

Memorandum

To: Chair and Commissioners

Date: February 23, 2009

From: JOHN F. BARNA, JR.

File: Book Item 5.1
Action

Ref: Technical Advisory Committee on Aeronautics – Transportation Security Administration: Large Aircraft Security Program Notice of Proposed Rule Making (TSA-2008-0021)

ISSUE: Should the Commission provide written comments in response to suggestions received by the Commission’s Technical Advisory Committee on Aeronautics (TACA) to the Department of Homeland Security Transportation Security Administration’s (TSA) Notice of Proposed Rulemaking (NPRM) for the Large Aircraft Security Program?

RECOMMENDATION: Staff recommends that the Commission provide a comment to the TSA that, since the rule, if adopted, will have a direct impact on the aviation community, a funding source should be identified and secured to offset the costs associated with implementation of the proposed rule.

BACKGROUND: The TSA issued a NPRM regarding a “Large Aircraft Security Program” (LASP). In this NPRM, TSA proposes to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements and by adding new requirements for certain large aircraft operators and airports serving those aircraft.

TSA is proposing to require:

- That all aircraft operations, including corporate and private operations, with aircraft with a maximum certificated takeoff weight (MTOW) above 12,500 pounds (“large aircraft”) adopt a large aircraft security program (LASP). This security program would be based on the current security program that applies to operators providing scheduled or charter services.
- Large aircraft operators to contract with TSA approved auditors to conduct audits of the operators’ compliance with their security programs and with TSA-approved watch-list service providers to verify that their passengers are not on the No Fly and/or Selectee portions of the consolidated terrorist watch-list maintained by the Federal Government. This proposed rule describes the process and criteria under which auditors and companies that perform watch-list matching would obtain TSA approval.

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- Security measures for large aircraft operators in all cargo operations and for operators of passenger aircraft with a MTOW of over 45,500 kilograms (100,309.3 pounds), operated for compensation or hire. TSA also proposes to require that certain airports that serve large aircraft adopt security programs and amend the security program for full program and full all-cargo operators.

Based on input from several California airports and organizations representing user groups which believe that this new proposed rule could have significant negative impacts on California airports and their users, the Commission's Technical Advisory Committee on Aeronautics (TACA) discussed the LASP at its February 4, 2009 meeting.

TACA's recommended position is that the TSA should not implement the LASP in its current form. TACA suggested that the TSA should work with the industry to audit existing large general aviation security protocols, identify any significant unaddressed threats, and jointly develop cost effective and realistic incremental security measures which might be warranted. The following further outlines the concerns raised:

- Based on general aviation user input, the proposed LASP could have significant detrimental effects on aircraft operations at many of the more than 250 public use airports in California.
- Based on the information provided in the NPRM, TSA has not made a case showing that a significant threat exists from large general aviation aircraft (especially given the thousands of airports in the U.S. that could be used by these aircraft and would likely not be included in the proposed "enhanced security" protocols.
- The NPRM does not show a clear nexus between the proposed measures and identified "threats".
- The NPRM has not adequately identified the costs associated with LASP implementation, especially law enforcement, security program audit requirements, and indirect costs which could burden airports and their general aviation users. Furthermore, the NPRM does not identify sources of funding for all of the rule-related costs.

Government Code Section 14506.5 provides that the Technical Advisory Committee on Aeronautics shall give technical advice to the Committee on Aeronautics on the full range of aviation issues to be considered by the Commission. Although the NPRM public comment period (Docket 2008-0021) formally ended February 27, 2009, TACA is requesting that the Commission provide comments to address the concerns raised.

Given the technical nature of the LASP as well as the possible security implications to the United States and California, Commission Staff recommends that the Commission limit comments to the cost impact on the aviation community required to implement this

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rule. Specifically, TSA should identify the costs associated with implementation and provide a source of funding for rule related costs.

Attachments

- American Association of Airport Executives Summary of LASP
- National Business Aviation Association Summary of LASP



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Transportation Security Administration Proposed Rule on General Aviation “Large Aircraft Security Program”, American Association of Airport Executives

On October 30, 2008, the Transportation Security Administration (TSA) released the Large Aircraft Security Program Notice of Proposed Rulemaking (LASP NPRM). The proposed LASP regulation would require all U.S. operators of aircraft exceeding 12,500 pounds maximum take-off weight to implement security programs that would be subject to compliance audits by TSA.

For airport operators, the proposed regulation would require airports servicing such large general aviation (GA) aircraft to implement inappropriate regulatory programs and operations. TSA anticipates that the LASP would affect 270 FAA designated reliever airports and an additional 42 non-federalized airports that regularly serve large aircraft with scheduled or public charter service as well as approximately 10,000 aircraft operators.

The LASP NPRM would have a significant financial and resource impact on GA airports across the U.S., fundamentally altering or in some cases causing the closure of GA operations without adding meaningful benefits or improvements to security. The LASP NPRM proposes several unnecessary requirements on a community of airports already struggling in the wake of a national economic crisis. As the leading trade association representing airports nation-wide, AAAE proposes that TSA reconsider the LASP as written and work closely with the GA community to establish real, practical and cost effective solutions to enhance aviation security.

