AIRCRAFT OWNERS AND PILOTS ASSOCIATION
421 Aviation Way • Frederick, MD 21701-4798
Telephone (301) 695-2000 • FAX (301) 695-2375
www.aopa.org

February 27, 2009

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
West Building Ground Floor
Room W12-140
Washington, D.C. 20590-0001

Re: Notice of Proposed Rulemaking, Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program, Docket No. TSA-2008-0021

Dear Sir/Madam:

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization representing more than 416,000 members, which is nearly three-quarters of the nation's pilots. AOPA's mission is to effectively represent the interests of its members as aircraft owners and pilots concerning the economy, safety, security, utility, and popularity of flight in general aviation (GA) aircraft.

On October 30, 2008, the Transportation Security Administration (TSA) issued a Notice of Proposed Rulemaking (NPRM) entitled "Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program" (LASP). The NPRM proposes to amend existing aviation transportation security regulations by extending to non-commercial general aviation operators a comprehensive, and costly, regime of security regulations. The TSA does so by imposing commercial air carrier standards on private operators.

The general aviation community, like many other parts of the aviation industry has been adversely impacted by the economic downturn. Sales of aviation gasoline, the life blood of light aircraft flying, are down by 12 percent. Flight training has slowed, with a more than 12 percent reduction in student pilot certificates issued for the first half of last year and there is a six percent reduction in the number of private pilot certificates issued in 2008, the lowest since 1984. Another indicator of the downturn is the number of airplanes flying through the system. According to the FAA's traffic statistics, general aviation flew 13 percent fewer flights at airports with operating control towers. Over the past several months tens of thousands of manufacturing workers have been laid off from aircraft and parts production plants, and factories. Well known companies such as Cessna, Hawker/Beechcraft and Piper have all announced layoffs and have scaled back their rates of production and Mooney Aircraft has scaled back dramatically and is in "super hibernation". In the past, AOPA has not opposed reasonable measures that enhance aviation security without imposing unnecessary regulatory costs on small

businesses or unduly infringing upon citizens' freedom of movement and right to privacy. TSA, however, admits in the NPRM that it cannot accurately estimate the financial burden it would impose on general aviation. Just as importantly, the NPRM does not provide confidence that the proposed regulations, if implemented, would provide substantial security improvements that justify the potential financial burden and the intrusion on individual rights. Therefore, AOPA does not support the NPRM as currently drafted, and requests that TSA reconsider the proposed rules, focusing particularly on whether there are less costly and less intrusive ways to enhance general aviation security.

AOPA requests that TSA work closely with the general aviation community and other stakeholders to fill the sizeable information gaps identified in the NPRM regarding the LASP's impact and to explore alternative solutions. To that end, in a letter to Assistant Secretary Hawley dated October 30, 2008, (Attachment B) AOPA requested that TSA hold public hearings. In response, TSA held public meetings in White Plains, New York; Atlanta, Georgia; Chicago, Illinois; Burbank, California; and Houston, Texas. At each one of these hearing speakers and participants packed the room to capacity and presented to TSA concrete evidence that the proposed rule would add significant costs and jeopardize the existence of their operation. In all over 400 people signed up to testify. AOPA presented testimony at each of these hearings drawing on the expertise and experience of leading industry experts, regional representatives, and individual owner/operators. (Attachments E through I). AOPA thanks the TSA for allowing the thousands of attendees and hundreds of speakers the opportunity to have their voices heard. In short, we believe that the public meetings benefited all parties, including TSA, by allowing for a more productive interactive process than merely reviewing written comments.

In addition, given the substantial gaps in information regarding the effect of this program on general aviation, and TSA's requests in the NPRM for critical information from the public, TSA should consider re-issuing the NPRM as an Advance Notice of Proposed Rulemaking, and instituting a negotiated rulemaking process. A negotiated rulemaking would ensure that the segments of aviation covered by this NPRM could work together with TSA to address the numerous areas of concern regarding this proposal.

EXECUTIVE SUMMARY

The proposal fails to recognize the inherent differences that exist between private and commercial aviation and attempts to impose costly and unnecessary security regulations without justification. AOPA's 416,000 members continue to be committed to strengthening general aviation security, but the proposed rule raises concerns focused on the following areas:

- **Applies commercial standards to general aviation operations**. In applying commercial security standards to individual aircraft owners and operators under Part 91, the rule does not take into account the inherent differences between commercial air travel and private operations, nor does it explain why less intrusive measures could not achieve comparable levels of security.

- **Weight threshold**. The large aircraft described by the TSA typically hold two pilots and four to five passengers and are commonly referred to within the industry as light jets. Medium-size jets weigh roughly 25,000 pounds, and the largest jets have maximum

takeoff weights approaching 80,000 pounds. However, even the largest of these aircraft weigh 10 tons less than the smallest airliner (Boeing 737, Airbus A320) the TSA used as justification for the rule. The reasons for imposing weight-based, rather than operation-based, compliance are not explained, nor is there any explanation of the reason the 12,500 pound weight was selected.

- **Expansion to all aircraft and all airports**. Because the NPRM does not recognize the inherent differences between commercial and non-commercial operations, AOPA sees the potential for these requirements to be applied to the entire general aviation fleet in the future. Similarly, although approximately 312 airports would initially be regulated by the TSA, the security requirements could be expanded to include the additional 4,300 public-use airports and 18,000 landing facilities across the country. In a survey of AOPA members conducted in advance of the NPRM release, 86 percent of members surveyed expressed the concern that once the rule is final it is only a matter of time before all general aviation aircraft will be impacted.

- **Outsourcing regulatory oversight**. Security oversight has been established as an inherent government function, and AOPA has concerns with outsourcing it to a third-party auditor. The proposed biennial third-party audits are costly to operators, who will have to pay unsubsidized, market rates for audits that should be conducted, or at least paid for, by the government. Further, no system for auditor accountability exists, and the proposal lacks critical information on how operators will be able to challenge audit errors.

Additional areas of concern that are addressed in greater detail in the body of these comments:

- **Threat to individuals' constitutional rights to travel and privacy.** The regulations proposed by the NPRM unduly infringe upon the ability of general aviation passengers to exercise their right to freedom of travel. Further, while the LASP mandates that passengers and others divulge substantial personal information, TSA has not sufficiently analyzed the risk of unauthorized disclosure of this information and what specific risk-mitigation strategies will counter this threat.

- **Lack of sufficient tailoring to demonstrable security threat.** The threat to constitutional rights is not mitigated by a clear showing by TSA of a demonstrable security threat posed by general aviation sufficient to warrant implementation of the proposed regulations. No reference is made to any analysis, classified or unclassified, by any government agency, or anyone else, about the threat posed by general aviation. Nor does the LASP adequately explain why less burdensome and less intrusive measures would not achieve comparable gains in security.

- **TSA's admitted lack of critical information undermines its economic analysis.** The NPRM squarely admits that its economic analysis was hindered by critical shortcomings in the data available to it which forced it to request detailed comments from affected entities to fill the gap. To the extent TSA attempted to model the costs, it relied upon unreasonable assumptions and, even then, could not accurately determine the costs the NPRM would impose on affected small businesses or quantify the accompanying

benefits. In TSA's regulatory evaluation the agency estimates the 10 year cost of implementing this NPRM at $1.9 billion with 90 percent of these costs being borne by newly regulated aircraft operators. An independent economic analysis commissioned by AOPA, by contrast, conclusively demonstrates that the NPRM drastically under-estimates the economic burden it would impose on general aviation by a factor of 6 with first year costs alone approaching $1.2 billion, with the majority of those costs being paid by the aircraft operator.

- **Outsourcing Security Oversight.** The obligation to ensure transportation security is an inherently governmental function and the requirements for monitoring implementation of security programs and watch list checking clearly are governmental responsibilities. AOPA believes that those functions should be performed by government employees, and the costs of those unfunded mandates should be borne by the government, not private aircraft operators. Further, the NPRM suggests no system for training and maintaining accountability over the auditors, or for ensuring that the same standards and requirements are applied in all compliance reviews. The NPRM also fails to address the issue of how private aircraft operators will be able to challenge errors in the audits, what criteria will be used to determine whether the operator "passes" the audit, and whether penalties will be imposed for failure to maintain perfect compliance. Finally, the use of third-party auditors and their access to sensitive security information pose an additional unforeseen security risk if those auditors later leave the business voluntarily, or are removed for cause from the approved list of auditors.

- **Watch list checks raise substantive privacy concerns.** The NPRM proposes that all passengers on general aviation aircraft above 12,500 pounds be checked against TSA watch lists, meaning potentially thousands of new names will be vetted by TSA. This will likely affect how quickly information can be checked against the watch lists, leading to undue delays for travelers. Likewise, the current procedures to remove a name that is on the watch list in error is cumbersome and costly at best, and the NPRM does not propose to improve the current redress system for passengers wrongly included on the watch lists. These issues seriously call into question the ability of TSA to ensure legitimate passengers are able to travel in a timely fashion. In 2006, the DHS Office of Civil Liberties expressed similar concerns in it's *Report on Effects of Privacy & Civil Liberties*, which noted that expanding the use of no-fly and selectee lists to other modes of transportation, "because of its potential to deprive individuals of all means of travel, may have greater legal and personal implications than the use of these lists to screen only airline passengers."

- **Unrealistic procedure for submissions of security programs.** The NPRM proposes to require all general aviation operators that operate aircraft over 12,500 pounds to submit a security program for review by TSA. The implementation procedure and its affect on business opportunities is not discussed in the proposed rule. This vagueness creates concerns as to how the programs will be created, approved and implemented. The NPRM also proposes to supply an unworkable "one-size fits all" standardized security plan to operators.

- **Criminal history check lacks timetable and guidance for handling crew pending check results.** The NPRM proposes to require flight crews to undergo criminal background checks, as well as security background checks without any proposed timeline for clearance. This requirement adds no value and duplicates the multiple security threat assessments that are conducted on pilots, aircraft owners and operators on a regular basis by the TSA. There is no discussion of the process under which these checks will occur and the effect it will have on the business opportunities of the general aviation operators. Regulated entities must be provided with clarity as to the requirements and the affect on businesses.

- **Placing FAMS on GA flights is costly and potentially ineffective.** The NPRM proposes to require that general aviation operators allow TSA to place federal air marshals on flights when it determines there is a need. This is an unnecessary and ineffective manner of enhancing aviation security while imposing additional costs on the operator.

- **Impact on Airports.** If adopted as proposed, the NPRM would have a devastating impact on the National Airspace System and in particular the system of reliever airports that has been established throughout the country. The NPRM significantly underestimates the cost to general aviation airports. A recent survey of airports conducted by the American Association of Airport Executives revealed that the costs associated with compliance may force 22 percent of the designated reliever airports to give up their reliever status or ban aircraft weighing over 12,500 lbs.

DETAILED REGULATORY ANALYSIS

In the past, TSA has focused primarily on common carrier transportation providers, such as airlines, railroads, and transit systems. In the context of regulating the operations of common carriers, legal concerns regarding privacy issues and restrictions on private travel are often subordinated to the security goals that TSA seeks to achieve. In contrast, in considering whether new security costs and obligations should be imposed on privately owned and operated aircraft, the new requirements are subject to heightened legal scrutiny, and the costs and benefits need to be carefully analyzed. In regulating purely private activity, such restrictions should be imposed only when they are clearly necessary and clearly justified. This NPRM falls short on all of these criteria. AOPA has carefully analyzed the proposed rule and broken comments down into three main categories, the impact on civil liberties, flaws in the economic data provided, and analysis of key provisions of the rule.

I. The Restrictions and Obligations Imposed by the NPRM Unduly Infringe on the Constitutional Rights to Travel and Privacy.

Among the fundamental rights protected by the United States Constitution are the right to travel and the right to privacy. The Supreme Court has clearly stated that "freedom to travel throughout the United States has long been recognized as a basic right under the Constitution."[1] The Supreme Court has been equally clear that the Constitution affords citizens with a fundamental right to privacy.[2] Congress has similarly held that "the right to privacy is a personal and fundamental right protected by the Constitution of the United States" and that, accordingly, "the right to privacy is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies."[3] These constitutional rights protect against overreaching government intrusion into the daily lives of citizens and the proposed rules should be sufficiently limited in scope and effect to avoid infringing on those rights.

A. The Restrictions Imposed on Operators Threaten Individuals' Freedom of Movement and Right to Travel.

The Constitution guarantees citizens the "freedom of movement," or, as the Supreme Court has put it, "the right to go from one place to another."[4] The right to travel and move about the country is critical to the concept of individual liberty at the heart of this country's core principles. This right to travel is violated when a statute deters travel or when impeding travel is its primary objective.[5] The restrictions and requirements of the NPRM would burden the very qualities that make general aviation travel attractive to millions -- flexibility, convenience, and reasonable cost -- and, in doing so, would deter travel by many who rely upon general aviation. While no constitutional right is absolute, the NPRM fails to analyze, or even acknowledge, the impact that conditioning the movement of GA passengers upon sweeping screening protocols

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[1] *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972) (quotation marks omitted).
[2] *See, e.g., Lawrence v. Texas*, 539 U.S. 558 (2003).
[3] Pub. L. No. 93-579 (1974).
[4] *Saenz v. Roe*, 526 U.S. 489, 500 (1999); *see also Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901 (1986).
[5] *Soto-Lopez*, 476 U.S. at 903; *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 277 (1993).

will have on those passengers' ability to exercise their right to travel. Accordingly, TSA should weigh the burden this proposed rule will have on every citizen's constitutional right to move about this country.

