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CIVIL AVIATION AUTHORITY
OF NEW ZEALAND

United States Department of Transportation
Dockets

Docket No. **FAA-1998-4758**

400 Seventh Street, SW,

Room Plaza 401

Washington DC 20590

UNITED STATES

ORIGINAL

FAA-98-4758-26

**14 CFR Part 129 Security Programs of Foreign Air Carriers; Proposed Rule
Docket No. FAA 1998-4758**

Submission and Comments on NPRM Docket FAA-7998-4758 – Part 129

This document forms the New Zealand Government response to the United States Federal Aviation Administration's Notice of Proposed Rule Making on Security Programmes of Foreign Air Carriers Docket **No. FAA-1998-4758**.

The New Zealand Civil Aviation Authority has carefully considered this NPRM and has consulted with the Government agencies and industry parties that the proposed amendment could affect. Our submission follows:

The New Zealand Civil Aviation Authority shares with the United States Federal Administration the objective of aviation safety and security. Indeed we have had a substantial and successful history of co-operation. In this context we are encouraged by the statements in the NPRM supporting information of the intention to:

- (a) consult with the foreign government or authority whenever changes to security measures may be deemed necessary at a foreign airport; and
- (b) review security requirements on a State by State basis and if necessary an airport by airport basis using Annex 17 to the Chicago Convention as the baseline for security measures which may be required of foreign air carrier operations to and from the United States.

However the New Zealand Civil Aviation Authority urges the United States Federal Aviation Administration to reconsider the proposed rule, taking into account that:

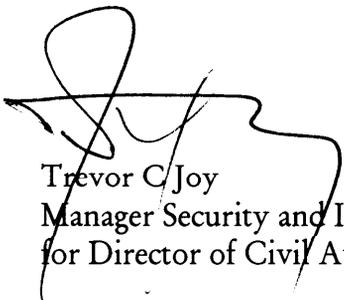
- (a) there is already a network of international arrangements in place to meet aviation security requirements based on the notion of host country responsibility as embodied in Annex 17 of the 1944 Chicago Convention. While the United States NPRM approach is consistent with Annex 17 standards and recommended practices included in paragraph 3.1.18 for flights from the United States, it is contrary to the intent of Annex 17 paragraph 3.2.2 in respect of flights to the United States. These international agreements also provide for co-operation and consultation as necessary. Any unilateral move by the United States to impose specific requirements on foreign airports or operators would constitute an inappropriate exercise of extra-territorial jurisdiction;
- (b) under internationally accepted and implemented practice, security measures required should reflect the level of threat to flights of the air operator concerned. In the majority of attacks against aviation, the air operator whose aircraft are registered in the State under threat are the target. It is very rare for attacks to be directed at the citizens of a State while travelling on an aircraft of another State to or from the target country;
- (c) recognition of international arrangements and practice is the basis which underlies the provisions concerning aviation security contained in the bilateral Air Transport Agreement between New Zealand and the United States. Article 7(3) specifically provides that the two sides will act in conformity with the ICAO aviation security standards and recommended practices. As noted above, the regime proposed in the NPRM is contrary to the intent of Annex 17, paragraph 3.2.2 in respect of flights to the United States. It also overrides the selective implementation of special security measures. It is noted that Article 7(4) refers to each Party agreeing to observe the security provisions required by the other Party for entry into, etc., its territory. Nevertheless, it is questionable whether the regime proposed in the NPRM is consistent with our Air Transport Agreement. It would also call into question the accepted concept of "host nation responsibility."

Moreover, at the practical level:

- (a) it is inappropriate and can be counter-productive to impose additional security measures tailored to meet the security risks to United States air carriers on to non-United States air carriers on services operated to the United States. The security measures designed by each State primarily address the security risk to all air carriers operating from that State. The United States Government is entitled to require its own air carriers to undertake additional measures because of increased sensitivity. However, for the reasons outlined above, the effect of the rules proposed in the

NPRM is likely to be the diversion of security resources and focus from specific measures to counter the particular operator's risk to questionable 'blanket' security measures on all United States-bound carriers;

- (b) if the rule is passed into law as the draft proposes, it will establish a precedent by the State seen to be a world leader in the field of aviation security. Such a precedent may well give rise to States, regardless of any real threat, requiring additional measures to the commercial disadvantage of any other State's air carriers, and not necessarily limited to security issues;
- (c) as a substantial proportion of the security of aviation tasks are applied by a State organisation in New Zealand (the Aviation Security Service), the United States Government would be imposing its requirements for questionable reasons on a foreign State agency;
- (d) the cost hindrance of compliance would fall disproportionately on foreign operators. Because there are 3.28 times more flights by non-United States registered aircraft into the United States from New Zealand than there are United States aircraft, the cost penalty to the foreign operators over the US air carrier involved will be of approximately the same magnitude.
- (e) The actual costs of implementing the proposed amendment on an on-going basis can not be calculated until such time as the consultations referred to in the NPRM supporting papers have taken place between the Federal Aviation Authority and the New Zealand Government. Even when those requirements have been established, and the costs estimated, these would only be indicative for such circumstances. Any high threat situation to any involved United States air carrier would immediately escalate the costs to the foreign operators and governments.



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