



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, JENNIFER MARY SHIPLEY, Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *10* day of *Febs.* 1997

by **JENNIFER MARY SHIPLEY**

Minister of Transport

A handwritten signature in black ink, appearing to read 'Jennifer Mary Shipley', written over a horizontal line.

Civil Aviation Rules

Part 108

Air Operator Security Programme

Docket Nr. 1013

Civil Aviation Rules
Part 108

Air Operator Security Programme

RULE OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

The objective of Part 108 is to establish security standards for air operators performing regular air transport passenger services from or within New Zealand.

In May 1990 the Air Transport Division of the Ministry of Transport published a notice of intention to carry out a complete review of the aviation regulatory system. This notice, in Civil Aviation Information Circular Air 3, listed the areas in which rules would be made and invited interested parties to register their wish to be part of the consultative process. The Register was identified as the Regulatory Review Consultative Group.

A draft of Part 108 was developed by the rules rewrite team in consultation with members of the consultative group. An informal draft was published and distributed on 18 February 1993 and a period of informal consultation followed. This culminated in the issue of Notice of Proposed Rulemaking under Docket 1013 on 15 November 1995.

The publication of this notice was advertised in the daily newspapers in the five main provincial centres and the *Gazette* on 15 November 1995. The notice was mailed to members of the Regulatory Review Consultative Group and to other parties, including overseas Aviation Authorities and organisations, who were considered likely to have an interest in the proposal.

A period of 70 days was allowed for comment on the proposed rule.

The submissions and verbal comments were considered and where appropriate the proposed rules amended to take account of the comments made.

The rules as amended were then referred to and signed by the Minister of Transport.

Part 108 comes into force on 1 April 1997.

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Subpart A — General

108.1 *Applicability*

This Part prescribes rules governing the air operator security programme required by Part 119 and Part 129.

108.3 *Definitions*

In this Part, unless the context otherwise requires—

Air operator means a person or organisation offering or operating a regular air transport passenger service.

Subpart B — Air Operator Security Programme Requirements

108.51 *Air operator security programme*

Each air operator security programme shall contain—

- (1) where any work relating to compliance with this Part is intended to be contracted out to any other organisation, the contractual provisions by which the applicant for an air operator certificate or a foreign air operator certificate ensures that any such contractor or other agent complies with the requirements of the applicant's air operator security programme; and
- (2) details of the person responsible for training personnel in accordance with the procedures required by 108.59; and
- (3) details of the procedures required by—
 - (i) 108.53 regarding domestic security requirements; and
 - (ii) 108.55 regarding international security requirements; and
 - (iii) 108.57 regarding the clearance of aircraft flights; and
 - (iv) 108.59 regarding the training of personnel; and
 - (v) 108.61 regarding incident notification and reporting.

108.53 *Security requirements — domestic*

(a) Each air operator security programme for a domestic regular air transport passenger service shall have security procedures for flights within New Zealand to safeguard passengers, crew, ground personnel, aircraft, and facilities, against acts of unlawful interference.

- (b) The security procedures shall detail the means by which—
- (1) the requirements of 91.9(a), and either 121.13 or 135.9, are complied with, regarding the carriage of firearms on board an aircraft; and
 - (2) danger to the air operator's passengers, crew, and ground personnel in the event of a hijacking, bomb threat, or any other threat of unlawful interference is minimised; and
 - (3) access to unattended aircraft is controlled at all times to prevent unlawful interference with such aircraft; and
 - (4) access to security areas of security designated aerodromes and operational areas at other aerodromes within New Zealand, through the air operator's facilities or any other access used by the air operator for passengers, personnel, baggage, cargo, freight, or aircraft supplies is controlled; and
 - (5) cargo, courier, and express parcels and mail intended for carriage on an aircraft are to be subjected to appropriate security controls to prevent the introduction of any weapon, substance, or other device which may be used to commit an act of unlawful interference; and
 - (6) the safe conduct of any flight is to be achieved and the pilot-in-command notified, where one or more persons on board are required to travel on that aircraft because they are in legal custody, or subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and
 - (7) the risk arising from baggage on board any aircraft belonging to a passenger who has failed to board, is assessed by the air operator and the pilot-in-command, before deciding whether the baggage may be transported on the flight; and
 - (8) all passengers and crew members boarding any aircraft are subjected to passenger and baggage screening by, or under the direct supervision of, the Aviation Security Service established under section 72B(ca) of the Act, or the holder of an aviation security organisation certificate issued under Part 142, when the Director requires passenger and baggage screening for the flight.
- (c) The procedures required by paragraph (b)(6) shall include procedures to ensure, in relation to the carriage of any person in legal custody on a regular air transport passenger service, that—
- (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 their escort; and
- (6) metal utensils are not provided for the person's use; and
- (7) no more than one person in custody is carried on an aircraft with a certificated seating capacity of less than 30 seats and no more than one additional person in custody is carried for every additional 25 seats of certificated seating capacity.