The NPRM was formulated without analyzing the impact on civil liberties, a process that is contrary to established Department of Homeland Security (DHS) procedures. Of particular concern is the failure of TSA to research and heed the recommendations of the DHS Office of Civil Liberties as published in their "Report on Effects of Privacy & Civil Liberties" in which they reported to Congress on the impact of the automatic selectee and no-fly lists on privacy and civil liberties. In their findings they advised that expanding the use of no-fly and selectee lists to modes of transportation other than commercial airlines "because of its potential to deprive individuals of all means of travel, may have greater legal and personal implications than the use of these lists to screen only airline passengers".[6] AOPA has repeatedly requested information on whether DHS has conducted a Civil Liberties Impact Assessment examining the LASP (Attachment D) unfortunately, DHS has remained silent on the issue.

Finally, TSA should indicate whether it is considering imposing similar security restrictions on the class of smaller GA aircraft that are not covered by this proposed rule. While only 12 percent of AOPA members fly aircraft that are directly impacted by the proposed rule, an overwhelming 86 percent of members surveyed oppose or strongly oppose the rule fearing it will only be a matter of time until all aircraft are subjected to TSA's regulatory oversight. The constitutional rights of the operators of those aircraft must also be respected, and implementation of the LASP might be cited as justification for applying new security rules to operators of small general aviation aircraft. TSA must explain the future implications of the LASP so that all potentially affected parties can express fully informed views regarding the proposal -- including its potential future effect on the constitutional right to travel.

B. The NPRM Does Not Adequately Describe How the Private Information It Requires That Passengers and Others Provide Will Be Safeguarded

TSA set forth its analysis of the privacy issues implicated by LASP in a Privacy Impact Assessment (PIA), as required by Section 208 of the E-Government Act of 2002.[7] DHS policy requires that PIAs "discuss what privacy risks were identified and how they were mitigated."[8] The LASP PIA does not substantively address the critical questions -- what are the privacy risks posed by LASP and how *specifically* will those risks be mitigated.[9] The PIA never identified what privacy risks are raised by the various exchanges of personal, identifying information mandated by the program beyond generally alluding to unauthorized disclosures of such

[6] U.S. Department of Homeland Security, *Report on Effects on Privacy and Civil Liberties, issued April 27, 2006.*

[7] U.S. Department of Homeland Security, *Privacy Impact Assessment for the Large Aircraft Security Program*, issued Oct. 2, 2008.

[8] The Privacy Office, U.S. Department of Homeland Security, *Privacy Impact Assessments, Official Guidance*, issued May 2007.

[9] *See* PIA at §§ 1.7, 2.4, 3.3., 4.3, 5.4, 6.4, 7.5, and 8.6.

information. With respect to risk mitigation, the PIA again only set forth general statements about how the undefined risks would be mitigated.[10]

The TSA should undertake a more thorough analysis of the specific risks presented by implementation of this proposal and provide the public with the specific safeguards it will use and will require third-parties to use. AOPA is concerned that providing personal information to third-parties, such as the watch list matching service providers, creates an unnecessary risk of unauthorized dissemination of personal information. Moreover, it is not clear that the required biennial audit by third-party auditors would not also require disclosure to the auditor of personal information. As it currently stands, neither the PIA nor the NPRM adequately address these concerns.

Additionally, the PIA acknowledges that TSA does not have a plan in place for providing Privacy Act Statements to individual general aviation passengers.[11] It seeks comments and suggestions for how to provide these statements given that the "unique" nature of this class of individuals makes providing individual notice "exceedingly difficult or impractical." AOPA suggests that, rather than try to adapt the Privacy Act requirements to fit the NPRM, TSA should revise the NPRM to fit the Privacy Act by eliminating the proposals that would require Privacy Act notices.

C. The NPRM Fails to Demonstrate That an Existing Security Threat Merits Restricting These Constitutional Rights or Even That It's Proposal Is Carefully Tailored to Counter That Threat

AOPA recognizes that neither the right to travel nor the right to privacy is unfettered or unlimited. Since 9/11, Americans have been debating how to define the line this nation must draw between providing for its security and protecting the constitutional rights of its citizens. While views may vary about where this line should be, there is no dispute that security measures should be tailored to fit the threat. In this case, the NPRM does not provide affected parties with sufficient information to make a determination of where the line should be drawn. It merely states that "[m]any general aviation aircraft . . . are of the same size and weight of the commercial operators that TSA regulates" and that the "TSA does not currently require security programs for many general aviation aircraft operators."[12] The obvious inference is that general aviation represents a glaring hole in America's security network. This basic assertion, however, is an inadequate basis on which to propose wide-ranging, disruptive, and cost-intensive regulations, and to disregard less burdensome alternatives.

Before deciding what security measures are appropriate, it is standard procedure to analyze the security threat, determine the likelihood of various possible threat scenarios, and then balance the incremental security benefit of each of the proposed measures against the negative

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[10] For example, the PIA stated that the information would be protected by the Privacy Act and TSA polices on disclosure of personal information; the fact that the results of the watch list matching would be secure information and therefore would be safeguarded in accordance with federal regulations. *See* PIA at § 5.3.

[11] PIA at § 6.1.

[12] Large Aircraft Security Program, 49 Fed. Reg. 64,790, 64,826 (proposed Oct. 30, 2008).

impact of the proposed measure on legitimate activities and on the economy.[13] Here, the NPRM makes no reference to any analysis, classified or unclassified, conducted by TSA, FAA, DHS, the Intelligence Community, or anyone else regarding the security threat posed by the GA community generally or the specific class of aircraft affected by this regulation. There is, for example, no reference to any past efforts by terrorists to employ the general aviation aircraft at issue here as a weapon.[14] Nor does the NPRM provide the public with a sufficient explanation whether less intrusive and less costly measures were considered and, if they were, why each measure would not achieve comparable gains in security.

Given the substantial costs imposed by the LASP on operators, the NPRM's failure to describe any tangible or verifiable security threat from this community should not be lightly ignored or brushed aside. In a security analysis of general aviation, the Congressional Research Service stated that "no publicly available intelligence on terrorist operations since September 11, 2001, has indicated any specific threat involving GA aircraft domestically."[15] The FAA has admitted that "the DHS has no specific information that terrorist groups are currently planning to use GA aircraft to perpetuate attacks against the United States."[16] According to a CRS report, the view that general aviation aircraft and airports might pose attractive soft targets for terrorists:

> does not systematically assess risk with regard to the interaction between these vulnerabilities, the threat posed by GA aircraft, and the potential consequences of a terrorist attack using GA aircraft.[17]

The Report continues: "In fact, there is considerable debate over the threat element of the risk equation for GA operations."[18]

Moreover, of four high-profile crashes of general aviation aircraft identified in the CRS report, none apparently involved planes that would be subject to the LASP and none resulted in

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[13] *See also* Bart Elias, *CRS Report for Congress: Securing General Aviation*, Congressional Research Service (updated January 24, 2008) at 20 ("Because of the diversity of GA airports, aircraft, and flight operations, and the varied threats and vulnerabilities posed by different sectors of the GA industry, a logical starting point in mitigating security risk would be to perform systematic risk analyses or security risk assessments examining specific components of GA."); *see id*. ("A comprehensive risk assessment and risk mitigation strategy would likely take into account both the threat and vulnerability associated with GA operations as well as the potential cost of consequences associated with possible terrorist attacked scenarios.").

[14] While it is true that Mohammed Atta and Zacharias Moussaoui apparently expressed interest in aerial applicators, presumably to use as a dispersal vehicle for chemical or biological weapons, crop-dusters are too light to be affected by LASP. And this does not account for the fact that "the chemical and biological threat [posed by] GA aircraft may not be as ominous as some casual observers may fear." Bart Elias, *CRS Report for Congress: Securing General Aviation*, Congressional Research Service (updated January 24, 2008) at 16 (identifying challenges to effective aerial dispersal of chemical or biological weapons).

[15] Bart Elias, *CRS Report for Congress: Securing General Aviation*, Congressional Research Service (updated January 24, 2008) at 14.

[16] Washington, DC Metropolitan Area Special Flight Rules Area, 70 Fed. Reg. 43251 (proposed on August 4, 2005).

[17] Bart Elias, *CRS Report for Congress: Securing General Aviation*, Congressional Research Service (updated January 24, 2008) at 2.

[18] Bart Elias, *CRS Report for Congress: Securing General Aviation*, Congressional Research Service (updated January 24, 2008) at 2.

any deaths of persons on the ground. The CRS Report continued to note that "thefts of jet aircraft are practically unheard of."[19]

Further, it is debatable how, if at all, security regulations like the LASP should factor in the threat of terrorists using general aviation aircraft to deliver a nuclear or radiological weapon. Current programs and procedures such as Customs and Border Protection Electronic Advance Passenger Information System and 100 percent radiological monitoring of all inbound general aviation flights have effectively closed that gap.

II. The Economic Analysis Conducted by the TSA Relies on Incomplete or Absent Data and Unreasonable Assumptions, and Provides No Reasonable Basis for a Determination of Either the Costs or the Benefits of Implementing LASP

General Aviation represents a significant component of the aviation industry. Each year, 170 million passengers fly using personal aviation, the equivalent of one of the nation's major airlines, contributing more than $150 billion to U.S. economic output, directly or indirectly, and employing nearly 1.3 million people whose collective annual earnings exceed $53 billion.[20]

Despite the importance of the GA sector to the economy, TSA has proposed imposing costly and burdensome regulations on GA operators without a full understanding of the economic ramifications implementing these regulations would trigger. The NPRM squarely admits as much. The NPRM acknowledges there are "critical shortcomings" in the data available to determine the number of entities affected by the LASP.[21] As the NPRM admits, "TSA was unable to acquire comprehensive revenue data on currently regulated aircraft operators, and therefore could not make a conclusive determination on whether these firms would experience a significant economic impact under the proposed rule."[22] With regard to currently unregulated Part 91 and Part 125 aircraft operators, the NPRM could not provide any definite understanding of the proposed rule's impact because, in part, TSA lacks comprehensive revenue and employment data for these entities.[23] In fact, the TSA does not even know how many Part 91 and Part 125 operators would be affected. The best estimate it could provide was between zero and 9,061 operators.[24] The NPRM later admits that due to lack of sufficient data, it "may have under- or over-estimated the number of affected small entities."[25] At one point, TSA states that it could not make a "determination whether the proposed rule would have a significant economic impact on a substantial number of small entities," and requested "comment on all aspects of [its] analysis."[26] Finally, TSA has requested the operators themselves help TSA by providing "detailed comments" about the cost ramifications of the LASP.[27] This statement raises the question -- if TSA does not know how many operators will be affected by the proposed rule,

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[19] Bart Elias, *CRS Report for Congress: Securing General Aviation*, Congressional Research Service (updated January 24, 2008) at 12.

[20] U.S. Government Accountability Office, *General Aviation Security: Increased Federal Oversight is Needed, but Continued Partnership with the Private Sector is Critical to Long-Term Success*, (November 2004) GAO-05-144.

[21] Large Aircraft Security Program, 49 Fed. Reg. at 64,831.

[22] Large Aircraft Security Program, 49 Fed. Reg. at 64,833.

[23] Large Aircraft Security Program, 49 Fed. Reg. at 64,831.

[24] Large Aircraft Security Program, 49 Fed. Reg. at 64,829.

[25] Large Aircraft Security Program, 49 Fed. Reg. at 64,831.

[26] Large Aircraft Security Program, 49 Fed. Reg. at 64,839.

[27] Large Aircraft Security Program, 49 Fed. Reg. at 64,825.

how will it know whether it has received “detailed comments” from some, all, or none of the affected operators?

The paucity of information available to TSA as it drafted this NPRM is plainly evident given the number of times it solicits comment and information from the public. Illustrative examples include:

- **Security Coordinators**: The NPRM admits that it did not consider alternative programs and “invites comment on whether there is a more cost-effective means of meeting the same or substantially similar security goals.” The NPRM goes on to state that it lacks information about how this specific proposal would be implemented. For example, it solicited comment about whether “there [are] operational limitations that prevent aircraft operators from designating security coordinators for multiple flight segments.[28]

- **Impact on Small Airport Operators**: The NPRM admits that TSA lacks any revenue information for small airport operators and thus could not “make a judgment on whether the costs represent a significant economic impact to these firms.”[29]

- **Qualification of Auditors**: The NPRM proposes that the third-party auditors have “experience with Federal statutes and regulations and have a certification or accreditation from a highly-regarded organization in the appropriate field.”[30] No information is provided as to what the “appropriate field” is, nor does the NPRM identify how much experience is necessary and which certifications or accreditations would be sufficient. Rather, the NPRM requested that the public fill this gap by commenting on the appropriate qualifications.

Given the substantial amount of information that TSA has requested, it would appear that TSA has skipped a step in issuing this NPRM. AOPA suggests that, in view of TSA’s admitted lack of critical information, it would have been more appropriate to issue an Advance Notice of Proposed Rule Making (“ANPRM”), which would have allowed TSA to gather the information it requires to construct a more carefully crafted and tailored proposal. AOPA believes that the NPRM should be withdrawn and re-issued as an ANPRM to allow TSA an opportunity to get the facts straight before proposing a solution. Additionally, TSA should convert this rulemaking initiative into a negotiated rulemaking process so that all stakeholders can provide TSA with the insight and input needed for an appropriate action.

It is not surprising that the NPRM admits that its cost figures are uncertain. "Given several areas of uncertainty in the cost estimates" and its ability to model some requirements, such as aircraft operator expenses to collect and submit information for watch-list matching, the

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[28] Large Aircraft Security Program, 49 Fed. Reg. at 64,801.
[29] Large Aircraft Security Program, 49 Fed. Reg. at 64,837.
[30] Large Aircraft Security Program, 49 Fed. Reg. at 64,806.

