



PURSUANT to Sections 28, 29 and 30 of the Civil Aviation Act 1990

I, **GERRY BROWNLEE**, Minister of Transport,

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This 26<sup>th</sup> day of November 2012

by **Hon GERRY BROWNLEE**

A handwritten signature in blue ink, appearing to read 'Gerry Brownlee', is written over the printed name.

Minister of Transport

**Civil Aviation Rules**

**Part 108, Amendment 9**

**Air Operator Security Programme**

*Docket 7/CAR/1*

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## **Rule objective**

The objective of amendment 9 to Part 108 is to improve protection from aviation security threats affecting the travelling public.

The amendment addresses—

- security controls for international transit operations
- security training
- operations under the Australia New Zealand Aviation (ANZA) Mutual Recognition Principle.

## **Extent of consultation**

Development of the rule amendment proposal included informal discussions, meetings and emails with Air New Zealand, Air Nelson, Mount Cook Airline, Air Chathams, Vincent Aviation, Air Freight, Auckland International Airport, Rotorua Airport, Christchurch International Airport, Dunedin Airport, Qantas, LAN Chile, and Avsec. Prior to the publication of the notice of proposed rulemaking (NPRM), the Security Rules Update amendment project was undertaken in consultation with a project working group (PWG) that consisted of representatives from the aviation industry. The PWG also had support from the New Zealand Air Line Pilots Association.

A Notice of Proposed Rulemaking, NPRM 12-01, containing the proposed amendment to Part 108 was issued for public consultation under Docket 7/CAR/1 on 9 February 2012.

The publication of this NPRM was notified in the Gazette on 9 February 2012 and advertised on 10 February 2012 in the following metropolitan and regional newspapers: The New Zealand Herald, The Dominion Post, The Press, the Otago Daily Times, The Waikato Times, The Daily Post, the Manawatu Standard, and the Southland Times. 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.

## **Summary of submissions**

Seven written submissions and two emailed comments were received on the NPRM. These submissions and comments were considered and as a result the following changes were made to the final rules:

108.55(b)(9) – amended to add exceptions to the requirement in the cases of the Director accepting the screening of a transiting flight’s State of departure, or when the transit stop is unscheduled.

108.55(b)(18) – amended term “flight deck” to “flight crew compartment”.

108.59(a) – amended to relax the security training recurrency interval from 2 years to 3 years; and separated the record keeping requirement from the training requirement.

108.59 (b) – simplified and clarified the requirements for training procedures.

108.59(c), (d) and (e) – simplified the records requirements and moved them to new rule 108.60.

In addition, transitional provisions were added to rules 108.55, 108.59, 108.60, and 108.65.

Editorial changes have been made, where appropriate, to clarify the requirements of the rules or for consistency with modern legislative drafting style.

The rule as amended was then referred to Parliament’s Regulations Review Committee before being signed by the Minister of Transport.

## **Examination of submissions**

Submissions may be examined by application to the Docket Clerk at the Civil Aviation Authority between 8:30 am and 4:30 pm on weekdays, except statutory holidays.

## **Insertion of Amendments**

### **Effective date of rule**

Amendment 9 to Part 108 comes into force on 16 January 2013.

### **Availability of rules**

Civil Aviation Rules are available from–

CAA web site: <http://www.caa.govt.nz/>

Freephone: 0800 GET RULES (0800 438 785)

## Part 108 — Air Operator Security Programme

### Subpart B — Air Operator Security Programme Requirements

*Rule 108.55 is revoked and replaced by the following rule:*

#### **108.55 Security requirements – international**

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

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

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

- (6) subject to paragraph (c), appropriate security controls are applied to baggage, cargo, courier parcels and mail intended for carriage on the air operator's aircraft; and
- (7) the safe conduct of a flight is achieved and the pilot-in-command notified, if 1 or more persons on board are required to travel on that aircraft because they are in lawful custody, or subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and
- (8) a transit or transfer passenger and the passenger's carry on baggage is controlled to prevent an unauthorised article being taken on board the air operator's aircraft by the passenger; and
- (9) carry on items left in the cabin by a passenger disembarking from a transit flight are removed from the aircraft or otherwise dealt with in an appropriate manner before the flight departs unless—
  - (i) the passenger screening process of the flight's originating State is acceptable to the Director; or
  - (ii) the flight is making an unscheduled stop; and
- (10) appropriate security controls are applied to cargo, baggage, mail, aircraft supplies, stores, and air operator's supplies which are moved within an aerodrome for carriage on the air operator's aircraft; and
- (11) every consignment of a package that is not cargo or mail but is intended for carriage on an air operator's aircraft, (whether unaccompanied or using commercial courier services) is screened; and
- (12) before boarding an air operator's aircraft, every passenger, crew member, and the carry on baggage of the passengers and crew members is screened in accordance with rule