108.55 Security requirements – international

- (a) Each air operator security programme for an international regular air transport passenger service shall have security procedures for flights within or from New Zealand to safeguard passengers, crew, ground personnel, aircraft, and facilities, against acts of unlawful interference.
- (b) The security procedures shall detail the means by which—
 - (1) the requirements of 91.9(a), and either 121.13 or 135.9, are complied with, regarding the carriage of firearms on board an aircraft; and
 - (2) danger to the air operator's passengers, crew, and ground personnel in the event of a hijacking, bomb threat, or any other threat of unlawful interference is minimised; and
 - (3) access to unattended aircraft is controlled at all times to prevent unlawful interference with such aircraft; and
 - (4) access to security areas of designated aerodromes and operational areas at other aerodromes within New Zealand, through the air operator's facilities or 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 from New Zealand, where the Director finds or suspects an increased level of security risk to any person on an aircraft, or to any aircraft or aerodrome; and

- (6) cargo, courier, and express parcels and mail intended for carriage on an aircraft are to be subjected to appropriate security controls to prevent the introduction of any weapon, substance, or other device which may be used to commit an act of unlawful interference; and
- (7) the safe conduct of any flight is to be achieved and the pilot-in-command notified, where one or more persons on board are required to travel on that aircraft because they are in legal custody, or subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and
- (8) transit and transfer passengers and their cabin baggage are controlled to prevent unauthorised articles being taken on board by such passengers; and
- (9) where the flight is under an increased level of threat of an act of unlawful interference, disembarking passengers do not leave items on board the aircraft; and
- (10) all cargo, baggage, mail, aircraft supplies, stores, and air operator's supplies being moved within an airport and intended for carriage on an aircraft are to be protected against the introduction of any weapons, explosives, or any other dangerous devices which may be used to commit an act of unlawful interference; and
- (11) consignments of packages other than air cargo or mail intended for carriage on an aircraft, whether unaccompanied or using commercial courier services, are subjected to security screening; and
- (12) all passengers and crew members boarding any aircraft are subjected to a passenger and baggage screening before the aircraft departs. For aircraft operating from New Zealand the screening shall be conducted by, or under the direct supervision of, the Aviation Security Service established under section 72B(ca) of the Act, or the holder of an aviation security organisation certificate issued under Part 142. For New Zealand registered aircraft operating from aerodromes outside New Zealand, the screening shall be conducted by an organisation acceptable to the appropriate authority of the state of departure; and
- (13) the baggage from passengers who are not on the aircraft is prevented from being transported if the baggage is not subjected to security screening; and
- (14) pre-flight checks of originating aircraft are undertaken, including procedures to discover suspicious objects or anomalies that could conceal weapons, explosives or any other dangerous devices; and

- (15) protection is to be provided for baggage from the point where it is checked in until it is placed on board an aircraft, where that baggage is intended for carriage on passenger flights and has originated from places other than airport check-in counters.
- (c) The procedures required by paragraph (b)(7) shall include procedures to ensure, in relation to the carriage of any person in legal custody on a regular air transport passenger service, that—
- (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 their escort; and
 - (6) metal utensils are not provided for the person's use; and
 - (7) no more than one person in custody is carried on an aircraft with a certificated seating capacity of less than 30 seats and no more than one additional person in custody is carried for every additional 25 seats of certificated seating capacity.
- (d) Where a domestic air operator accepts passenger or baggage check-in on behalf of an international air operator, or for transshipment for carriage on an international regular air transport passenger service, the international air operator shall ensure the domestic air operator complies with the international air operator's security programme.