TSA provided a billion dollar potential margin of error in the ten-year cost estimate, from $.85 billion to $1.9 billion.[31] Elsewhere the NPRM stated that "costs are estimated as ranges rather than absolute values in order to reflect the uncertainty surrounding different estimates."[32]

Not only is TSA unable to accurately estimate the *costs* the NPRM would impose on small businesses, but TSA admits that it "cannot quantify the *benefits*" to security and quality governance provided by the proposed rule.[33] Accordingly, it is impossible to say that TSA has conducted a credible cost-benefit analysis of the NPRM.

The "break-even" cost-benefit economic analysis set forth in the NPRM is based on ungrounded and questionable assumptions. The TSA proposed four scenarios of likely attacks by GA aircraft. For each, it estimated the likely number of deaths and injuries and the direct economic costs resulting from the attack. The third scenario was a reoccurrence of the 9/11 attack in which "a large aircraft is used as a missile to carry out a direct attack on a building in a densely populated urban area."[34] The NPRM estimates that this attack would mirror the 9/11 attack yet the two scenarios have very stark and dramatic differences which render any comparison difficult to achieve. First, the 9/11 attacks involved *four* large *commercial* aircraft, not the *single* large *GA* aircraft mentioned in this scenario. The two Boeing 767s which struck the World Trade Center were laden with fuel for transcontinental flights and hit two of the most densely populated office buildings in the country, if not the world. Even the largest corporate jets that comprise the "Long Range" category weigh only one-fourth as much as these aircraft.

Accordingly, the estimated loss of life and number of injuries that could result from a GA aircraft hitting a building is, at the very least, highly speculative. Further, using the estimated property loss from 9/11 is questionable as that attack struck one of the most expensive districts in a city with the most expensive real estate in the country. Recognizing that potential losses may be difficult to quantify, it seems clear that the NPRM has not used a conservative methodology for calculating property loss.

The fourth attack scenario -- the use of a large aircraft to deliver a weapon of mass destruction (WMD) to an urban center -- is also problematic. The NPRM fails to take into account well established and highly effective programs such as the Airport Watch program which is currently in place and providing dramatic results at three out of four general aviation airports in the Nation. General aviation airports are a close knit community and share many of the characteristics of your average neighborhood, but instead of houses they have hangars. Unusual circumstances or strange behaviors are reported to both national and local authorities. The ability to gather materials and assemble a device necessary to carry out such an attack would inevitably draw unwanted attention with the resulting notification of authorities. Any organization determined to conduct this type of operation would find sanctuary at alternative locations and utilize alternative methods to avert the risk of discovery. Thus, imposing these restrictions offers no meaningful additional protection against a WMD attack. In sum, the LASP

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[31] Large Aircraft Security Program, 49 Fed. Reg. at 64,825.
[32] Large Aircraft Security Program, 49 Fed. Reg. at 64,831.
[33] Large Aircraft Security Program, 49 Fed. Reg. at 64,822 (emphasis added).
[34] Large Aircraft Security Program, 49 Fed. Reg. at 64,823.

offers only symbolic protection against a WMD attack and any consideration of the benefits of the LASP in preventing a WMD attack, therefore, should be discounted.

An independent analysis performed by Advanced Aviation Consulting for AOPA found that this program would impose substantially greater economic costs than the NPRM has estimated. Results of this analysis are described in detail in Attachment A, but as the following table indicates TSA underestimated the cost to aircraft operators by a factor of 6. Actual annual costs to aircraft operators are projected to be $1,200,000,000 per year. This figure is consistent with testimony presented by numerous aircraft owners and operators during the TSA public meetings that projected their annual costs between $100,000 and $120,000 per year. ($120,000 yearly cost x 10,000 new operators = $1,200,000,000)

Description	TSA Estimate	AOPA Estimate	Difference
Pass. & Baggage Screening (1st year cost)	$3.47M	$742.2M	$738.7M
True Pass. & Baggage Screening (1st year cost)	N/A	N/A	N/A
Watch-list Service (10 yrs)	$45.6M	$53.3M	$7.7M
False Positives (2nd Yr)	$1,094	$2.41M	$2.41M
Program Devel..(Years 1 & 2)	$6.9M	$22.9M	$18M
Training .(Years 1 & 2)	$3.4M	$6.8M	$3.4M
AOSC Personnel	$1.41M	$371.91M	$370.5M
Security Coord. Training	$1.46M	$2.91M	$1.46M
Total	$62.25M	$1.2B	$1.1B

AOPA requests that TSA reconsider the proposals in the NPRM and work with AOPA and stakeholders to develop an accurate understanding of the costs of this program, including particularly its effect on small businesses. Without knowing the true costs of this program, it is impossible to assess with confidence whether the security benefits provided by the LASP are worth their cost. It is equally difficult to determine if less burdensome alternatives would strike a better balance.

Finally, the Regulatory Flexibility Act, 5 USC Section 603.C requires each regulatory flexibility analysis to contain a description of any significant alternatives to the proposed rule which will accomplish the objectives of the rule but minimize the significant economic impact of the proposed rule on small entities. Of the two alternatives proposed by TSA, one actually increased the burden on small business and failed to take into account the criteria required by law in conducting the analysis. TSA should explore the suggested alternative weights as discussed later on in these comments and revise the regulatory flexibility analysis and republish for comment.

III. Analysis of Key Proposals in the Regulation

A. Audits Should be Conducted by Transportation Security Administration Auditors as Part of a Government Function.

The NPRM proposes that GA operators use third-party auditors, from a TSA-approved list, to audit their security plans on a biennial basis.[35] The auditors would be hired by and paid for by the operators. That requirement raises several concerns.

1. *TSA Proposes to Impose an Unfunded Mandate on General Aviation Operators In Order to Cover the Costs of a National Security Function that is Among the Core Responsibilities of the Government.*

The NPRM's requirement to hire third-party auditors to conduct security audits will impose high cost on operators -- over $3,000 per audit.[36] This cost should not be borne by the private operators but should be borne by the government as national security functions are among the core responsibilities of the federal government.

The NPRM proposes to create a list of TSA-approved auditors from which GA operators can choose. The third-party auditors would audit the operator and submit the final audit to the TSA. The operators would bear the cost of these audits.

2. *The NPRM Includes No Accountability of the Auditor or TSA to the Operator.*

The NPRM does not provide details or discuss the accountability of the auditor. It is important for an operator not only to know the results of an audit, but to know the methodology by which the auditor arrived at the findings so that the operator can remedy any problems that were identified or to dispute any erroneous findings. The proposed rule does not require the third-party auditor discuss the audit methodology and findings with the operator. Similarly, there is no such requirement for the TSA to discuss the findings with the operator.

The proposed rule requires that GA operators pay over $3,000 per audit on a biennial basis, yet it does not give the operator any role in the audit process nor does it detail what will happen when TSA receives the audit. The NPRM is silent as to what TSA will do with the audit report once filed and what responsibilities the operator will have, if any, to respond to the audit.[37] The NPRM directs the auditor to file the audit report with TSA within 30 days of completing the audit. Certain record keeping requirements are detailed in the NPRM. However, what is not discussed is what actions TSA will take in response to the audit report. For example, it is unclear what actions TSA might take upon a negative finding in an audit. TSA has not detailed different levels of noncompliance. For example, there may be some areas of noncompliance that will be so severe as to require that the operator cease operations pending resolution. Conversely, there will be noncompliance issues that are minor and can be dealt with at any time before the next audit. As written, it appears that the proposed rule will treat all infractions equally. Likewise,

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[35] Large Aircraft Security Program, 49 Fed. Reg. 64,790, 64,840 - 64,843 (proposed Oct. 30, 2008).
[36] Large Aircraft Security Program, 49 Fed. Reg. at 64,835.
[37] Large Aircraft Security Program, 49 Fed. Reg. at 64,842.

the proposed rule is silent as to whether the operator will be able to operate pending an appeal of the results and a resolution of issues that arise during an audit. These issues are critical to operators who are being required not only to provide access to auditors but to pay for the audits.

TSA proposes that operators pay over $3,000 per audit for a program that is incomplete. The NPRM does not propose a process whereby the operator and TSA are presented with issues and given an opportunity to cure the problem. TSA should require that its own auditors perform the audits of GA security plans so that there will be accountability and an opportunity to effectively address any issues that arise. Further, AOPA recommends that TSA make available to each GA operator a detailed description of the audit process from commencement to finalization.

3. *Security Sensitive Information May be Compromised by Requiring Operators to Provide Security Information to Third-Party Audit Companies that May Later Be Removed by TSA from the List of Approved Auditors.*

The security plans that GA operators will be required to implement will be security sensitive by their nature. Operators will be forced to turn over this sensitive information to third-party auditors who may not be equipped or qualified to receive this information. In fact, the proposed rule contemplates this and creates a process whereby TSA can withdraw approval of the auditor.[38] However, withdrawing the auditor's approval does not negate or cure the fact that an auditor whom the government no longer believes to be trustworthy has in its possession critical security information belonging to a GA operator. This process unnecessarily exposes operators to potential security threats and monetary liabilities. Furthermore, the NPRM is silent as to how GA operators are to store and limit access to security plans that contain Security Sensitive Information.

TSA should audit security programs using government auditors. Audits of security programs are serious and can have consequences for the businesses being audited. The audits could compromise security sensitive information. It is therefore not acceptable that the system does not establish a clear and transparent program for audits of regulated parties.

B. The NPRM Fails to Address Privacy Concerns or Timing Issues Raised by the Requirement that General Aviation Operators Provide Third-Party Watch List Providers with Passenger Names.

The NPRM proposes that all passengers of GA aircraft of 12,500 lbs and above be vetted through a watch list program. The NPRM proposes that GA operators transmit the names of all passengers to a third-party watch list provider for flight clearance.[39] This proposal is likely to create undue delays in travel, to raise privacy concerns that have been at issue previously in the watch list context, and to impose additional costs to the operator. Finally, any passenger vetting program should be delayed until the Secure Flight Program is capable of handling the new names required to be submitted.

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[38] Large Aircraft Security Program, 49 Fed. Reg. at 64,841.

[39] Large Aircraft Security Program, 49 Fed. Reg. at 64,849, 64,851 - 64,853.

1. *The NPRM Fails to Address the Issue of Timing for Watch list Results.*

The NPRM fails to propose a timeframe within which an operator must submit names. Nor is there a timeframe proposed within which a passenger's name must be cleared. The NPRM seeks to regulate approximately 10,000 *new* GA operators. These operators vary in size and number of passengers. And given the sheer volume of operators regulated by this rule, it is clear that there will be a significant increase in passenger information submissions to be checked against a watch list. The volume of names to be checked will likely have an effect on how quickly a passenger can be cleared through the system.

GA flights that the NPRM seeks to regulate are unscheduled and often planned without a great deal of lead time. Therefore, it will be important to the operator that the names submitted to the watch list program will be turned around in a very short period of time. Additionally, there will be circumstances under which an expedited process will be needed. The proposed rule is silent on this. TSA must detail a reasonable timeframe for submitting names and for submitting information back to the operator.

2. *The NPRM is Silent as Whether Operators Will Be Required to Purchase New Technology in Order to Submit Names for the Watch List Check.*

The NPRM is silent as to how a passenger's name will be transmitted to a third-party watch list provider and at some unspecified later date, to the Secure Flight Program. Under the current program, GA operators are required to perform name checks at the operator's location. Because the proposed process will require transmittal of the information, TSA must provide adequate notice to GA operators if this process will require the purchase of software or additional technology.

3. *The NPRM Fails to Adequately Address Serious Privacy Concerns Raised by the Watch List Checks.*

The NPRM's proposal to clear all GA passengers through a watch list raises privacy concerns. First, the current process to remove a name from the watch list when someone has been included on the list in error or to attempt to clarify that the name on the list is a different person, is cumbersome and costly at best. It can take years and thousands of dollars in legal fees to successfully remove oneself from the watch list when listed in error.[40] At present there is no proposal to improve the current redress system. It is therefore critical now when TSA is proposing to add millions of new passengers to this process, that there be an office or ombudsman created specifically to assist GA passengers in the event that problems arise.

Second, there are concerns regarding passengers who are singled out for secondary screening (the "selectee list") each time they fly. Such concerns were raised in 2003 when TSA

[40] Currently there are any number of people on the watch list or with names similar to those on the watch list who do not pose a threat but nonetheless have extreme difficulty in rectifying the situation. There are reports of Federal Air Marshals being denied boarding privileges because names similar to theirs are on the watch lists. *See Air Marshals Grounded in List Mix-ups,* WASHINGTON TIMES, April 30, 2008, *available at* http://washingtontimes.com/news/2008/apr/30/air-marshals-grounded-in-list-mix-ups/.

attempted to institute CAPPS II, a program that sought to assign a coded color (red, yellow or green) to each passenger based on a mathematical algorithm using commercially available information on each passenger. Under CAPPS II, if a passenger was deemed not to be a threat, the passenger would receive a green mark on the passengers boarding pass and be able to proceed through security subject to minimal screening. If however, a passenger was deemed to be an increased threat, the passenger would receive a yellow mark on his boarding pass and be subject to secondary screening. Finally, if the passenger posed an unreasonable threat, the passenger would receive a red mark on the passengers boarding pass and be denied boarding privileges. One purpose of this system was to accelerate the screening process at airports. CAPPS II was designed in part, to respond to complaints that TSA wasted resources and unnecessarily delayed security lines. At that time, TSA employed data mining procedures to determine which passengers posed increased threats and which did not. Another purpose was to more accurately determine which passengers posed a threat to aviation security. Members of Congress and civil liberties groups expressed serious reservations about a system that mined commercial databases as well as visibly singled certain passengers out for additional screening.[41] These concerns continue to be valid.