act of unlawful interference being taken onto the air operator's aircraft; and

- (13) baggage from a passenger who is not on the aircraft is prevented from being carried unless the baggage is authorised as required by paragraph (17); and
  - (14) pre-flight checks of originating aircraft are undertaken, including procedures for discovering any suspicious object or anomaly that can conceal a weapon, explosive, or any other dangerous article or substance that may be used to commit an act of unlawful interference; and
  - (15) security control is provided for baggage from the point where it is checked in until it is placed on board the air operator's aircraft, if the baggage is for carriage on a passenger flight and has originated from a place other than an airport check-in counter; and
  - (16) except as provided for in paragraph (h), before being loaded onto an air operator's aircraft, every item of baggage that is not carry on baggage is screened in accordance with rule 108.63 in order to prevent a weapon, explosive, or other dangerous article or substance that may be used to commit an act of unlawful interference being loaded onto the air operator's aircraft; and
  - (17) only baggage that is authorised by the air operator is carried; and
  - (18) an unauthorised person is prevented from entering the flight crew compartment of the air operator's aircraft during flight.
- (c) An air operator must not allow cargo or mail to be loaded onto an aircraft carrying passengers unless—
- (1) the cargo or mail is received from a regulated air cargo agent and the consignment of cargo or mail is—



- (ii) checked by the air operator to ensure that the consignment has not been tampered with; or
  - (2) if the air operator accepts the cargo or mail from a person who is not a regulated air cargo agent, the cargo or mail is subjected to appropriate security controls, in accordance with paragraph (d); or
  - (3) despite paragraphs (1) and (2), if the cargo or mail is subject to a direction to screen made by the Minister or the Director under sections 77A or 77B of the Act respectively, the cargo or mail has been screened in accordance with the direction and has been maintained in a secure state.
- (d) If the air operator is to accept cargo or mail from a person who is not a regulated air cargo agent, the air operator must establish appropriate facilities and procedures that are equivalent to those required under the following rules for ensuring that the security controls required in paragraph (c)(2) meet the requirements of Part 109:
- (1) rule 109.53 (Facility requirements):
  - (2) rule 109.55 (Cargo and mail security control procedures):
  - (3) rule 109.57 (Screening procedures):
  - (4) rule 109.59 (Authorisation procedures):
  - (5) rule 109.61 (Procedures and register for a known customer):
  - (6) rule 109.63 (Training of personnel):
  - (7) rule 109.65 (Cargo security incidents):
  - (8) rule 109.67 (Records).
- (e) Details of the facilities and procedures required by paragraph (d) must be included in the air operator's security programme required by rule 108.65, Part 119 or Part 129.

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

- (1) the person is escorted; and
- (2) the escort confirms that the person is not carrying any item that may be used as a weapon; and
- (3) the escort is equipped with adequate devices for restraining the person; and
- (4) the pilot-in-command and senior flight attendant are notified of the location of, and the security arrangements for, the person; and
- (5) alcoholic beverages are not served to the person or the person's escort; and
- (6) metal utensils are not provided for the person's use; and
- (7) the person is not seated in a seat or seat row next to an emergency exit; and
- (8) the person is seated appropriately to ensure safe conduct of the flight is achieved; and
- (9) not more than 1 person in custody is carried on an aircraft with a certificated passenger seating capacity of 29 seats or less and not more than 1 additional person in custody is carried for each additional 25 seats of certificated passenger seating capacity.

(g) If a domestic air operator undertakes passenger or baggage check-in on behalf of an international air operator, or for transshipment onto an international regular air transport passenger service, the international air operator must ensure that the domestic air operator complies with the international air operator's security programme.

(h) Paragraph (b)(1C) does not apply to international transfer and

- (i) The requirements of paragraph (c)(1) and (2) do not apply to—
- (1) diplomatic mail that is carried in a diplomatic bag that is externally marked to identify its character and is accompanied by signed documentation from an official of the dispatching diplomatic agency; or
  - (2) international transfer and transit cargo or mail.
- (j) Paragraph (b)(9) does not apply to an air operator until 16 July 2013 provided that the air operator continues to comply with rule 108.55(b)(9) that was in force on 15 January 2013.

***Rule 108.59 is revoked and replaced by the following rule:***

### **108.59 Training of personnel**

- (a) An air operator security programme must have procedures for ensuring that—
- (1) personnel responsible for carrying out security procedures detailed in the security programme are sufficiently trained to competently perform their tasks; and
  - (2) all other personnel employed in the maintenance and servicing of the aircraft have a basic awareness of air operator and aviation security; and
  - (3) training is conducted in a structured and coordinated manner by a person authorised by the air operator; and
  - (4) 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.
- (b) The procedures required by paragraph (a) must contain—
- (1) applicable segments for initial training and recurrent training; and

- (3) syllabi for each applicable security control function.
- (c) Paragraphs (a)(3), (a)(4), and (b) do not apply to an air operator until 16 July 2013.

*Insert the following new rule after rule 108.59:*

### **108.60 Records**

(a) An air operator security programme must have procedures for identifying, collecting, indexing, storing, maintaining, and disposing of the records that are necessary to provide an accurate record for every person who is required to be trained under rule 108.59, including details of—

- (1) each segment of training that is undertaken; and
  - (2) knowledge testing or competency assessment as appropriate for the training conducted.
- (b) Paragraph (a) does not apply to an air operator until 16 July 2013.

