

One Hundred Eleventh Congress U.S. House of Representatives Committee on Homeland Security Washington, DC 20515

March 2, 2009

Mr. Erik Jensen Assistant General Manager, Policy and Plans Office of General Aviation, TSNM, TSA-28 U.S. Transportation Security Administration 601 South 12th Street Arlington, VA 22202-4220

Dear Mr. Jensen:

The purpose of this letter is to submit comments on the Notice of Proposed Rulemaking (NPRM) issued by the Transportation Security Administration (TSA) regarding the Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program (Large Aircraft Security Program NPRM), which appeared in the Federal Register on October 30, 2008 [TSA-2008-0021].

Based upon my concerns over the issues raised in the following discussion, I urge TSA to delay implementation of final rulemaking with regard to the Large Aircraft Security Program until the new TSA leadership has had an opportunity to review the NPRM and engage with Congress and industry stakeholders.

Congress passed the Aviation and Transportation Security Act of 2001 (ATSA) which requires a security program for charter aircraft weighing 12,500 pounds or more and a report from TSA detailing measures which would be necessary to improve general aviation security. The 9/11 Commission expressed concerns regarding vulnerabilities in aviation security and found that "[M]ajor vulnerabilities still exist in cargo and general aviation security. These, together with inadequate screening and access controls, continue to present aviation security challenges."

The Committee on Homeland Security has worked diligently to ensure that the recommendations contained in the 9/11 Commission Report were passed into law. The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) directed TSA to develop a risk-based threat and vulnerability assessment for general aviation airports, study the establishment of a grant program for general aviation security,

¹ P.L. 107-71, Sec 132.

² The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States.

and require international inbound general aviation aircraft operators to submit advanced passenger information to Customs and Border Protection (CBP) before entering the United States.³

The Large Aircraft Security Program which would be established by the NPRM would require new security mandates for general aviation aircraft operators with aircraft of 12,500 pounds or greater. These mandates include conducting background and criminal history checks for flight crews, using a third-party watch list service provider to validate passengers against the Federal aviation watch lists, designating security coordinators at corporations and businesses operating the aircraft, and checking property onboard the aircraft for unauthorized persons and prohibited items. Although Congress has supported increased general aviation security protocols in the past, and will continue to do so, numerous concerns from industry stakeholders who would be impacted by the proposed protocols have been communicated to the Committee. As such, the Committee was pleased that TSA extended the initial comment period for the NPRM and conducted a series of five public meetings across the country to receive input from the general aviation community.

While all of the concerns expressed by stakeholders have merit, several critical elements in the NPRM, in particular, appear to be problematic, infeasible, or overly burdensome to industry. The Committee is also concerned that the formulation of the NPRM was not based on a threat and risk methodology process tailored to the general aviation environment. I encourage TSA to continue to work with stakeholders in crafting a sensible, risk-based approach to improving general aviation security and to do so in a timely fashion.

The following comments outline the Committee's concerns with the NPRM.

Watch list Matching of Passengers

The NPRM establishes a process whereby third-party watch list service providers would conduct watch list matching for passengers on large general aviation aircraft. This use of a third party vendor would shift the responsibility away from individual aircraft operators. The NPRM states that this is an interim step until the Secure Flight system is fully operational. However, this proposed interim step raises several concerns. First, Congress has directed TSA to assume the aviation watch list matching function and TSA has subsequently developed the Secure Flight program. There is a question as to whether the use of third-party service providers to perform this function, as provided in the NPRM, in general aviation on a short-term basis would undermine Congressional intent to have TSA administer watch list matching. Moreover, it seems that the use of third party vendors would require the release of confidential watch list information to the private sector. Additionally, it appears that this policy would indirectly impose a fee on

³ P.L 110-53, Sec 1617.

⁴ Certain large general aviation aircraft operators are already required to perform passenger watch-list matching such as operators of private charter aircraft. Currently for these operators, TSA provides the No Fly and Selectee lists to the operators.

general aviation operators for a service that commercial airlines receive without a fee. Since Secure Flight should be operational at some point in 2009, TSA should consider integrating general aviation watchlist matching procedures into the Secure Flight system so that stakeholders will not be tasked with implementing a separate, interim watchlist matching process.

In addition, the unspecified time requirements for conducting watch list matching in advance of a flight are of considerable concern to the general aviation industry. As you may know, the general aviation industry routinely performs unscheduled flights, often with very short notice. This kind of advance matching in the general aviation context could have adverse economic consequences on the general aviation community. Further, the proposed rule does not provide a protocol for general aviation aircraft operators if a prospective passenger is selected for secondary screening. Industry stakeholders should be involved in the development of a feasible protocol to address this scenario.

Finally, in addition to requiring the use of a third party vendor for watch list matching services, the proposed rule would require general aircraft operators to contract with a third-party auditor to conduct biennial audits of watch list matching compliance. Not only does this requirement appear to be an additional unfunded mandate on aircraft operators, it would be a delegation of TSA's federal responsibility to protect aviation security to the private sector. TSA should work with stakeholders to develop a process with a less costly impact on the general aviation industry, exerts stringent security controls over the personal data of private individuals who undergo watch list matching and supports the Federal government's security interests in these sensitive areas.

Unauthorized Persons and Accessible Weapons on Board Large Aircraft

The NPRM tasks aircraft operators with adopting procedures to prevent passengers from carrying prohibited items onto the aircraft. While unauthorized weapons, explosives, incendiaries and other destructive substances must be excluded from general aviation aircraft, this rule appears to apply a commercial passenger security checkpoint standard to general aviation. Given that general aviation aircraft are configured differently from commercial aircraft, with cargo hold access being generally available to passengers, the rules for prohibited items aboard general aviation aircraft should be tailored to a risk-based methodology and assessment specifically developed for general aviation aircraft and their passengers. This assessment should be completed before implementing inspection and seizure protocols that may not be feasible or warranted in a general aviation environment. Additionally, it should be noted that the risk assessment should include delineation between protocols for Part 91 operators who have greater knowledge and control over passengers and Part 135 operators who are available for hire and may have more limited knowledge of their passengers.

The Committee commends TSA for its efforts to strengthen vulnerabilities in general aviation as recommended and encouraged by the 9/11 Commission, and prescribed by statute. The Committee has serious concerns, however, about several components in the NPRM as described above. Therefore, I urge TSA to postpone final implementation of

general aviation security regulations until the new TSA leadership has had the opportunity to review the NPRM and engage in discussion with Congress and industry stakeholders.

If you have further questions, please contact Rosaline Cohen, Chief Counsel of the Committee on Homeland Security, at 202-226-2616.

Sincerely,

Bennie G. Thompson

Chairman

Committee on Homeland Security