One concern is that by employing data mining techniques, it is impossible to target specific information that causes a passenger to be considered an increased threat. Therefore, because it was impossible to pinpoint with any accuracy what triggers the labeling of someone as an increased threat, it is impossible for the person to prove otherwise. This creates a scenario under which a person labeled as an increased threat cannot be removed from the list unless he is able to prove to the government that he is not an increased threat. However, a shortcoming of the data mining system is that the government cannot accurately inform the person what has triggered increased threat level because even the government does not know.

Another concern relates to business passengers who receive a yellow mark. Business passengers have a unique issue regarding being singled out for additional screening. If someone is traveling for business purposes and is consistently taken aside for additional screening, his employer may, at some point, feel that there was an important characteristic of that passenger that the U.S. government finds to cause the individual to pose an increased threat. The employer could use this against the employee as a reason to release the employee. In other words, an employer may think that if the government finds his employee not completely trustworthy, why should he. The inherent problem is that the employee would have no way to know what triggered the additional screening. And as noted, it is likely that he would not be able to remedy the situation through removal from the watch list. These same key concerns are heightened in the GA business context.

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[41] *See* Ryan Singel, *Congress Puts Brakes on CAPPS II*, WIRED MAGAZINE, Sept. 26, 2003, *available at* http://www.wired.com/politics/law/news/2003/09/60600?currentPage=all; Larry Greenemeirer, *CAPPS II is Dead, Says Ridge, But Door is Open for CAPPS III,* INFORMATION WEEK, July 15, 2004, *available at* http://www.informationweek.com/news/management/showArticle.jhtml?articleID=23901115; Fred Bayles, *Air Traveler Screening Privacy Concerns* Collide, USATODAY, Oct. 02, 2003, *available at* http://www.usatoday.com/travel/news/2003/10/03-capps.htm; Sara Kehaulani Goo, *Confidential Passenger Data Used for Air Security* Project, WASHINGTON POST, Jan. 17, 2004, *available at* http://www.washingtonpost.com/ac2/wp-dyn/A26037-2004Jan17?language=printer.

Due to these concerns, the TSA did not implement the CAPPS II program. Instead, TSA continues to randomly screen passengers in addition to passengers whose names actually appear on watch lists. This randomness helps to resolve privacy issues raised in the business context. When a passenger seeks to board a commercial aircraft, he may or may not be subjected to additional screening. Because this screening is random, it is highly unlikely that a person would be singled out each time the passenger flies. Therefore, there is no obvious suggestion by the government that a certain passenger is untrustworthy, with the obvious exception of those whose names are on the watch list.

These concerns about privacy are heightened in the GA business context. The NPRM proposes to employ the watch list to screen all GA passengers on aircraft weighing over 12,500 pounds, and require that if the passenger is determined to be a heightened threat, that the GA operator conducts additional screening of that passenger.[42] There are several problems presented with this scenario. First, it is unclear what will cause TSA to require additional screening. The NPRM does not define how TSA will determine the threat level of passengers. It does not discuss whether TSA will rely on a watch list to determine threat or whether it will data mine for information regarding the passengers habits to determine the threat level. If the watch list is the sole source of information being relied upon to make a threat determination, then as stated above, TSA must create an office which passengers can contact to resolve any issues that might occur. It is not sufficient to direct GA business passengers to use the current redress system. This system is inconvenient and costly at best. If TSA intends to data mine, the concerns raised above still apply.

4. *Any Watch List Checks Performed on General Aviation Passengers Should be Incorporated into the Secure Flight Program.*

TSA established the Secure Flight program to correct the security deficiencies and problems that exists with private entities having access to and checking manifests against the terror watch-list. The Secure Flight program final rule was published in October 2008.[43] While the NPRM states that the intent of TSA is to transfer the watch list program to Secure Flight in the future there is no express timeframe for watch list responsibilities to be incorporated into Secure Flight. AOPA recommends that TSA either transfer the program immediately to Secure Flight or delay implementation of the program until Secure Flight can handle the volume of names.

Unnecessary process issues are raised if the watch list program is begun and then transferred at a later date. For example, the NPRM discusses the creation of what is termed a Master List.[44] This list is intended to ease the process for repeat travelers. It is a sort of frequent flier program whereby a person who flies with the same operator will only need to submit to a thorough watch list check once. Following the initial check, the passenger’s name will be continuously run through the watch list system so that when he wishes to fly again the operator only has to contact the watch list provider to receive clearance for the person to fly. The proposed rule implies that this process will be smoother and more efficient than vetting the name

[42] Large Aircraft Security Program, 49 Fed. Reg. at 64,849 -64,850.
[43] Secure Flight Program, 49 Fed. Reg. 64,017 (Oct. 28, 2008) (to be codified at 49 C.F.R. pts. 1540, 1544, 1560).
[44] Large Aircraft Security Program, 49 Fed. Reg. 64,849 - 64,850.

through the watch list program each time the person flies. However, the NPRM cites no evidence that this process will be more efficient and presents no timeline as to how long such a vetting will take. For example, if a passenger notifies the operator that he wishes to use the aircraft within a few hours, will that provide the watch list providers with enough time to clear the passenger? Additionally, the NPRM is silent as to whether the Master List will be transferred to the Secure Flight Program or whether each passenger will have to start the process anew.

5. *The Cost of Watch List Program Should Not be Borne by Operator.*

Finally, under the NPRM the cost of this process would be charged to GA operators. Homeland security and the costs of the LASP rules should be borne by the government, not GA.

C. The Security Program Timing for Submission is Unrealistic and TSA Must Provide Alternative Standardized Plans to Fit the Variety of Operations the NPRM Seeks to Regulate.

The NPRM proposes to require all GA operators that operate aircraft over 12,500 pounds to submit security programs for review by TSA. The implementation procedure and its effect on business operations is not discussed in the proposed rule. This vagueness creates concerns as to how the programs will be created, approved and implemented.

1. *Timing for Submissions of the Security Plans is Unrealistic and Unworkable Because the Proposal Seeks to Regulate Businesses Already in Operation and the Rule Assumes Businesses Have Not Yet Begun Operation.*

The NPRM states:

> (a) Initial approval of security program (1) Application. Unless otherwise authorized by TSA, each aircraft operator required to have a security program under this part must apply for a security program in a form and manner prescribed by TSA at least 90 days before the intended date of operations.

NPRM, 49 Fed. Reg. 64,790, 64,846 (proposed Oct. 30, 2008).

Most, if not all, of the up to 10,000 new operators this proposed rule seeks to regulate will already be in operation. That means that according to this section, TSA will have to provide authorization to *every* operator under this proposed rule. Exactly how these operators are to obtain authorization from TSA to operate pending submission and approval of is not discussed in the NPRM. And it is not clear how TSA will provide authorizations for these 10,000 operators in a timely and organized manner. This section will create undue confusion and unrealistic expectations. Instead of requiring operators to submit security plans 90 days before the intended date of operation, TSA should require that for all current operators security plans must be submitted within 90 days of finalization of this rule. And for new operators (GA operators who do not yet exist), security plans must be submitted within 90 days prior to operation. This scheme accounts for the fact that TSA seeks to regulate businesses already operating and that

cannot afford to cease operations pending special approval by TSA. This will provide a seamless transition for TSA and for the operators.

2. *The NPRM Attempts to Create a One-Size Fits All Security Plan for an Industry that is Composed of Various Types and Sizes of Aircraft and Business Models.*

The NPRM proposes to supply a one-size fits all standardized security plan to operators.[45] Operators may submit an alternative plan for TSA's approval. The NPRM is silent as to whether it will create different security plans based on different types and sizes of operations. If TSA only provides one plan that is intended to fit all 10,000 new operators, many of the operators will likely be required to tailor the plan to their businesses. This will create delays in submissions and confusion among operators. TSA should confirm that it will create several standardized plans to fit the various operations being covered by the NPRM.

D. Weight Threshold of Aircraft Covered by this Proposal.

As mentioned throughout the comments submitted by AOPA and expressed at the series of public hearings on the subject, the underlying problem in the NPRM is that the proposal fails to recognize the inherent differences that exist between private and commercial aviation and attempts to impose costly and unnecessary security regulations without justification. Additionally, the 12,500 weight limit as proposed by the TSA in this NPRM unnecessarily burdens tens of thousands of aircraft owners and operators without proving justification or reasoning. In the NPRM TSA invites comments on the weight threshold of aircraft to be covered by the proposal, but fails to distinguish between commercial and non commercial operations.

This distinction is important when specific portions of the LASP proposal are examined. For example provisions that are unacceptable at any weight level for private Part 91 operators such as watch-list matching, screening passengers for TSA prohibited items, carriage of FAM's may have application when applied to the commercial (for-hire) arena and operators covered by existing TSA security programs.

According to the most recent statistics, the overwhelming majority of aircraft that the NPRM proposes to cover are aircraft with a maximum take-off weight less than 75,000 lbs. In reviewing FAA data sources of the U.S. registered general aviation fleet above 12,500 pounds and business jet segmentation criteria the active inventory can be classified into 4 different weight classes and 7 different product categories.

Aircraft 12,501 to 66,000lb – Total of 8,741 aircraft in this class divided into four categories

Entry (10,000-13,000lb) - CJ1+, CJ2+, Premier 1, SJ30-2

Light (13,000-20,000lb) - CJ3, Citation, Encore, Hawker400XP, Learjet 40

[45] NPRM §1544.105 (a)(2) *Standard Security Program*. TSA will provide to the aircraft operator security coordinator the appropriate standard security program, any security directives, and amendments to the security program and other alternative procedures that apply to the aircraft operator. The aircraft operator may either accept the standard security program or submit a proposed modified security program to the designated official approval. Large Aircraft Security Program, 49 Fed. Reg. at 64,846.

Light medium (20,000-33,000lb) - Gulfstream 100, Gulfstream 150, Citation XLS, Citation Sovereign, Hawker 800XP, Learjet 45/XR, Learjet 60

Medium (33,000-50,000lb) - Citation X, Legacy, Legacy Shuttle, Challenger 300, Falcon 50EX, Falcon 2000, Gulfstream 200, Hawker Horizon

Aircraft 66,001 to 75,000lb – Total of 1,291 aircraft in this class all in the same category

Long range - Global 5000, Gulfstream 350/450, Challenger 604, Challenger 850 ELR, Falcon 2000EX, Falcon 900EX/DX

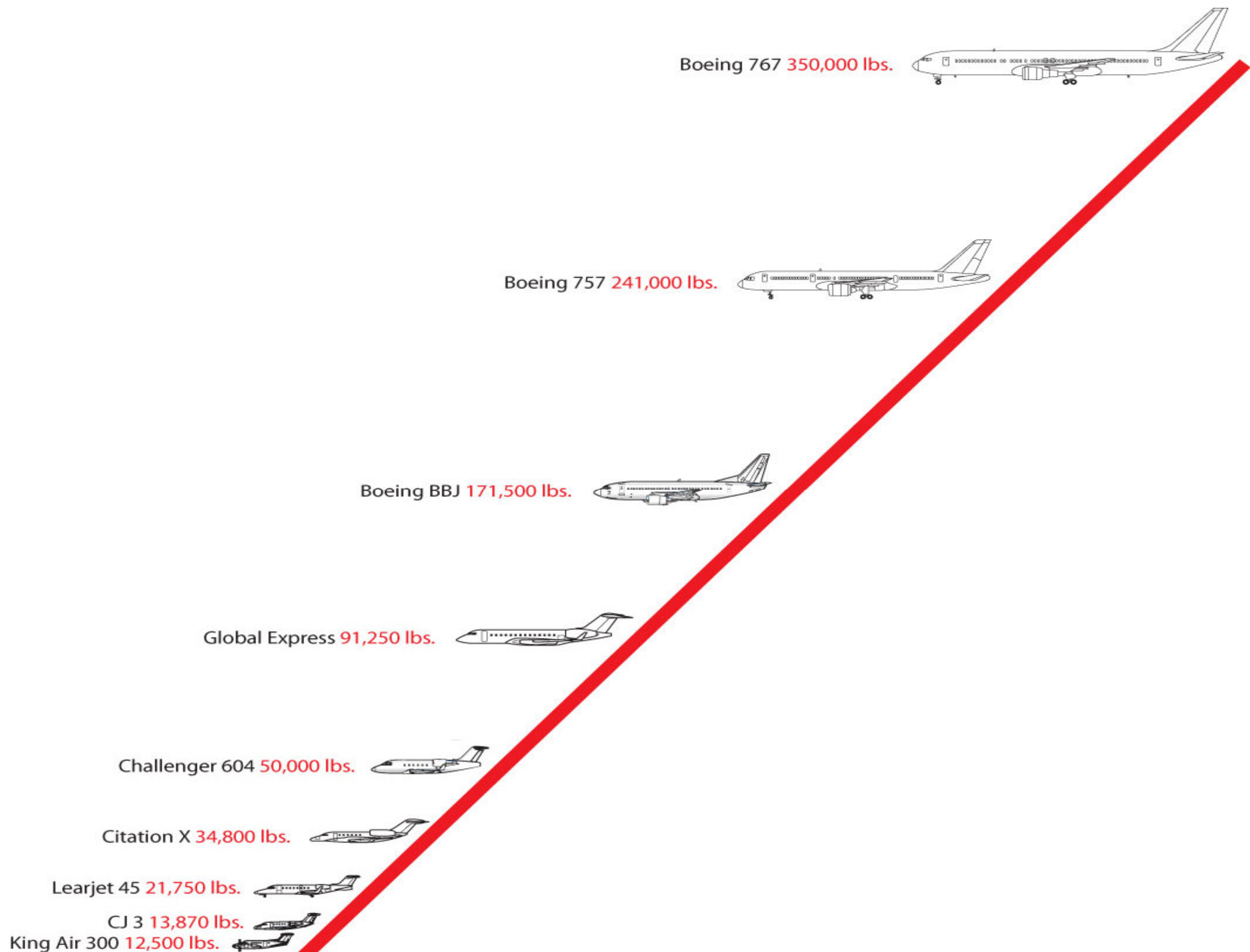
Aircraft 75,001 to 100,309lb - Total of 450 aircraft in this class all in the same category

Very long range - Falcon 7X, Gulfstream 500, Gulfstream 550 Global Express

Aircraft above 100,309lb – Approximately 270 aircraft in this class all in the same category

Bizliner - A319CJ, BBJ1, BBJ2

In general, aircraft with gross take-off weights greater than 75,000 are similar in size to the smaller "Regional-Jet" type of aircraft used by commercial carriers, while aircraft above 100,309 typically represent "Airliner" type aircraft. One could reasonable argue that the most stringent security protocols should be applied to these categories of aircraft. Careful examination of industry standards and practices would show the majority of these operators currently have security programs and procedures in place that provide a comparable, if not superior, level of security than that proposed in the NPRM thus negating the requirement for regulatory action.