108.57 Security clearance of flights

Each air operator security programme shall have a procedure to ensure that the security programme applicable to the flight is complied with before an aircraft is permitted to depart on an air transport operation from any New Zealand aerodrome.

108.59 Training of personnel

Each air operator security programme shall have a procedure to ensure that—

- (1) personnel tasked with security procedures detailed in the security programme are sufficiently trained to competently operate the procedures; and

- (2) all other personnel employed in the maintenance and servicing of the aircraft have a basic awareness of air operator and aviation security.

108.61 Incident notification

Each air operator security programme shall have a procedure for notifying, and where applicable reporting, any security incident involving the air operator's aircraft to the Director in accordance with Part 12.

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.)*

Background to the Rules

In April 1988 the Swedavia McGregor – Report on civil aviation regulation in New Zealand was completed. Following the recommendations contained in that report, the Air Transport Division of the Ministry of Transport commenced a complete review and rewrite of all existing civil aviation legislation, and where necessary initiated new legislation for the areas not previously covered.

Considerable research was carried out to determine the format of the new legislation. The Division decided that the most suitable legislative framework should incorporate the advantages of the system being developed by the European Joint Aviation Authorities and published as Joint Aviation Requirements (JAR), and of the Federal Aviation Administration (FAA) of the United States of America. The JAR are structured in a manner similar to the FAA's Federal Aviation Regulations (FAR) and aim to achieve maximum harmonisation while allowing for national variations.

New Zealand's revised legislation is published as the Civil Aviation Rules (CAR). The CAR are divided into Chapters which reflect a range of related topics. Each Chapter is divided into Parts that contain individual rules relating to a particular aviation activity.

Each Part of the CAR is accompanied by at least one Advisory Circular (AC) which expands, in an informative way, specific requirements of that Part and describes an acceptable means of compliance. For example an AC may contain the minimum acceptable practice or standard that would be necessary to meet a rule.

The CAR numbering system is based on the FAR system. As a general principle the subject matter of a Part is the same or similar to the FAR although the title may differ to suit New Zealand terminology. Where a CAR Part does not readily equate with a FAR number code, a number is selected that does not conflict with any existing FAR Part.

The FAR have been used as a starting point for the development of most CAR but there are likely to be significant differences in the content of the rule. The equivalent rules in the US are contained in Parts 100 - 177 of Chapter 49 of the Code of Federal Regulations which have also incorporated the ICAO standards. This Chapter is administered by the Department of Transport as it covers the three modes of transport. The Department of Transport has delegated authority to the FAA for the enforcement of the requirements relating to the carriage of dangerous goods by air.

The objective of the new rules system is to strike a balance of responsibility between the State authority and those who provide services and exercise privileges in the civil aviation system. The balance must enable the State authority to maintain continuing regulatory control and supervision while providing the maximum flexibility for participants to develop their own means of compliance.

Notice of Proposed Rule Making

To provide public notice of, and opportunity for comment on, the proposed new rules the Authority issued Notice of Proposed Rule Making 95-5 under Docket Number 1013 NR on 15 November 1995. This Notice proposed the introduction of Civil Aviation Rules Part 108 to provide a regulatory airline security boundary for the operations of regular air transport passenger services.

Supplementary Information

All comments made on the Notice of Proposed Rule Making are available in the rules docket for examination by interested persons. A report summarising each substantive contact with the CAA concerning this rule making has been filed in the docket.

Availability of the Document

Any person may view a copy of these rules at Aviation House, 1 Market Grove, Lower Hutt. Copies may be obtained from Publishing Solutions Ltd, PO Box 983, Wellington 6015, Telephone 0800 800 359.