The NPRM stated *reason for the proposed rule* appears to contradict TSA’s own intelligence evaluation and conclusions.

- In the NPRM, the TSA asserts “The TSA is aware that, as vulnerabilities within the air carrier and commercial aviation industry are reduced, GA operations become more attractive targets.” However, this is in direct contradiction with other, more recent intelligence analysis conducted by TSA, which concludes, “there is little evidence to suggest that terrorists are turning their attention specifically to the general aviation sector in the Homeland.”¹ This assessment appears to directly contradict the NPRM and brings into serious question the basis for this proposal.

The NPRM proposes to make mandatory what is already in place without demonstrating the efficacy of the existing combination of mandatory and voluntary initiatives.

- TSA appears to have issued this NPRM without a comprehensive vulnerability assessment of the GA industry that takes into account the effectiveness of all mandatory and voluntary initiatives implemented to date.
- The NPRM does not include a cost/benefit analysis that justifies the cost of implementing the NPRM against the efficacy of the existing voluntary and mandatory security measures in place at GA airports.

¹ (U) Civil Aviation Threat Assessment. Transportation Security Administration, Office of Intelligence. December 30, 2008 (U/FOUO).



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- The NPRM may force GA airports unable to comply with the NPRM to violate FAA Grant Assurances and be in non-compliance with federal law, possibly resulting in becoming ineligible for AIP funding or becoming subject to other punitive actions.

The NPRM constitutes an Unfunded Mandate pursuant to the Unfunded Mandate Act of 1995.

- The TSA estimates that it will cost affected GA airports \$5.5 million over 10 years, while estimating its own costs to implement the program at \$136.6 million.
- Based on a AAAE survey of 45 Reliever Airports affected by the NPRM, the TSA substantially underestimates implementation costs while overestimating airport revenues.
- In the NPRM, the TSA completely omitted one of the largest cost to GA airports, namely LEO training and on-call deployment expenses.
- Unlike the commercial air carrier aviation sector, TSA does not propose to reimburse any costs to GA airport operators to implement the NPRM or to improve security.

AAAE conducted a survey in which over 90 airports participated, including 45 of the 273 of the known Reliever Airports (“RAs”) that will be subject to the NPRM.

Highlights of the results from the AAAE survey show that:

- 24% of RAs operate 24/7 but do not have full time staff on hand;
- 64% of RAs report having to add staff to meet ASC requirements;
- 22% of RAs may have to consider giving up RA status or ban large aircraft;
- 15% of RAs will either close or consider closing if they cannot meet requirements;
- 88% of RAs will pass the cost on the aircraft operators;
- 60% of RAs estimate the annual NPRM cost more than \$40K, many over \$200K;
- 71% of RAs believe the NPRM will not improve security.

NBAA: Detailed Analysis of the Large Aircraft Security Program (LASP) NPRM

November 5, 2008

Regulatory Construction

Under TSA's current regulatory structure, each of TSA's aircraft security programs, such as the Aircraft Operator Standard Security Program (AOSSP) for the scheduled airlines, the Twelve-Five Standard Security Program (TFSSP) for on-demand charter operators and the Private Charter Standard Security Program (PCSSP) for aircraft over 100, 309 pounds occupies its own set of regulatory requirements. TSA is proposing to combine all of the security programs under a single structure and then identify which requirements apply to a particular operator.

This will eliminate the separate distinctions for TSA's current security programs and combine all of them under a singular Large Aircraft Security Program.

The NPRM proposes a number of significant modifications including the following.

Flight Crew Background Checks

The proposal would require flight crew, which under TSA's definition includes both pilots and flight attendants, to undergo a fingerprint-based Criminal History Record Check (CHRC) and a Security Threat Assessment (STA), similar to the requirements for airline pilots. TSA proposes to charge \$74 per person to complete the required checks. TSA would prohibit flight crew members that do not pass a CHRC and STA from operating the aircraft. The TSA would also require follow up STA's every 5 years.

Passenger Manifest Validation

TSA proposes to require passengers on board a large aircraft to have their names compared against two lists maintained by the Agency; the "selectee" list, which subjects commercial airline passengers to additional screening at the security checkpoint, and the "no fly" list which prohibits listed individuals from boarding a commercial flight. While the TSA proposes that the operator only submit passenger names, additional biographic information, such as date of birth, place of birth and gender is under consideration.

Today, TSA provides these lists to commercial carriers who conduct the passenger vetting process in-house. The Agency does not want to send these lists to an additional 10,000 potential operators and has created a Watch List Service Provider (WLSP) who would conduct the passenger name vetting for the operator. TSA has set forth a number of requirements for companies that would act as WLSPs. The proposal would also allow a WLSP to charge for this service.

An operator would have the ability to either check passenger names on a flight-by-flight basis or by creating a Master Passenger List (MPL) for frequent or regular passengers. TSA would

constantly vet passengers on the MPL, alleviating the need for a flight-by-flight check. Passengers would sign a written acknowledgement of their inclusion on the MPL since TSA would retain certain passenger information subject to continuous vetting.