E. The NPRM Fails to Provide a Clear Timeline for Completion of the Criminal History Records Check and Fails to Address the Status of Legal Crew Members Pending Completion of the Checks.

The NPRM proposes to require flight crews to undergo criminal background checks as well as security background checks. While the purpose and necessity for these checks are of questionable value given the extensive vetting that is already done on all pilots, the concern is that there is no discussion of the process under which these checks will occur and the effect it will have on the business opportunities of the GA operators.

1. *The NPRM is Silent as to the Timing of the Background Checks and the Continuity of the General Aviation Operators Businesses Pending the Outcomes of the Background Checks.*

The NPRM requires that all flight crew submit to criminal history background checks (CHBC) but does not propose any estimated timing for completing these checks.[46] Likewise the proposed rule is silent as to whether the crew members undergoing the background checks will be able to perform their duties pending resolution of such checks or whether the operators will be required to place the crew members on leave. Finally the proposed rule is silent as to whether the crew members will receive a transferable certificate verifying passage of a background check or whether the crew member have to resubmit each time he changes employers.

The GA operators whom the proposed rule is targeting are for the most part, business operators. It is therefore critical to not only the operator's business that he is able to conduct his business seamlessly but it is critical to his passengers who are using the operator to conduct business of their own. If up to 10,000 affected operators request CHBC's for flight crews at roughly the same time, the CHBC system will come to a standstill, and operators could experience substantial delays in receiving results. Therefore it is critical that TSA present a reasonable timeline within which the CHBCs will be conducted. Furthermore, the final rule should expressly state that pending resolution of a CHBC, a crew member may continue employment.

Because of the continuous vetting of the pilot population by the Transportation Security Administration the need to accomplish a Security Threat Assessment (STA) should be eliminated from the rule in its entirety. If the requirement to perform an STA remains part of the LASP it should be transferable to any employer and aircraft flown. Additionally, to prevent duplication pilots that have undergone security checks as part of other TSA programs such as the Maryland Three, currently have a valid security clearance issued by the United States Government, or currently have an Airport Issued ID media should be exempt from the requirement to conduct an STA.

[46] Large Aircraft Security Program, 49 Fed. Reg. at 64,853 - 64,855.

F. Methods for Positively Identifying Pilots and Effectively Linking Them to the Aircraft They are Operating.

TSA has undertaken a program to positively identify pilots flying aircraft in the National Airspace System as part of an overall DHS leadership situational awareness tool. This issue represents technological and civil liberties challenges of immense proportion. This program is best explored through channels other than the LASP rulemaking and all references to this program should be removed from the LASP accordingly.

G. Prohibited Items.

In the NPRM TSA has proposed that aircraft operators covered by the proposal be required to adopt and carry-out procedures to prevent passengers from carrying prohibited items onto the aircraft. Additional clarification is sought as to whether TSA should limit the definition of "weapon" to guns and firearms or should the entire TSA prohibited list apply. AOPA suggests that the entire section entitled "Unauthorized Persons and Accessible Weapons on Board Large Aircraft" including section 1544.206 be deleted from the proposed rule or modified to exclude aircraft that are not operated for hire. Again, the inherent differences between commercial operations and private aircraft eliminate the need for this requirement. Additionally, TSA's cost benefit analysis did not factor the cost of implementing these measures into the overall impact of the proposed rule. If this requirement becomes part of a final rule it is incumbent on TSA to issue a revised regulatory analysis to take this into account.

H. Federal Air Marshals Costly and Ineffective in the General Aviation Context.

The NPRM proposes to require that GA operators allow TSA to place Federal Air Marshals ("FAMS") on flights when it determines there is a need.[47] This creates concern as an unnecessary and ineffective manner of security while imposing additional costs on the operator.

The GA aircraft that the NPRM is seeking to regulate vary in size and are not scheduled flights open to the public. Due to the closed nature of these flights, it is often the case that either the operator will be familiar with the passengers on board and/or the passengers themselves will be familiar with each other. Therefore, if the purpose of placing a FAM on an aircraft is to have on-board security without alerting passengers, that purpose will be frustrated on GA aircraft. Simply put, the identity of an out-of-place FAM will be obvious to everyone on the flight.

Additionally, according to published reports there are not enough FAMS currently to provide security for commercial aircraft. It is unclear, therefore, where TSA will get enough FAMS to cover GA aircraft. In addition, due to the size and internal design of some GA aircraft, it may be costly or impractical to provide a seat on the plane for the FAM. Finally, the cost of a FAM should not be borne by the operator but should be borne by the TSA, as it is a purely governmental function.

[47] Large Aircraft Security Program, 49 Fed. Reg. at 64,848.

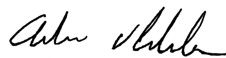
IV. Implementation Issues.

Given that LASP attempts to impose a comprehensive, multi-tiered regime of security procedures on thousands of individuals and businesses, it would be reasonable to question whether TSA possesses adequate resources to execute the proposal without unduly disrupting the economic livelihood of the affected operators and businesses. In contrast to Secure Flight, which imposes enhanced security restrictions on approximately 65 heavily-regulated airlines, LASP will impose substantial restrictions and obligations on nearly 10,000 aircraft operators and 315 airport operators. The scope of the education, implementation, and verification efforts required by this proposal will likely be far greater than any other aviation security program TSA has attempted. In addition, depending on when the final rule is issued, LASP may be launched while Secure Flight is also being rolled out, a situation which undoubtedly risks further overextending TSA's limited resources. These potential implementation issues are a further reason for TSA to consider re-issuing the NPRM as an ANPRM, and opening a negotiated rulemaking proceeding as an alternative to the current NPRM.

V. Conclusion.

Given the proposals substantial lack of data regarding the effect of this program on general aviation, and TSA's numerous requests for critical information from the public, AOPA requests that TSA re-issue the NPRM as an Advance Notice of Proposed Rulemaking (ANPRM), and take the steps necessary to establish a rulemaking committee. Creation of a dedicated workgroup would allow industry and the TSA to work together on requirements that would simultaneously enhance general aviation security and facilitate general aviation operations. A rulemaking committee would provide a secure forum for stakeholder information sharing and the development of sensible and implementable measures.

Sincerely,



Andrew V. Cebula
Executive Vice President
Government Affairs

Attachment A

Independent Regulatory Analysis

Of the Transportation Security Administration's

Large Aircraft Security Program
Docket TSA-2008-0021

February 17, 2009

Prepared for Aircraft Owners and Pilots Association
By Advanced Aviation Consulting

Independent Regulatory Cost Analysis

An independent analysis performed by Advanced Aviation Consulting for AOPA found that this program would impose substantially greater economic costs than the NPRM has estimated. Results of this analysis are described in detail in Attachment A, but as the table below shows TSA underestimated the cost to aircraft operators by a factor of 10. Actual annual costs to aircraft operators are projected to be $1,200,000,000 per year. This figure is consistent with testimony presented by numerous aircraft owners and operators during the TSA public hearings that projected their annual costs between $100,000 and $120,000 per year. ($120,000 yearly cost x 10,000 new operators = $1,200,000,000)

On many of the estimates provided, the TSA provided low, high and "primary" figures. TSA considers the primary figure to be the most probably and is therefore what is used in the following table for comparison purposes. (Note: Figures below represent **one year** costs.)

Description	TSA Estimate	AOPA Estimate	Difference
Pass. & Baggage Screening (1st year cost)	$3.47M	$742.2M	$738.7M
True Pass. & Baggage Screening (1st year cost)	N/A	N/A	N/A
Watch-list Service (10 yrs)	$45.6M	$53.3M	$7.7M
False Positives (2nd Yr)	$1,094	$2.41M	$2.41M
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Training .(Years 1 & 2)	$3.4M	$6.8M	$3.4M
AOSC Personnel	$1.41M	$371.91M	$370.5M
Security Coord. Training	$1.46M	$2.91M	$1.46M
Total	$62.25M	$1.2B	$1.1B

Passenger and Pilot Value of Time

A significant underlying flaw in TSA cost estimates is using airline passenger time value as the basis for corporate/private business travel. TSA uses $45/hour wage for corporate owned aircraft travel and $31.50/hour for personal owned aircraft travel and an average of $37.20/hour fractional owned aircraft travel (pages 52 & 120). This is an incorrect assumption when you take into account the business advantage that is generated through the use of general aviation aircraft and their typical use. General aviation aircraft are capable of reaching thousands of destinations not currently served by commercial airlines. They are used to transport business teams, highly skilled equipment repair and maintenance personnel and senior level corporate officers. On average salary ranges for these types of skilled company employees are much higher. Based on an annual study[48], the average Fortune 500 CEO makes approximately $12 million per year ($5,769 per hour), and the average senior executive $5.8m per year ($2,789 per hour). AOPA estimated senior managers reporting to these executives that were likely to travel with them make an average $250,000/year or $325,000/year fully loaded ($160 per hour). With TSA

[48] http://www.sanepr.com/The-Fortunate-2500-of-the-Fortune-500-_56605.cfm

average of 4 passengers per aircraft, then assuming 1 CEO, 1 senior executive and 2 senior managers, the total passenger hourly time value would exceed $10,000. In order to be conservative with its estimates, AOPA assumed all passengers were only senior managers with a $160/hr value of time.

Ratio of Business and Personal Flights

As previously mentioned the TSA assumes that aircraft that are registered in an individual's name is used solely for pleasure when in actuality most are used primarily for business through leasing arrangements. TSA also averages the two wage estimates for fractional operators under the assumption that half of the travel on these aircraft is for pleasure. According to the most recent aircraft utilization statistics no more than 5% of personal/business travel is pleasure. To quote the TSA, "Using this valuation approach, the 12.5 million passengers using the regulated operators in the first year would devote 86,911 hours to the provision of personal information for security purposes, at a total opportunity cost of $3.5 million (page 120)." However, even using AOPA's conservative estimate of passenger time value and the DOT value for pleasure travel for 5% of the time, the actual first-year cost would be more than 5 times higher.

Discounting Time

TSA estimates include out year 3% and 7% discounting for everything including employee and passenger time. AOPA believes this is not representative of true costs as salaries historically increase, not decrease. Although a discount would be appropriate when assuming employees and passengers grow more efficient at their respective tasks, that improved efficiency would only reduce costs in the first and second year. Regardless, AOPA believes many of the TSA time estimates are overly optimistic and that even the AOPA estimates reflect average best cases.

Personnel and Baggage Screening

The extension of security screening requirements to part 91 operators brings with it requirements to screen passengers and baggage for controlled or prohibited contraband. Those rules currently apply to Part 135 operators, however the TSA does not enforce them to the same degree as airlines due to the potential costs and logistical problems. Expanding these requirements to Part 91 operators unnecessarily expands an ambiguous and unenforced mandate to a much broader audience.

AOPA agrees that the estimated 18 minutes (Page 58) for prescreening passengers and baggage (using currently approved methods) is adequate for flights on which continuously screened passengers are flying, AOPA believes that in more dynamic circumstances where new employees, customers, friends or family are involved, it will take at least 30 minutes with such scenarios being conservatively estimated to include 10% of the flights conducted. Applying AOPA's passenger time value combined with pilot time value, 5% pleasure travel and additional time on 10% of the flights produces a cost of $6,046,218,122.