Summary of Comments on Docket Number 1013 NPRM

Development of the Rules

1. General Comment on the NPRM

1.1 The Board of Airline Representatives of New Zealand Incorporated [BARNZ] in considering 108.1 raised concerns that air charter operators who operate on a frequency of less than four services in consecutive 28 day period will not have to comply with the Part 108.

CAA response: The CAA have excluded operators of one-off services from the requirement to have a security programme. One-off services may include, for example, a foreign charter operator which, within the 28 day period would operate a service into or within New Zealand and then return within the same period to uplift its passengers. The requirement for such operators to submit an airline security programme for approval by the CAA was considered unduly onerous.

However, the CAA intends to include identical specific security requirements (excluding the requirement to submit a security programme for approval by the CAA) to those in Part 108, in a rule to be developed specifically for charter operators that fall outside the applicability of Part 108. It is also of significance that a very high proportion of charter operations are carried out by either international or domestic air operators falling within the applicability requirements of Part 108 for other services they operate.

1.2 Qantas Airways in their general submission to this Part submit that as their programme fully meets the requirement of the Australian Department of Transport and the standards of ICAO Annex 17, New Zealand should not require additional measures and management systems.

CAA response: Part 108 is based specifically on the airline operator standards included in ICAO Annex 17. Any additional requirement for the management system, in so far as it affects Qantas, is to be contained in Part 129 - Foreign Air Carrier certification and not this Part.

1.3 In their submission on Part 108, New Zealand Post seeks clarification on whether or not the Part 108 applicability covered aircraft with the capability to fit 9 or more passenger seats, but which were configured without seats to carry only freight.

CAA response: The applicability rules requiring an operator to submit an air operator security programme are now found in Part 119 for domestic air transport operators, and Part 129 for foreign air transport operators. The CAA agrees 108.1 could be read as including cargo only operations and this was not intended. The definition of the term *regular air transport service* has been

amended to specify that only regular air transport passenger services are subject to Part 108.

In circumstances where aircraft are used as all-cargo on some services and the seats replaced for passenger operations on other services, the provisions of this Part will apply to the passenger services meeting the criteria specified in Part 119 or Part 129.

1.4 Rural Aviation in their submission on the general thrust of the Rule raise three main issues covering:

- (a) applicability of Part 108 to helicopters, and
- (b) applicability of Part 108 to all-cargo operations, and
- (c) a suggested split in the level of security requirements between the operators of aircraft of 1-30 passenger seats and more than 30 passenger seats similar to that utilised in the United States.

CAA Response: (a) The applicability rules requiring an operator to submit an air operator security programme are now found in Part 119 for domestic air transport operators, and Part 129 for foreign air transport operators. These rules make the security programmes applicable only to regular air transport passenger services with aircraft having more than 9 passenger seats. The CAA is of the opinion that it would be inappropriate and counter-productive to exclude helicopter operations that meet these criteria.

(b) The applicability to all cargo operations is not intended. See comment in 1.3.

(c) The CAA does not agree. To place specific security requirements on operators aircraft with less than 9 passengers seats is not justified in the New Zealand situation. With respect to operations of aircraft from 9 to 30 passenger seats, the majority of these aircraft operated on regular air transport passenger services utilise the same terminal facilities, secure environment and threat situation as the larger aircraft. To release them from the standard requirements poses an unacceptable level of risk and would have the potential to compromise the security systems of the larger operators.

2. Specific Comments on the NPRM

2.1 Air Nelson in their submission on rule 108.3 submits that the definition of regular air transport passenger services should include an element of "scheduled services".

CAA response: The CAA does not agree, and the contrary was proposed by other operators and BARNZ. The CAA and other operators believe that to restrict applicability to scheduled operations would provide less responsible

operators with the opportunity to avoid the full requirements by calling their operations non-scheduled or charter operations.

2.2 Qantas Airways, in a submission on 108.55(b)(8) raised concern that *persons obliged to travel* are not actually defined and suggests the addition of a definition similar to that provided in the Australian Air Navigation Regulations.