*Rule 108.65 is revoked and replaced by the following rule:*

### **108.65 Air security programme required**

(a) A holder of an Australian AOC with ANZA privileges must establish and implement an air operator security programme that meets the relevant requirements of this Part.

- (b) The security programme required by paragraph (a) must—
- (1) identify the person or persons in New Zealand who are responsible for compliance with this Part; and
  - (2) specify the responsibilities of the person or persons referred to in paragraph (1), including the matters for which that person or persons would deal directly with the Director on behalf of the AOC holder.

(c) A holder of an Australian AOC with ANZA privileges must—

- (1) ensure that the holder's security programme is amended so as to remain a current description of the holder's operations to, from, or within New Zealand; and
  - (2) ensure that each amendment made to the holder's security programme meets the applicable requirements of this Part and complies with the amendment procedures contained in the holder's security programme.
- (d) A holder of an Australian AOC with ANZA privileges must notify the Director in writing within 7 days of a change to any of the following:
- (1) the AOC holder's security programme;
  - (2) the person or persons referred to in paragraph (b);
  - (3) the responsibilities of the person or persons referred to in paragraph (b).
- (e) Paragraphs (b), (c), and (d) do not apply to the holder of an Australian AOC with ANZA privileges until 16 July 2013.

## **Consultation Details**

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

A Notice of Proposed Rulemaking, NPRM 12-01 Security Rules Update, containing the proposed rules was issued for public consultation under Docket 7/CAR/1 on 9 February 2012.

Submissions were received from Airways, Avsec, Chatham Islands Enterprise Trust, Christchurch International Airport, Federation of Air New Zealand Pilots, New Zealand Airports Association, and Qantas.

In addition to the seven formal submissions two organisations commented informally; and those comments have been included in this summary as they also resulted in changes being made to the proposed rules.

The submissions and comments relevant to Part 108 were as follows:

### **Subject area**

#### **Security training recurrency interval**

Two submissions were received regarding the proposed security training recurrency interval of two years.

One submitter proposed that the training recurrency interval of two years should align with the airport identity card re-issue interval of three years. This was proposed on the basis of it being an administrative and compliance advantage to have the airport identity card requirement “trigger” the training requirement.

The other submitter commented that the proposed two year interval is unreasonably short and would give rise to increased costs without significant increase in security value. An interval of three years would be more appropriate having regard to the roles of the personnel affected. They, too, noted that it would align to the validity period of airport identity cards.

One international operator commented informally that they currently use

### **CAA Response**

*In light of the submission and comment, the CAA has reviewed the proposal and agrees that the cost associated with a shorter interval may not balance the security advantage. The CAA notes that there are provisions already to respond to security threats with either advisory material or mandatory requirements which, if necessary, could apply to training if more frequent updates were required. The CAA will amend the proposed training recurrency intervals from 2 years to 3 years.*

### **Transit passengers' carry on items**

One submission was received regarding security controls for international transit operations. The submitter asserted that the status quo should remain on the basis that:

- Reintroducing transit passengers' carry on items will increase screeners' workload potentially affecting effective screening.
- There are already a number of enhancements that offset the necessity of the proposed requirement—
  - Passenger information analysis (identifying selectees)
  - LAGs
  - Adoption of a global 'Prohibited Items' list
  - Explosive trace detection and frisk search
  - X-ray machines with multi-view tomography and explosive detection capability
  - Body scanners, and bottle scanners
- Not all states employ the full range of techniques, so the requirement should be based on—
  - Threat
  - Intelligence and risk assessment
  - Assessment of the systems and processes of other States (via ICAO, IOSA, CAA audits etc)

In addition, the submitter suggested that the rule should consider unscheduled transits as being candidates for relief against the proposed

where there are no passengers leaving or joining the flight. The submitter also noted that they have a ‘failure to board’ procedure that could be an example of a mitigating action.

### ***CAA Response***

*In light of this submission, the CAA has reviewed the proposal and will leave the requirement as drafted. However, the CAA will add provisions for another State’s passenger screening to be acceptable to the Director<sup>1</sup>, and unscheduled transit stops.*

### **Rule Reference**

#### **Rule 108.59      Training of personnel**

One informal comment was received regarding rule references contained in 108.59(c), (d), and (e) which incorrectly referred to paragraph (a)(4) instead of (a)(5).

### ***CAA Response***

*The references were updated.*

A further informal comment was received regarding rule 108.59. The submitter was asking for clarification on the CAA’s expectations with regard to:

- competency assessment of all personnel tasked with security procedures contained within the security programme [108.59(b)(1)(iii)]
  - the acceptability of identifying students by employee number rather than date of birth [108.59(d)(1)]
  - the applicability of tests or assessments [108.59(d)(3)]
-



**CAA Response**

*The comment prompted a review of the proposed rule wording, and consequently the CAA simplified the requirements in line with those existing in Part 109. The CAA will detail its expectations regarding competency assessment, records requirements, and applicability of tests or assessments in the relevant guidance material. In addition, the record keeping requirements will be separated from the training requirements as it is more appropriate to draft substantially separate requirements in discrete rules.*