TSA Estimate: - $3,474,713 1st year

AOPA Estimate: - $742,161,309 1st year

18 min delay at AOPA passenger/pilot time value = **$635,119,025**

  - According to TSA, a 50% load factor = 12 million passengers/year
  - 95% business = 10.8 million passengers/year
- $160/hr ÷ 60 min = $2.67/min x 18min = $48/hr x 10.8M passengers = **$518,400,000**
  - 5% pleasure = 1.5 million passengers/year
- 31.5/hr ÷ 60 min = $.53/min x 18 = $9.54 x 1.2M passengers = **$11,448,000**
  - 2 pilots every flight – each making $83/hr ÷ 60 min = $1.38/min x 2 pilots = $2.76/min x 18 min = $49.68 x 2,118,982 flights = **$105,271,025**

Additional 12 mins for 10% of the passengers & pilots = **$107,042,283**

  - 1.2 million passengers: 95% business (1,140,000), 5% pleasure (60,000)
- $160/hr ÷ 60 min = $2.67/min x 12min = $32/hr x 1.14M passengers = **$36,480,000 business passenger cost**
- 31.5/hr ÷ 60 min = $.53/min x 12 = $6.36 x 60K passengers = **$381,600**
  - 2 pilots every flight – each making $83/hr ÷ 60 min = $1.38/min x 2 pilots = $2.76/min x 12 min = $33.12 x 2,118,982 flights = **$70,180,684**

Watch List Services

The TSA regulatory analysis makes it difficult to determine how much operators will need to spend for watch list services on a monthly basis. However, it does assume a 10% profit margin which is extremely low (page 80). Typically, corporations look for a minimum of 30% margin and more often closer to 60% margin in businesses with high startup costs and low sales volume. Even at the low end, the TSA has underestimated profit motives by two orders of magnitude**.** The TSA does not provide a break down operator costs for using 3rd party watch list matching services, only the cost to the service provider. There seems to be an assumption that the cost to the service provider combined with a 10% profit margin represents the operator's cost. The TSA tables seem to combine a 12% overhead and 10% profit margin to define "profit."

TSA Estimate: $45,575,000 for 10 year period (10% profit margin)

AOPA Estimate: $53,332,750 for 10 year period (30% profit margin)

The Clear Flight program (web based submission of passenger data and approval) should be utilized. However, this requires access to a computer, and possibly special software and may not fit with the dynamic and transient nature of these operations. Consequently, private service should still be permitted as an option. Implementation of the Clear Flight program would help reduce costs while addressing TSA security information concerns. The speed of web communications and modern computer servers should easily accommodate the approximately 10,000 operators the TSA projects will be affected.

False Positives

Additionally, the TSA estimates it will take 30 minutes to resolved instances where passengers are either restricted or are on the no-fly list. Since most if not all passengers are usually critical to the trip (business or pleasure), such circumstances would involve trouble-shooting until the issue is resolved rather than continuing the flight without the matched passenger. Depending on the circumstances and the response by TSA, that could take hours or days. In some circumstances, even a delay of hours could result in a cancelled flight and in other cases extending the trip to take care of business postponed due to the delay. These types of delays could result in a lost day of productivity for all involved (at a cost of at least $71,344 (pilot and passenger salaries for a day) and pose costs in the 10s of thousands or millions in corporate profits, in cases of time critical business deals. The regulatory analysis fails to account for these circumstances.

The TSA estimates between 1 and 4 instances of false positive episodes will occur annually per operator. However, a recent audit of the Terrorists Screening Center determined there to be a 43.4% false-positive rate between the years 2003 and 2007. Finally, the TSA does not consider that nearly all these aircraft are flown by professional crews. This means that even on pleasure flights at least two people on the aircraft are making business wages.

TSA Estimate: $1,094 2nd year (when all operators affected)
AOPA Estimate: $2,408,810,203 2nd year

- $1,758,647,872 - True positive no-fly episodes (4 x 9,973 (no. of operators affected) = 39,892/yr x .57 = 22,738 x $71,344 (passenger & pilot salary cost for 1 day); plus…
- $38,244,843 - False positive no-fly episodes resulting in 30 min delay (4 x 9,973 (no. of operators affected) = 39,892/yr x .43 = 17,153 ÷ 2 = 8, 577 x ($71,344 ÷ 480min x 30min), plus…
- $611,917,488 - False positive no-fly episodes resulting in 30 min delay (4 x 9,973 (no. of operators affected) = 39,892/yr x .43 = 17,153 ÷ 2 = 8, 577 x $71,344)

Assumptions:

- 4 no-fly episodes per operator per year (TSA estimate)
- 43% false positive rate
- False positives result in cancelled flights 50% of time and 30 min delay 50% of time
- True positives cancel flight in all cases

Finally, the TSA fails to estimate the cost of these delays on the business itself. Delayed or cancelled flights could cost a company hundreds of thousands or millions of dollars in business should it miss a time sensitive window of opportunity. AOPA has no data on the number of occurrences that would result in these situations or the specific costs associated with them.

Program Development
The TSA estimates it will take no more than 12 hours for operators and airports to either adopt their template program or devise their own. Given the primary requirements, contingency plans and the internal and external coordination necessary to establish and document, AOPA estimates it would take at 40 to 80 hours to develop a security program, with ¾ of this time being that of the security coordinator and the remaining quarter being contributed by higher-paid decision makers.

TSA Estimate: - $6,882,400 Years 1 and 2 for new operators (100% of new operators complete training programs (see figure 14))
AOPA Estimate: - $22,944,761 Years 1 and 2 for new operators (40 hrs)

AOSC Training & Personnel
The TSA requires that the AOSC be accessible 24/7 and assumes the AOSC will like serve a dual role as either the ground or in-flight security coordinator in smaller operations. Oddly, the TSA assumes that 3 people will be necessary to cover the position of AOSC at airports, but does not make the same assumption for operators. AOPA believes that corporate operators large enough to justify a large aircraft in their fleet are active enough to justify 3 AOSC personnel as well in light of the 24/7 requirement. This is required to cope with duty time limitations (when pilots serve this role) as well as vacation and sick time.

The TSA goes on to estimate the cost of security coordinators by estimating the portion of each security coordinators pay allocated to security duties. Although methodology may work for ISCs and GSCs since there are likely existing personnel currently performing similar duties, is not true of AOSCs. The 24/7 requirement and the higher responsibilities demanded of an AOSC will command a higher salary. The TSA accounts for this by assuming personnel presently making those types of salaries will be task with AOSC duties with no additional compensation. This would likely be true for flight a department manager, but as previously indicated, AOPA believes 3 AOSCs will be needed. AOPA believes corporations would assign those duties to personnel currently performing duties similar to those for GSCs and ISCs and pay them a higher salary. This additional salary would have to be paid regardless of how much time they spent doing actual security duties. TSA's methodology makes it impossible to determine the exact AOSC costs, therefore AOPA used TSA's total cost estimate for all security coordinators (AOCS, ISC, GSC).

TSA Estimate: - $1,413,630 Security Coord. Personnel (allocated minutes of time for all security coordinators (see figure 18))

AOPA Estimate: - $371,913,116 AOSC Personnel (additional AOSC salaries)

- $371,913,116 per year in additional AOSC salaries ($18,646 (salary differential between GSC & AOSC) x 2 x 9,973 (no. of operators affected)

Training
TSA estimates that its training program will take an hour for ground and in-flight security coordinators and 2 hours for aircraft operator security coordinators (AOSC). AOPA estimates will take at least 4 hours and 8 hours respectively to train such personnel on the company's security program and how to apply the TSA training to that company program. This represents a 2X higher training costs than TSA estimates.

TSA Estimate: $1,457,350 (10 yrs for all security coordinators (see figure 16))

AOPA Estimate: $2,914,700 ($1,457,350 x 2)

Airports and Flights Affected
The TSA assumes that airports with scheduled air service will not be impacted since they already have security programs in place. Depending on the requirements for airports, the FBOs that serve large corporate and private aircraft could still be impacted. The TSA also estimates that only 42 airports in addition to those serving scheduled operators will be affected. However, there are more than 4,000 public use airports in the US with thousands capable of serving large aircraft. Additionally, it is not unusual to have more than one FBO on each of these airports serving these operators.

In terms of flights, the TSA relies solely on ETMS to calculate the number of annual flights. ETMS only counts flight operating under instrument flight rules (IFR).

Other Costs
The TSA does not account for the following costs:

- Control of maintain security program details as Sensitive Security Information
- Carriage of Federal Air Marshalls
- Operator determining whether or not airport has security program and who the proper AOSC and local law enforcement representatives are
- Develop contingency plans
- Response to security threats, e.g. bomb threats
- Verbal confirmation of receipt and intended compliance of security directives
- Application of yet-to-be-developed TSA risk assessment tool
- TSA estimates its costs for inspections, but not the operator or airports costs
- Estimated travel costs for airport AOSC to take AAAE course is $450 per person
- Operator audit costs are based on 8 to 16 hours of auditor time, however, it doesn't take into account company personnel time. It's also difficult to determine audit costs without know performance requirements and depth and scope of audit.
- TSA assume no audits will be deficient.
- Cost to connect to secure flight (web access, 3rd party software)
- Use of Secure Flight web based program in lieu of watch list service providers
- Frequency of no-fly events
- Range of delay times for no-fly events
- Number of passengers carried annually
- Number of passengers previously known/on continuous watch screening

Other concerns

- Privacy of company info with watch list vendors
- Privacy of passenger info
- Liability waiver for emergency personnel coming on aircraft
- Securing aircraft and facilities is not defined
- TSA says application of yet-to-be-developed TSA risk assessment tool would be voluntary, but liability issues would effectively make it mandatory
- Regulatory scope weight of affected aircraft 10,500 lbs vs. 12,500 lbs vs. 16,000 lbs
- Passenger Privacy notice
- TSA assumes they can implement secure flight well after rule goes into effect…no incentive for new commercial watch list service providers making assumptions of available providers wrong.

Attachment B

October 30, 2008

The Honorable Edmund "Kip" Hawley
Assistant Secretary
Transportation Security Administration
601 South 12th Street
Arlington, VA 22202-4220

RE: Docket Number TSA-2008-0021, Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program

The Aircraft Owners and Pilots Association (AOPA), and the National Business Aviation Association (NBAA) represent the 10,000 aircraft operators with aircraft affected by TSA's recent rulemaking proposal. This proposal represents a significant regulatory change in the conduct of private aircraft operations. We believe that the 60-day comment period is insufficient in order to provide TSA with answers to the substantial number of questions posed in the proposal and to provide sufficient time for community education and feedback. We respectfully request that the Transportation Security Administration (TSA) extend the comment period by 60 days. Additionally, we believe that the significant nature of this measure warrants public outreach directly by TSA in the form of public meetings to allow the members of the General Aviation (GA) community impacted by this NPRM to provide feedback and comment directly to TSA representatives.

This proposed rule for the first time extends TSA's regulatory activities to GA aircraft, operators, and pilots flying under 14 CFR Part 91, meaning personal and business use. These private operations are fundamentally different from those conducted by air carriers and we must carefully examine the introduction of TSA security requirements on these operators. With over 15,000 aircraft, 10,000 operators, and 300 airports impacted, the voluminous regulatory changes proposed in the NPRM, and the introduction of new concepts such as third party auditors and watch list checking firms, it becomes impossible to accurately determine the impact of the NPRM and respond to TSA solicited requests for comment and alternatives in the time-frame provided.

We believe TSA will benefit substantially by a 60-day extension to the comment period and the use of public meetings. The additional time and public outreach will allow industry associations, such as AOPA and NBAA and the GA community to better understand the content of TSA's proposal and to develop more relevant and data-driven comments that are so critical to the regulatory process.

We ask that TSA consider this request for an extension to the comment period and the inclusion of public hearings in a timely manner.

Sincerely,

Phil Boyer
President
Aircraft Owners and Pilots Association

Ed Bolen
President and CEO
National Business Aviation Association

Attachment C

February 5, 2009

Gale Rossides
Acting Administrator
Transportation Security Administration
601 South 12th Street (TSA-1)
Arlington, VA 22202-4220

Dear Madam Administrator:

Re: Docket No. TSA-2008-0021, Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program

The Aircraft Owners and Pilots Association (AOPA), the National Business Aviation Association (NBAA), the General Aviation Manufacturers Association (GAMA), and the Experimental Aircraft Association (EAA) represent the operators, owners and manufacturers of general aviation aircraft that would be significantly affected by the Transportation Security Administration's (TSA) pending rulemaking proposal regarding the Large Aircraft Security Program (LASP). The general aviation industry has been very aggressive promoting security initiatives since the terrorist attacks of 9-11. When it comes to security, the general aviation community has led, not followed. We take a back seat to no one in our commitment to security, and our actions to date have demonstrated that fact. However, the proposals put forth in the LASP Notice of Proposed Rulemaking (NPRM) will do little to improve general aviation security and will have disastrous consequences on the industry.

Given the proposals substantial lack of data regarding the effect of this program on general aviation, and TSA's numerous requests for critical information from the public, we are formally requesting that TSA begin the steps necessary to establish a rulemaking committee. Creation of a dedicated workgroup would allow industry and the TSA to work together on requirements that would simultaneously enhance general aviation security and facilitate general aviation operations. A rulemaking committee would provide a secure forum for stakeholder information sharing and the development of sensible and implementable measures.

We look forward to working with TSA on regulations that will simultaneously enhance general aviation security and facilitate general aviation operations.

Sincerely,

Craig Fuller President and CEO Aircraft Owners and Pilots Association	Ed Bolen President and CEO National Business Aviation Association	Pete Bunce President and CEO General Aviation Manufacturers Association	Tom Poberenzy President and CEO Experimental Aircraft Association

Attachment D

December 29, 2008

Daniel W. Sutherland
Officer for Civil Rights & Civil Liberties
Department of Homeland Security
245 Murray Lane, SW
Building 410, Mail Stop #0800
Washington, DC 20528

Dear Mr. Sutherland:

The Aircraft Owners and Pilots Association (AOPA) is the largest general aviation (GA) organization in the world, a not-for-profit individual membership organization representing more than 414,000 members, nearly three-quarters of the United States' pilots. GA is a vital component of the aviation sector and the national economy that accounts for some 77 percent of all flights in the United States encompassing a wide range of activities.

Recently, the Transportation Security Administration published a notice of proposed rulemaking (NPRM) entitled the Large Aircraft Security Program (LASP). This proposed rule for the first time extends TSA's regulatory activities to GA aircraft, operators, and pilots flying under 14 CFR Part 91, meaning personal and business use. These private operations are fundamentally different from those conducted by air carriers and the application of commercial security measures including vetting against the no-fly and selectee lists raise a number of complex civil liberties questions. A privacy impact analysis on the NPRM was completed but did not address the impact on civil liberties or the larger legal and personal implications of using these lists to screen other than airline passengers.

