avsec to carry out individual security check determinations.

CAA Response

Agreed and the RIS is amended accordingly.

Additional changes

The following are changes made to the rule as a result of further CAA internal review:

109.105 Changes to certificate holder's organisation

The following new rules have been added to 109.105 after further CAA review. The procedures below have been identified as critical to the ongoing security of the cargo supply chain, and it is therefore appropriate that the Director accept the changes:

109.105(b)(5) the authorisation procedures required under 109.59:

109.105(b)(6) the procedures for a known customer under 109.61:

109.105(b)(7) the internal quality assurance procedures required under 109.69.

Appendix C – Training Standards

In reviewing the levels of competency for each subject matter in Appendix C.1(b) it has also been decided to amend Appendix C.1 (b)(1)(ii)&(iii) to grade 5 to reflect the important nature of the screening function.

Addendum to Summary of Submissions

Authorisation procedures for visitors: One submitter requested that the rule be changed to allow for guests such as overseas dignitaries, inspectors, auditors or contractors who have not been security cleared to visit the RACA site under supervision.

CAA Response as published in the Summary of Submissions

Agreed. New rules 109.59(b) and (d) are added to allow for a person to enter an access controlled area for functions other than security control functions. This is to cater for special guests of the RACA who might want to view the RACA's access controlled area and cleaners. The people entering the access controlled area for functions other than security control functions will be required to have a background check unless they are issued with a temporary authorisation and are accompanied by a person authorised under 109.59(a). The old rule 109.59(b) will change its number to 109.59(c).

Additional changes to the rules after further CAA internal review:

The CAA initially decided to incorporate a provision for a temporary authorisation into the final rule 109.59 as a result of the above submission. However, after further internal CAA review, it was decided that a temporary authorisation provided no useful purpose because the person still had to be accompanied by a person who had a full authorisation, i.e. a person who had undergone an acceptable

background check, and therefore the proposed new paragraphs 109.59(b) and (d) dealing with the requirement for, and the procedure for issuing a temporary authorisation have not been included.

However as all unaccompanied persons entering an access controlled area need to have a full authorisation, including the cleaners, it was decided to remove the reference to access controlled area from 109.59(a) and have a separate paragraph 109.59(b) to cover the issue of an authorisation to all persons who are required to enter an access controlled area.

It was then decided that a new operating rule is needed, 109.109 that prohibited the entry into an access controlled area unless the person holds an authorisation to enter the area or is accompanied by a person who holds the necessary authorisation. An offence for new rule 101.109 can then also be created for any person violating the rule.

109.61(a)(2)(iii) and (iv)

Authorisations: One submitter maintained that it should not be a requirement for large companies who have hundreds/thousands of customers to retain and check authorisations from known customers who may nominate many employees to sign declarations. The submitter recommended it should only need to be determined that the person signing the documentation is in fact a representative of the known customer, for example a store person.

The submitter recommended that the wording be changed for 109.61(2)(ii) to read ‘...every consignment of cargo or mail that is forwarded to the applicant’s organisation is accompanied by a statement of content that is signed by a person who is authorised by the known customer to sign the statement of content...’.

One submitter believed that this subsection is too onerous and should only require the name of the person who is responsible for ensuring the known customer is complying with the requirements of 109.61(1) and (2).

CAA Response as published in the Summary of Submissions

Disagree. The statement of content forms a key part of the security of the cargo supply chain under Part 109. As such, the RACA must have assurance that the person who signs a statement of content is authorised in writing by the known customer to do so.

Additional changes to the rules after further CAA internal review:

The CAA reconsidered this issue and decided to remove the requirement for the statement of content to be signed as a signed statement of content is not a usual document for shipping exports and a security outcome can still be attained if the statement of content is identified as originating from the known customer.

Rules 109.55(a)(3)(ii) and 109.61(a)(2)(ii) are amended to reflect this change. Rule 109.61(c)(4), which required the name of the person or persons authorised by the known customer to sign the statement of content to be on the known customer register, is deleted as the requirement is no longer necessary.

109.61(d)

One submitter commented that 21 days to amend details in the register is too long.

CAA Response as published in the Summary of Submissions

Agree. The rule has been amended to require that any changes to the known customer must be amended as soon as practicable. The change is consistent with other certification rules.

Additional changes to the rules after further CAA internal review:

The CAA decided to move this requirement to rule 109.105(b)(6) in order to align it with other requirements for notifying the Director of changes. Rule 109.61(d) is therefore deleted.