CAA response: The wording in 108.55(b)(8) has been revised to clarify the intended application of this rule. Further explanation will also be provided in an Advisory Circular.

2.3 In their comments on rule 108.51 BARNZ raises objections to the requirement for the air operators to provide details of the contractual provisions by which the applicant operator ensures that any contractor or other agent is carrying out work relating to the operator's compliance with the security programme will comply. BARNZ makes the point that *most* operators cover this requirement in their ground handling agreements and/or in their code share agreements with other airlines. BARNZ also observes that these contracts are usually confidential and should not be disclosed to a third party.

CAA response: The CAA disagrees. Experience has shown that while some operators include security requirements in their contracts and agreements, others do not. Without such an agreement responsibility and accountability for implementation of the security measures become confused and at times overlooked. With respect to the confidentiality concern, the CAA does not seek to have access to the contracts or agreements involved but does require the operators to specify the wording or detail of contractual provisions incorporated in the agreements. In the monitoring process the CAA may wish to view the particular clause in agreements between operators or other handling agents. With respect to code share arrangements a clause covering responsibility and accountability for security is essential.

2.4 With respect to 108.53, BARNZ and Qantas Airways in their submissions maintain that it should be sufficient for an airline to nominate a position (or positions) to carry out training and to warrant that only a qualified and competent person (or persons) will be appointed by the airline in such a capacity.

CAA response: The CAA agrees. The requirements in 108.53 are now covered by the general personnel requirements in the Air Operator certification rules: Part 119 for domestic air transport operators, and Part 129 for foreign air transport operators. These require the applicant to nominate a senior person to be responsible for security, but make no specific requirements for security instructors other than that they be competent.

2.5 Mr R J Crooks, Aviation Security Consultant of Rangiora, in his submission on 108.53(a) and 108.55(a) submits that the word "against" should replace the word "from" in the rule to make it consistent with ICAO Annex 17.

CAA response: The CAA agrees and the rule has been amended accordingly.

2.6 Qantas Airways in a submission on 108.57(b)(2) suggests that the situation is more a safety issue than a security issue. An identical provision is included in 108.55(b)(2) for domestic operations.

CAA response: The CAA agrees. The rules 108.53(b)(2) and 108.55(b)(2) have been moved to Part 91 - General Operating and Flight Rules.

2.7 BARNZ in their submission on 108.57(5) submit that compliance with requirements for control of access to security areas of aerodromes through the airline's facilities, or its agents, or any other access used by the airline for its passengers, personnel, cargo, baggage freight or aircraft supplies will be onerous.

CAA response: This requirement is identical to that which has been in place for several years and has been successfully applied by operators. It specifically applies to the situation where an operator's premises or other facilities are situated on the boundary between public areas and security areas or where a multi-use facility for access is provided for the passengers of the operator.

It is recognised that there are some situations where the aerodrome operator, or an agent operating on behalf of two or more operators controls access, and this is acceptable. However the responsibility for the type of access control specified under the proposed rule must remain with the operator and this must be specified in the procedures in the air operator security programme.

Where the Aviation Security Service is providing the access control under its aviation security provider official tasks, the responsibility is that of the Service and not the air operator.

2.8 In a submission on 108.57(b)(8) Qantas Airways interpret the rule as requiring all "persons in custody" to be escorted.

CAA response: This is not the case. The ultimate responsibility for decision making as to whether or not any such person needs to be escorted and by whom, is the responsibility of the operator. The confusion appears to have arisen from the wording of AC108 on the subject. Appropriate amendments to clarify the situation have been made to the AC.

2.9 Mr R J Crooks, Aviation Security Consultant of Rangiora in his submission on 108.57(b)(14) submits that the words "further security screening" be amended to read "further security control".

CAA response: The CAA agrees that the word “further” is inappropriate in the circumstances this rule is intended to cover. The word “further” has been deleted. Changing to “security control” is not appropriate as it is “security screening” that is required in the circumstances envisaged.