I have been unsuccessful in trying to obtain an answer from your office on whether a Civil Liberties Impact Assessment has been completed on this NPRM, and if so obtaining a copy. Your assistance in obtaining the answer is greatly appreciated.

It is critical that a copy of the Civil Liberties Impact Assessment on this proposal be released with sufficient time to review and comment prior to the closing of the official period on February 27, 2009. I thank you in advance for your assistance in this matter and look forward to receiving a copy of the assessment. Please feel free to contact me if you need any additional clarification or supporting documentation.

Sincerely,

Craig J. Spence
Vice President Aviation Security
craig.spence@aopa.org
(301) 695-2041

cc: TSA, TSNM GA Sector

Attachment E – AOPA Statement at TSA Public Hearing, White Plains, NY

TSA Public Hearing on Large Aircraft Security Program
at Westchester County Airport
Building #1, Airport Road, White Plains, New York
On January 6, 2009

My name is Craig Dotlo, Northeast Regional Representative for the Aircraft Owners and Pilots Association (AOPA), which is the largest aircraft association in the world with more than 400,000 members. Prior to my affiliation with AOPA, I managed the FBI Office in White Plains, which was responsible for the six counties north of New York City. Following the attack on the World Trade Center in September 2001, I was tasked with reviewing and analyzing the critical infrastructure facilities in my territory, which included, in part, Westchester County Airport and the Indian Point Nuclear Power Plant.

Having been both in the law enforcement and aviation communities, it has provided me with a very unique perspective on the security issues that have been in play post 9/11.
While the government must take every reasonable precaution to protect the homeland, it is recognized by most experts that it is virtually impossible to protect an open democracy with 10,000 miles of borders against every conceivable attack on bridges, tunnels, airports, nuclear power plants, chemical facilities, dams and the list goes on. The real key to homeland security is a robust, efficacious and sophisticated intelligence network that can identify prospective terrorist attacks and prevent them from occurring.

As the government considers specific security measures or policies designed to protect the homeland, it is my view these measures must be balanced against the potential economic liability to the U. S. economy. After all, the terrorists highest priority is to destroy our economy, which has been the economic engine producing the only super power in the world. Security policies that will impede the worsening economy will only serve to reward our adversaries. That is to say, a number of aviation businesses are barely able to survive the current recession and the additional costs associated with this policy will only serve to exacerbate an unfavorable economic forecast.

While AOPA continues to be committed to strengthening general aviation security, the proposed rule raises specific concerns focused on the following areas:

1) **Applies Commercial Standards to GA operations:** In applying commercial security standards to individual aircraft owners and operators under Part 91, the rule does not take into account the inherent differences between commercial air travel and private operations, nor does it explain why less intrusive measures could not achieve comparable levels of security.

2) **Weight Threshold:** The large aircraft described by TSA typically have 8-10 seats and are commonly referred to within the industry as light jets. Medium sized jets weight roughly 25,000 pounds and the largest jets have maximum take-off weights approaching 80,000 pounds. However, even the largest of these aircraft weight 10 tons less than the

smallest airliner used by TSA as justification for the rule. The reasons for imposing weight based, rather than operation based compliance are not explained.

3) **Outsourcing Regulatory Oversight:** Security oversight has been established as an inherent government function and AOPA has concerns with outsourcing it to a third-party auditor. The proposed bi-annual third-party audits are unfunded mandates, which will require operators to pay unsubsidized market rates for audits that should be conducted, or at least, funded by the government. Further, no system for auditor accountability exists, and the proposal lacks critical information on how operators will be able to challenge audit errors.

In conclusion, AOPA has concerns with this TSA approach and its implications for general aviation owners and operators. In particular, AOPA is concerned with the weight threshold that is used for the basis of the regulations and provisions in the rule that outsource security oversight to a third-party auditor. AOPA does not support the NPRM as currently drafted and requests that TSA reconsider the proposed rules, focusing particularly on whether there are less costly and less intrusive ways of enhancing general aviation security.

TSA Large Aircraft Security Program Statement

Statement of John F. Betsill, Jr.,
Airport Support Network Volunteer, Aircraft Owners and Pilots Association

Transportation Security Administration: Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program Proposed Rule

Docket Number TSA-2008-0021

Date: January 8, 2009
9:00 AM

Location: Renaissance Concourse Hotel, One Hartsfield Centre Parkway, Atlanta, GA

My name is John Betsill, and I am a commercial pilot, flight instructor, and aircraft owner. I also serve as Airport Support Network volunteer at the new Paulding County [Georgia] Regional Airport (KPUJ) for the Aircraft Owners and Pilots Association ("AOPA"). AOPA is a not-for-profit individual membership organization of more than 413,000 pilots. Representing three-quarters of all pilots in the United States, AOPA is the largest civil aviation organization in the world. AOPA's mission is to serve the interests of its members as aircraft owners and promote the economy, safety, security, utility and popularity of flight in general aviation aircraft. General aviation encompasses all of aviation with the exception of the commercial airlines and the military.

Paulding County Regional opened in November of 2008 and is still under development. KPUJ is the first jet-capable airport to be built in Georgia in over 30 years. As such, it is destined to become a major general aviation reliever airport for the Atlanta area. That goal, however, will be more difficult to attain by applying airline security standards to individual aircraft owners and operators under Part 91. The proposed rule does not take into account the inherent differences between commercial air travel and private operations, nor does it explain why less intrusive measures – like the joint AOPA/TSA Airport Watch program - could not achieve comparable levels of security.

KPUJ has the potential to enhance the economic development of Paulding County and the surrounding area. That potential will be curtailed by imposing costly and burdensome operational requirements on aircraft owners and operators. For instance, the proposed biennial third-party audits would be costly to operators, who will have to pay unsubsidized, market rates for audits that should be conducted, or at least paid for, by the government. Further, no system for auditor accountability exists, and the proposal lacks critical information on how operators will be able to challenge audit errors.

General aviation affords the same type of economy and utility in private air operations as private vehicles do in land transportation. To impose commercial operational procedures on private flying would effectively end that economy and utility. AOPA members have made it clear in a survey and in comments to the Association that they are concerned by the attempt to make GA aircraft over 12,500 lbs. flown under Part 91 comply with the same security requirements as commercial carriers.

While time allotted for this statement precludes me from addressing the specific areas requested by TSA in the Federal Register Notice announcing these meetings, AOPA will be addressing these and other issues raised in the NPRM in their final comments to the docket:

1. The proposed rule represents an unprecedented intrusion on general aviation because it would apply commercial standards to GA operations.
2. AOPA also is concerned about the proposal because the TSA has provided no justification for setting the aircraft weight requirement at 12,500 pounds. The association fears it could expand to all sizes of GA aircraft.
3. Equally alarming is a requirement that aircraft operators use and pay for third-party auditors to perform a government function.

AOPA does not support the NPRM as currently drafted, and requests that TSA withdraw or reconsider the proposed rules, focusing - in partnership with industry - on developing logical and cost-effective solutions that will continue to enhance general aviation security.

I thank you for the opportunity to voice our concerns.

CHICAGO, ILLINOIS
JANUARY 16, 2009

TRANSPORTATION SECURITY ADMINISTRATION
PUBLIC MEETING ON
PROPOSED LARGE AIRCRAFT SECURITY PROGRAM
DOCKET NO. TSA-2008-0021

STATEMENT OF KIRK K. VAN TINE
ON BEHALF OF THE
AIRCRAFT OWNERS AND PILOTS ASSOCIATION

On behalf of the Aircraft Owners and Pilots Association ("AOPA"), I want to thank TSA for providing an opportunity for public discussion of the proposed rules establishing the Large Aircraft Security Program. AOPA is the largest general aviation organization in the world, with more than 414,000 members, including nearly three-quarters of all the pilots in the United States. AOPA has worked closely with TSA on a number of important aviation security issues in the past, and believes that all parties benefit from improved communications to and from TSA. In this instance, while AOPA recognizes the importance of TSA's mission, AOPA does not support the proposed Large Aircraft Security rules as written, and will be submitting detailed written comments outlining its concerns. In the time available today, I want to focus on a few of the main substantive issues, and also suggest how we think TSA should proceed from here.

First, by way of introduction, I was the General Counsel of the U.S. Department of Transportation between 2001 and 2003, when the TSA was created as a part of DOT. I was part of the group that helped to get the TSA up and running, and worked closely with the TSA Administrator, the Chief Counsel and the TSA legal staff to address a number of difficult legal issues regarding transportation security. I was also part of the team that coordinated the transfer of TSA to the newly-created Department of Homeland Security in 2003. Subsequently, I became the Deputy Secretary of the Department of Transportation, and I worked closely with DHS and other agencies to address a wide variety of homeland security policy issues. As a result of those experiences, I have a first-hand appreciation for the difficulty of TSA's mission, and also of the legal and practical difficulties of finding workable solutions to complex, real-world security problems. In general, AOPA understands the problems that TSA is trying to address in the Large Aircraft Security rules, but believes that TSA needs to do substantially more work on all of the major issues to arrive at an acceptable balance between its legitimate security interests and the legitimate privacy and property interests of the wide range of private individuals and businesses that will be affected.

I would like to comment briefly on a few key issues that we see in the NPRM, and then offer some suggestions about how we think you should proceed from here.

I. <u>The Proposed Rules Should Be Tailored To Meet the Actual Security Threat</u>

The first concern that I want to discuss is both a legal and a policy concern. At a high level, I think it is important to recognize the fact that fundamental goal of the NPRM is to subject privately owned and operated aircraft to security measures that are essentially the same as those that are currently applicable to commercial aircraft that operate on a common carriage basis. That is an important departure from previous security measures, in a number of respects.

In the past, TSA has focused primarily on common carrier transportation providers, such as airlines, railroads, and transit systems. In the context of regulating the operations of common carriers, legal concerns regarding privacy issues and restrictions on private travel are often subordinated to the security goals that TSA seeks to achieve. In contrast, in considering whether new security costs and obligations should be imposed on privately owned and operated aircraft, the new requirements are subject to heightened legal scrutiny, and the costs and benefits need to be carefully analyzed. In regulating purely private activity, such restrictions should be imposed only when they are clearly necessary and clearly justified.

In the NPRM, TSA's starting point is the observation that privately-owned aircraft could cause the same damage as commercial aircraft of a similar size. Starting with that assumption, and without discussing any analysis of the actual security threat posed by privately operated aircraft, TSA concludes that the same security measures applicable to commercial aircraft should be applied to private aircraft. However, applying that same reasoning process, one might conclude that privately owned and operated <u>recreational vehicles</u>, many of which have gross weights and cargo carrying capacities that <u>far exceed</u> the 12,500 pound threshold for large aircraft, should also be subject to the same security measures, because they also could be used to cause the same type and degree of damage as large aircraft.

In the NPRM, TSA has ignored the fact that there are significant differences between private operations and commercial operations that may significantly reduce the security risks posed by private aircraft. Those kinds of differences would have been identified and considered if TSA had performed a security threat assessment prior to issuing the NPRM. Apparently, it did not perform such an assessment.

Before proceeding with the NPRM, TSA should perform a security assessment of the threat posed by private operation of large aircraft, and at a minimum, TSA should tailor the proposed rules to the actual operating profile of the privately operated aircraft it proposes to regulate. AOPA believes that, if it performed a formal security threat assessment, TSA would conclude that it could satisfy its security objectives with substantially less burdensome, costly and intrusive security regulations.

II. TSA's <u>Lack of Critical Information Render the Economic Impact Analysis Totally Speculative.</u>

The NPRM acknowledges that there are major gaps in TSA's factual knowledge regarding the proposed rules, and as a result of those gaps, the legally mandated cost benefit analysis accompanying the rules is a purely speculative exercise. One of the issues on which the NPRM acknowledges uncertainty is the fundamental issue of how many individuals, businesses and airports might be economically affected. In discussing that basic fact, which has to be the starting point for any cost benefit analysis, the NPRM states that the number of affected parties falls in a range of "<u>between zero and 9,061</u>," and essentially admits that, due to lack of data, even that range is pure speculation.

The NPRM also says the estimated ten-year cost burden is between $850 million and $1.9 billion. That is a “margin of error” of over a billion dollars, more than 100% of the base estimate. That huge uncertainty about costs is simply a reflection of the huge holes in the factual support for the proposed rules.

Finally, the Notice establishing these public hearings requests comment on no less than 16 major issues, which TSA “must explore to complete its review.” Those 16 issues are good examples of the many instances in the NPRM and the accompanying required analyses in which TSA admits that substantially more factual information is needed before the proposed rules can be finalized. In AOPA’s view, the costs and impacts of the proposed regulations are drastically understated, and the benefits of the regulations are significantly overstated.

AOPA believes that TSA should first complete its homework by gathering the necessary data, then perform a meaningful review of costs, benefits and impacts, and only when that work is finished, determine whether the proposed security measures are really justified and necessary.

III. The Proposals To Outsource Security Program Audits And Watch List Checks Should Be Reconsidered.

The NPRM would require that private operators of large aircraft establish security plans, and that their implementation of, and compliance with, those plans be audited every two years. In addition, the NPRM proposes that all passengers on privately operated large aircraft would undergo watch list checks, just like passengers flying on commercial aircraft. Unlike commercial aircraft, however, the NPRM would require private aircraft operators to pay third party auditors and third party watch list checkers to ensure compliance with these new requirements. While those two “outsourcing” proposals would certainly serve the goal of putting people to work by creating new private sector employment opportunities, they would do little to enhance security, and would impose significant potential burdens.