TSA would prohibit passengers appearing on the “No Fly” list from flying on board the aircraft. TSA identifies other notification requirements for the operator to follow if a passenger’s name appears on the “Selectee” list.

To prevent duplicate submissions, TSA proposes that inbound international flights using the Bureau of Customs and Border Protection (CBP) Electronic Advanced Passenger Information System (eAPIS) would not need to submit passenger information to TSA. An operator’s manifest submission to CBP would satisfy TSA’s passenger name check requirement.

Operator Security Program

The TSA proposes to manage the requirements of the LASP through a security program developed by each operator. The proposal requires the security program to contain several significant elements. These include:

- **Designation of Key Security Personnel:** These include the Aircraft Operator Security Coordinator (AOSC), In-Flight Security Coordinator (ISC) and Ground Security Coordinator (GSC). The operator could assign a single person to perform all three functions. The AOSC is TSA’s principal 24-hour-a-day point of contact regarding dissemination of specific threat intelligence. The ISC and GSC oversee the in-flight and ground security elements of the operator’s security program.
- **Procedures to Address Passenger Name Matches:** If a passenger’s name matches one of TSA’s lists, the operator must follow specific instructions to identify if a real match has occurred. TSA may require additional screening if a name matches the “Selectee” list. TSA will require the operator to deny boarding to a passenger if the name matches with the “No Fly” list.
- **Transportation of Weapons:** TSA would require that operators transport weapons either in an inaccessible cargo area or in a locked box under the control of the ISC.
- **Carriage of Prohibited Items:** TSA maintains a list of items prohibited in the cabin of a commercial aircraft. Some of these items include sporting equipment and tools. The proposal would require an operator to comply with this list of prohibited items designed for commercial aircraft.
- **Aviation Security Contingency Plan:** This would require development of specific security-related procedures for use in the event of a security threat or other security related issue.
- **Securing of Aircraft and Facilities:** Requires the operator to identify procedures for securing aircraft while at home-base and on the road and for ensuring security of facilities supporting an operator’s aircraft.

- **Carriage of a TSA Federal Air Marshal (FAM):** TSA would require operators of aircraft over 100,309 pounds to develop procedures to carry a FAM on their flights when notified by TSA.
- **Law Enforcement Assistance:** TSA would require operators to conduct training to ensure that employees understand procedures for obtaining law enforcement assistance in the event of a security need.
- **Bomb and Piracy Threats:** TSA would require operators to follow specific regulatory requirements in the event an operator receives a threat of a bomb or piracy.
- **Security Directives and Information Circulars:** TSA utilizes Security Directives (SDs) to quickly address very specific security threats. SD's are similar to FAA Airworthiness Directives in that they carry the authority of a regulation. Also important to note is that an SD does not follow a public rulemaking process due to the sensitive security information that it addresses. Information Circulars describe more general security concerns.

Security Audits

TSA has identified the challenges of overseeing approximately 10,000 aircraft operators covered by this proposal. While Congress has removed the cap of TSA's maximum number of employees, hiring a sufficient number of GA inspectors could prove daunting. TSA has proposed the use of third-party auditors to conduct security inspections of the LASP. The auditor would not have authority to require modifications to procedures or facilities. The auditor would submit a report to TSA who would determine regulatory compliance. TSA could accompany any inspector during an audit.

TSA proposes that the operator would contract with an auditor, at their own cost, to perform this security inspection. The auditor would inspect for compliance within 60 days of TSA approving the operator's security program and then every two years thereafter.

TSA also proposes a number of specific regulatory requirements for auditors that include:

- Successfully undergo a TSA security threat assessment.
- Currently hold or be able to obtain a certification or accreditation from an organization recognized by TSA.
- Have sufficient knowledge and skills to conduct a security audit of an aircraft operator.
- Receive initial and biennial training.
- Conduct independent and impartial audits, submit audit reports to TSA, and retain audit reports for 36 months.
- Identify, handle, and protect Sensitive Security Information and keep confidential other information provided by TSA and large aircraft operators.

- Submit to inspection by TSA.

Phased Compliance Schedule

TSA proposes to phase in compliance with the LASP based on the geographic location of the based aircraft.

- Mid Atlantic region: final rule + 1-4 months
- Northeast region: final rule + 5-8 months
- Southern region: final rule + 9-12 months
- Midwest region: final rule + 13-16 months
- Western region: final rule + 17-20 months
- Existing security program holders: final rule + 21-24 months

Airport Security Requirements

The proposal identifies approximately 320 airports that would need to adopt a “Partial” airport security program. The TSA has identified these airports as either a DOT defined reliever airport or one that regularly serves scheduled or public charter operations in large aircraft.

The “Partial” airport security program would require:

- Designation of an airport security coordinator
- Training program for law enforcement personnel
- Description of law enforcement support
- System for maintaining records
- Procedures for dealing with Sensitive Security Information (SSI)
- Procedures for posting public advisories
- Incident management procedures