2.10 BARNZ and Qantas Airways in their submissions on 108.57(b)(14) submit that this rule relating to passenger and baggage reconciliation is too prescriptive and should be confined to setting the standards.

CAA response: The CAA considers that as the rule is based on one of the most important “standards” of ICAO Annex 17, specific procedures are important. The wording of the rule closely follows the wording of the Annex 17 requirement. As a result, a moderating of the requirement can not be agreed to. For compliance with the rule, the air operator will need to provide sufficient procedure details to enable the CAA to confirm that the arrangements are appropriate and capable of being audited.

2.11 BARNZ in their submission asserts with reference to rule 108.57(b)(15), that to undertake such pre-flight checks would be unnecessarily restrictive and could cause delays to services.

CAA response: The CAA does not agree. This rule is based on achieving compliance with the ICAO Annex 17 “standard” and is already complied with by all international operators operating from New Zealand. However, adjustments have been made to the Advisory Circular to make it clear that the pre-flight checks required for compliance with this rule relate to checks carried out by the aircraft flight deck and cabin crews and not the detailed security searches required for high risk flights.

2.12 The Aviation Security Service, in a submission on 108.57(b)(15) submits that compliance with the rule would require a considerable number of aircraft to be “searched” before boarding and as such would have considerable resource implications for the Aviation Security Service (who normally carry out such “searches”).

CAA response: The Aviation Security Service, like BARNZ in 2.11 above, have read the pre-flight checks requirement to mean security searches by trained and competent security personnel and not the pre-flight crew security checks of the aircraft cabin and cockpit. The Advisory Circular has been amended to clarify the situation. As a result it is now clear that the requirement has no resource implications for the Aviation Security Service.

2.13 BARNZ and Qantas Airways in their submissions on 108.57(b)(16) submit that they have some problems with the reduction of risk achieved by the holding of unaccompanied baggage for 36 hours (as an alternative to screening of the baggage that is also acceptable) and with the requirements for security control of such baggage.

CAA response: The rule does not specify the holding of unaccompanied baggage for 36 hours. This is referred to in the Advisory Circular as one acceptable means of compliance where screening of the item is not considered by the operator to be appropriate or is not available. Air operators are at liberty to specify that all such baggage be subjected to screening. This would be acceptable.

The availability and use of electronic timing devices with far greater time delays than 36 hours, capable of being used as triggering devices, is well known. However, to date the use of longer delays by those intent on committing acts of sabotage against aircraft, has been extremely rare. Because of the saboteur's desire to see the results of his or her efforts, and maintain a degree of control over the target and where the incident takes place, delays beyond 36 hours are considered unlikely.

As a result the CAA believes that the risk may be reduced to an acceptable level by holding back unaccompanied baggage for 36 hours. Unaccompanied baggage shipped as cargo is not required to meet the requirements of this rule, provided it is treated as normal air cargo.

Transitional arrangements

The transitional arrangements for the Air Operator Security Programme are dealt with in Part 119, Air Transport Operator - Certification. Regular air transport passenger service providers with an air operator security programme approved by the Director under regulation 5 of the Civil Aviation (Security) Regulations 1989 at the time Part 119 comes into force shall continue to operate under that programme until a programme complying with Part 108 is certificated under Part 119.

Regulatory activities

Part 108 replaces the requirements of regulations 4, 5, 6, 7, and 8 of the Civil Aviation (Security) Regulations 1989.

Section 14(2) of the Civil Aviation Amendment Act 1991 (as amended by section 34 of 1996 No. 91) deems the Civil Aviation (Security) Regulations 1989 that are continued in force by section 8 of that Act to be revoked on the close of 31 March 1997.

Conclusion

The Authority concludes from this consultation that the majority of the aviation industry participants favour the direction of the new rules. Specific issues that were identified in the comments received from the consultative group have been addressed. The rules also meet New Zealand's international obligations under the applicable ICAO Annex. The comments and all the background material used in developing the rules are held on the docket file and are available for public scrutiny. Persons wishing to view the docket file should call at Aviation House, 1 Market Grove, Lower Hutt and ask for docket file 1013.