First, the obligation to ensure transportation security is an inherently governmental function, and the requirements for monitoring implementation of security programs and watch list checking clearly are governmental responsibilities. AOPA believes that those functions should be performed by government employees, and the costs of those unfunded mandates should be borne by the government, not private aircraft operators.

Further, with regard to the proposed third party audits, the NPRM suggests no system for training and maintaining accountability over the auditors, or for ensuring that the same standards and requirements are applied in all compliance reviews. All of those issues may be difficult to address in the context of a widely-dispersed and fragmented system of small auditing firms all over the United States. The NPRM also fails to address the issue of how private aircraft operators will be able to challenge errors in the audits, what criteria will be used to determine whether the operator “passes” the audit, and whether penalties will be imposed for failure to maintain perfect compliance. Finally, the use of third-party auditors, who may come and go depending on the economics of their business, raises the issue of how those third party auditors will be chosen and qualified by TSA, and whether their access to sensitive information poses an additional unforeseen security risk if those auditors later leave the business voluntarily, or are removed for cause from the approved list of auditors.

The outsourcing of watch list checks for private aircraft operators raises similar issues. Unlike commercial aircraft, private aircraft operators often do not know their exact operating schedules and passenger manifests until shortly before flight time. The NPRM does not

recognize this fundamental operational difference, and does not establish the time frame in which names must be submitted to, and cleared by, watch list service providers, or how GA operators will communicate passenger manifests and receive fly/no fly decisions. One of the main functions of privately operated aircraft is to provide transportation on short notice, to accommodate business or personal scheduling demands. If the watch list screening function cannot be performed very quickly by the outsourcing operators, that reason for private operations will be defeated.

In addition, in the normal course of private aircraft operations, many of the passengers on board will be repeat passengers, and will be well-known to the operator, as either employees or guests. Those facts should eliminate or decrease the need to check every passenger name on every flight.

Finally, there appears to be no reason to outsource the watch list screening function. With the issuance of TSA's Final Regulations instituting the Secure Flight program, the TSA is consolidating, and will soon perform, all other watch list screening tasks. The NPRM does not explain why the watch list screening program for privately operated aircraft should not be incorporated now into TSA's existing Secure Flight program, rather than setting up an entirely separate infrastructure and then dismantling it at some time in the future, as the NPRM currently proposes. The additional burden to the government of assuming responsibility for a newly-created private aircraft watch list mandate should be minimal when compared to the overall cost of the Secure Flight program.

IV. The NPRM Should Be Re-Issued As an ANPRM and Conducted As A "Negotiated" Rulemaking Proceeding.

The final area that I want to comment on is procedural. As I mentioned previously, I was the General Counsel of the Department of Transportation between 2001 and 2003. In that job, I worked on all the substantial rules that the Department issued before they went out, and there were a lot of them. I do not recall ever seeing a rule that reached the NPRM stage with as many important factual gaps as this one. In a case like this one, where the potential costs and impact on the economy could be major, it is important to get the facts right before the rule goes final. And this one clearly is not ready for "prime time."

As a former General Counsel, my suggestion would be to drop back a step -- the issues identified in the NPRM would typically be explored in an Advance Notice of Proposed Rulemaking, before the NPRM stage. That extra procedural step allows the agency to develop a proposed rule based on solid facts, rather than speculation. That is what should happen here -- we think TSA should withdraw the NPRM, and reissue it as an ANPRM, to provide a more meaningful opportunity to comment on the substance of the proposed rules.

I have one more procedural suggestion. Because this proposed rule would affect a wide and very diverse range of individuals and businesses, all of whom may have different interests and objectives, the Large Aircraft Security Program would be an ideal subject for what is called a "negotiated" rulemaking proceeding. In a "negotiated" rulemaking, representatives of the major affected groups are invited to participate in scheduled meetings to discuss the key facts, the costs and benefits, and the pros and cons of the proposed rules. Those meetings are real "working sessions," providing an opportunity for questions and answers and a "real-time" exchange of views, rather than just prepared statements or written comments. Sometimes, those sessions are led by a professional facilitator who tries to make sure that all issues are discussed

and all views are considered. In my experience at DOT, we used the “negotiated” rulemaking process successfully on a number of occasions very similar to this one, and I believe it would work well here, not only to gather data, but to help TSA arrive at workable solutions to the problems posed by the NPRM. That kind of a “negotiated” process might take a little longer to work through, but would produce a much better result in the end. AOPA would be pleased to work with TSA in a negotiated rulemaking to try to arrive at a reasonable, well-thought-out regulatory proposal that will meet TSA’s objectives, without unduly burdening the affected parties.

On behalf of AOPA, I want to thank you again for the opportunity to appear before you today.

Attachment H – AOPA Statement TSA Public Hearings, Burbank, CA

TSA Large Aircraft Security Program Statement

Statement of:
Fred Fourcher, President Orange County Pilots Association and member of Aircraft Owners and Pilots Association

Transportation Security Administration: Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program Proposed Rule

Docket Number TSA-2008-0021

My name is Fred Fourcher and I serve as President of the Orange County Pilots Association with 200 members and I am also a member of the Aircraft Owners and Pilots Association known as the AOPA. AOPA is a not-for-profit individual membership organization of more than 413,000 pilots. Representing three-quarters of all pilots in the United States, AOPA is the largest civil aviation organization in the world. AOPA's mission is to serve the interests of its members as aircraft owners and promote the economy, safety, security, utility and popularity of flight in general aviation aircraft. General aviation encompasses all of aviation with the exception of the commercial airlines and the military.

At my home base, the Orange County Airport, the TSA is proposing background checks and badges for the hundreds of GA pilots that use the facility. This along with the LASP would inflict a crushing burden on GA at the Orange County Airport and would accomplish little if anything from a security standpoint. Other sectors of transportation such as trucks have been used by terrorists and are not being targeted by your aggressive security rules, yet General Aviation has not been used and is being unfairly targeted under your proposals.

AOPA members have made it clear in a survey and in comments to the Association that they are concerned by the attempt to make GA aircraft over 12,500 lbs. flown under Part 91 comply with the same security requirements as commercial carriers.

While time allotted for this statement precludes me from addressing the specific areas requested by TSA in the Federal Register announcing these meetings, AOPA will be addressing these and other issues raised in the NPRM in their final comments to the docket.

The proposed rule represents an unprecedented intrusion on general aviation because it would apply commercial standards to GA operations. AOPA also is concerned about the proposal because the TSA has provided no justification for setting the aircraft weight requirement at 12,500 pounds. The association fears it could expand to all sizes of GA aircraft. Equally alarming is a requirement that aircraft operators use and pay for third-party auditors to perform a government function. AOPA does not support the NPRM as currently drafted, and requests that TSA withdraw or reconsider the proposed rules, focusing in partnership with industry on developing logical and cost effective solutions that will continue to enhance general aviation security. I thank you for the opportunity to voice our concerns.

Testimony of Shelly Lesikar deZevallos to the Transportation Security Administration
In regards to Proposed Large Aircraft Security Program Docket No. TSA-2008-0021
Houston, Texas
January 28, 2009

My name is Shelly Lesikar deZevallos. I am here on behalf of the Aircraft Owners and Pilots Association (AOPA) as the Southwest Regional Representative and as part of a family who owns and operates West Houston Airport, one of the 421 airports the TSA has recommended to be a part of the Airport Security plan outlined in this NPRM should this NPRM be implemented.

AOPA is the world's largest general aviation association and has worked with and on several committees regarding aviation issues across the country. For instance, the Aviation Security Advisory Committee Working Group on General Aviation Airport Security. In this capacity AOPA recognizes the TSA's mission. We also realize that the proposed Large Aircraft Security Program as written is not at all appropriate for general aviation.

One perspective I chose to look at was the current public policy in place regarding general aviation to determine if the TSA LASP was in alignment with other governmental sources:

- *The 9/11 Commission report (issued July 22, 2004) recommended that the US Strategy for transportation security be predicated on a risk-based prioritization for allocating limited resources to protect transportation infrastructure in a cost-effective manner..."*[49] With **numerous layered security measures already enacted across the United States at general aviation airports, what is more likely, a terrorist renting or stealing a rental truck, or getting on board my privately owned airplane?**

- *A 2004 GAO report regarding general aviation stated, "Increased Federal Oversight is needed, but Continued Partnership with the private sector is Critical to Long-Term Success."* [50] **No offense, folks, but after reading the LASP 260 page document, it is obvious there was not any Partnership with the general aviation Private Sector at all.**

- *In 2005, the ASAC concluded that "…a flexible, common sense approach to general aviation airport security is mandatory…."*[51] This **document has NO flexibility…it is a one size fits all…and that size happens fit if the airports are servicing commercial airline aircraft like a 737, 767 or 777 boarding at a commercial service airport.**

- *The National Strategy for Aviation Security (2007) identifies three origins or sources of threats to the air domain: terrorist groups, hostile nation-states, and criminals.*[52] **The FAA pilot list, which is matched against the TSA list on a periodical basis, as well as with all the other layered security approaches, have guaranteed me that the less than 600,000 American pilots today are not terrorists, nor part of a hostile nation-state or a dangerous criminal. Otherwise, we wouldn't be doing our job.**

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[49] National commission on Terrorist Attacks Upon the United States. The 9/11 Commission Report, p. 391.
[50] GAO. Report to the Subcommittee on Homeland Security, Committee on Appropriations, House of Representatives (November 2004). General Aviation Security.
[51] Elias, B. (Dec 15, 2005). CRS Report for Congress. Securing General Aviation. CRS-7.
[52] U.S. Department of Homeland Security, the National Strategy for Aviation Security. March 26, 2007. P. 9.

- According to the 9/11 Commission: America's homeland defenders faced outward (prior to 9/11). The most serious weaknesses in agency capabilities were in the domestic arena. The FBI did not have the capability to link the collective knowledge of agents in the field to national priorities. Other domestic agencies deferred to the FBI. FAA capabilities were weak…. Yet the FAA did not adjust
Either its own training or training with NORAD to take account of threats other than those experienced in the past. [53] **Since the issuance of this commission report, our governmental agencies have focused inward with a layered security approach that has kept this country safe. They have placed emphasis on intelligence as a priority, where we should be spending money. If a flight training school were to call the FBI today as one did prior to 9/11, they'd be taken much more seriously.**

My point in citing all this: The TSA is not in congruence AT ALL with the past eight years of general aviation public policy according to the GAO, CSR and the National Strategy for Aviation Security. This NPRM should not have been written this way in the first place. It should have been written with industry and association cooperation, with the idea that a 'one size does not fit all' and with the realization that layered security in the general aviation field has been put in place and is effective.

As for my personal experience: I have been a pilot for over 20 years, I have worked at my family's privately-owned/public use airport "reliever airport" and am an American Citizen, born and raised here in the fine state of Texas. And I am appalled at what the TSA is proposing. For the following logical reasons:

1) The costs will be astronomical to my industry and are not properly addressed in this proposal.
2) The proposal you ascertain does not take into consideration that these are privately owned aircraft; these aircraft are NOT aircraft available to the public.
3) The proposal uses 3rd party audits – the outsourcing of security is contrary to other national security implementations – like federal screeners.

The costs: As if all the above comments could not make a difference, let's take a look at the proposed costs according to the TSA for my airport alone:

-Designated Airport Security Coordinator: According to the NPRM, I would need to hire a security coordinator. Since we are opened 24 hours a day, if I didn't hire three additional personnel to be present at all times, I could be in violation of the NPRM. The average salary of security coordinator personnel is approximately $23,500[54], not including benefits. $23,500 x 3 = $73, 500 additional cost per year in salary alone.

- TSA's estimate of training: $1,800. Course fee of $350, travel expenses of $450 and ASC compensation of $1,000. The reality: Hotel at the Crown Plaza per AAAE website training of ASC is $129 per night – excluding taxes, etc. Since Southwest doesn't fly into Memphis, TN (using the last AAAE class on their website) I used Continental airlines as a means of travel. The rate – 3 weeks in advance – came to $430 round trip. Already, my travel expenses are higher than TSA's…. (129 + 430 + 50 (food allowance) = $609) by over 30%!

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[53] National Commission on Terrorist Attacks Upon the United States. The 9/11 Commission Report, p. 10.
[54] http://www.payscale.com/research/US/Job=Security_Officer/Hourly_Rate

- Costs for implementing a secure area: physical separation from aircraft over 12,500 and those under who are not under the same rulemaking will require tens of thousands of dollars to keep the two types of aircraft separated. And will require substantial changes in our terminal building – at a cost not even included by this proposal.

Oh, did I mention, we do not received any federal funding?

These aircraft that this NPRM would apply to are privately –owned. Like my car, my plane is privately owned. In other words, I lock my plane. I have the key – no one else does.   No one else flies it but my family and me. No one gets on board but my friends and family. This is NOT an aircraft available to the public in any manner.
The rules and regulations proposed are for public transportation, where people do not know each other, where the pilot does not know their passengers and where the crew and passengers are strangers to each other.
This rulemaking has the equivalent of trying to apply rules to my privately owned SUV - is that the next step by the TSA? To monitor privately owned trucks, vans and tractor-trailers– which can carry more fuel and explosives weight than most of the aircraft that would be affected by this NPRM[55].

In conclusion, the NPRM as written is not a realistic rulemaking policy for the general aviation arena. I respectfully request that the TSA remove this proposal and call upon an Aviation Rulemaking Committee that will allow industry and the TSA to work together.

Thank you.

[55] Elias, B. (Dec 15, 2005). CRS report for Congress. Securing General Aviation.