

AMERICAN ASSOCIATION  OF AIRPORT EXECUTIVES



Transportation  
Security  
Administration

Robert P. Orlislagers  
Centennial Airport

TSA • NPRM • LASP  
Docket 2008-0021

January 28, 2009

Good Morning, my name is Robert Olislagers and I am Executive Director of Centennial Airport in Denver, Colorado. I wish to thank you for this opportunity to respond to the NPRM, and my colleagues who yielded their time. I have been authorized to speak on behalf of the American Association of Airport Executives, the State of Colorado and Centennial Airport, representing some 170 airports affected by this NPRM, as well as aircraft operators in the State of Colorado.

By way of background, I served on the Working Group of the Aviation Security Advisory Committee (“ASAC”) and assisted the TSA in drafting the “*Security Guidelines for General Aviation Airports*”. I have managed GA airports for 25 years and at present, I manage one of the largest and busiest GA Reliever airports in the US. I have studied national and international security at the Air War College and Harvard University and I am a published author on the subject of GA airport security. Finally, I served as the Principal Investigator for the only GA security research grant ever issued by the TSA, and I chaired two aviation security research projects on behalf of the National Academy of Sciences, Transportation Research Board. Therefore, I believe I am reasonably qualified to comment on the Notice of Proposed Rule Making (“NPRM”), Federal Register, TSA Docket 2008-0021, *Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Program*, dated October 30, 2008.

To put it simply, we are deeply concerned about the NPRM and seriously question the need, assumptions and supporting data that seek to justify this proposed rule as follows:

**1) The NPRM stated *Reason For The Proposed Rule (145)* appears to contradict TSA’s own intelligence evaluation and conclusions;**

- i) Specifically, on page 181, the TSA states that the reason for the NPRM is that; the “TSA is aware that, as vulnerabilities within the air carrier and commercial aviation industry are reduced, GA operations become more attractive targets.”<sup>1</sup> However, this is in direct contradiction with other TSA documents distributed by the TSA Office of Intelligence, which concludes “There is little evidence to suggest that terrorists are turning their attention specifically to the general aviation sector in the Homeland”.<sup>2</sup> This assessment appears to directly contradict the NPRM and brings into serious question the basis for this proposal.

**2) The NPRM proposes to make mandatory what is already in place without demonstrating the efficacy [or lack thereof] of the existing combination of mandatory and voluntary initiatives, including a cost benefit analysis;**

- i) Specifically, the NPRM suggests that the GA industry is mostly unregulated, and that this presents a risk (145). We know in fact that GA is highly regulated, including security. I will not repeat all the mandatory and voluntary security initiatives that have been implemented since 9/11; however, it

---

<sup>1</sup> Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Program, Federal Register TSA Docket 2008-0021. P. 145

<sup>2</sup> Civil Aviation Threat Assessment, Transportation Security Administration, Office of Intelligence. December 30, 2008 (U/FOUO), Appendix A, P. 2.

appears that the TSA 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.<sup>3</sup> We believe therefore that it is premature to conclude that this proposal is in fact, needed.

- ii) As a related function, the TSA did not provide a cost/benefit analysis in the NPRM that justifies the cost of implementing the NPRM against the efficacy of the existing mandatory and voluntary initiatives.<sup>4</sup>

### **3) The NPRM constitutes an Unfunded Mandate pursuant to the Unfunded Mandate Act of 1995 (182)**

- i) Specifically, 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.
- ii) In spite of having access to data at all US reliever airports, TSA relied instead on very general NAICS and US Census Bureau data to conduct its fiscal impact analysis. The results are not only deeply flawed but even the TSA questions its own data in the NPRM (174, 175) Even more troubling is the fact that the TSA did not verify its data against even one airport. For this reason, AAAE conducted a survey of member airports and 45 (or 18%) of the 273 Reliever Airports responded. The resulting data confirmed that the TSA substantially underestimated NPRM implementation costs while overestimating airport revenues and, the TSA completely omitted LEO costs.

- 24% of Reliever Airports (RA) that operate 24/7 have full time staff on hand, therefore,
- 64% of RAs report having to add staff to meet ASC requirements,

Individual cost analyses are on file for TSA's review but below are some of the findings of the survey:

- 72% of airports reported ASC training costs to be no more than \$5,000
- 28% of airports reported ASC training costs to be more than \$10,000 , with most of the larger airports reporting costs in excess of \$20,000, including Centennial Airport.

But this is only part of the story:

- iii) The TSA completely omitted from the NPRM cost analysis what every airport reported would be the largest cost center, which is Law Enforcement Officer (LEO) training and deployment. One-third of airports surveyed indicated having to enter into a reimbursement agreement with local law enforcement and another 24% are uncertain of whether they have to negotiate such agreements. Most Alaska airports and many of the larger Reliever Airports reported estimated annual LEO costs in excess of \$200,000 and smaller

---

<sup>3</sup> For example, the TSA is just now in the process of reviewing data of vulnerability assessments at 100 GA airports through a pilot program.

<sup>4</sup> It should be noted that former DHS Secretary Chertoff often spoke about "measurable programs" and therefore this standard should apply to this DHS/TSA crafted NPRM.

Reliever Airports estimated costs between \$50,000 and \$100,000. Centennial Airport for example handles some 130,000 itinerant operations per year with aircraft weighing more than 12,500lbs. Assuming half are departures with 20% deadheading, the airport would have to accommodate an average of 142 aircraft per day, operating from four separate FBOs. Timely emplaning of GA passengers is the bane of existence for GA and with multiple departures from multiple locations, we would need multiple LEOs in order to satisfy customer throughput. We are just one example. All told,

- 60% of airports estimated the annual NPRM cost at more than \$40K, with the larger airports report costs over \$200K. Centennial Airport estimates costs at more than \$300K.
- 88% of airports told AAAE that they would pass the cost on to aircraft operators
- 22% of RAs may have to consider giving up RA status or ban large aircraft...and,
- 15% of RAs will either close or consider closing if they cannot meet the NPRM

- iv) The TSA also grossly overestimated revenues earned by airports, with only the very largest of airports reaching or exceeding the estimate cited in the NPRM. Most Reliever Airports, however, report less than \$500,000 in annual revenues, a significant discrepancy from the \$3.8 Million NPRM estimate.
- v) Finally, for the record, unlike the commercial air carrier sector, TSA does not propose to reimburse any costs to GA airport operators to implement the NPRM, nor will TSA provide screeners or other logistics support.

4) **The NPRM ignores privacy laws and private property rights (181, 183);** this is one of the more complex aspects of the NPRM and touches both on conflicts with other laws and Federalism issues. I am not an attorney; however, extensive case law suggests that citizens enjoy extraordinary legal protections related to private property and privacy rights. For this reason, we recommend that privately owned aircraft be exempt and that the NPRM focus only on publicly operated aircraft for the most stringent initiatives:

- i) Specifically, the *Fourth Amendment* guarantees “the right of the people to be secure in their persons, houses, papers and effects”, which includes vehicles and aircraft. Private aircraft do not operate with the benefit of a “Contract of Carriage” as is the case with commercial air carriers, and passengers on private aircraft therefore do not waive any rights while traveling.
- ii) Property rights are also guaranteed by the *Fifth* and *Fourteenth Amendments* and appear to have been ignored by the NPRM
- iii) In conjunction with private property rights, the NPRM ignores the *Privacy Act of 1974* and related case law, again complicated by the absence of a “Contract of Carriage.”
- iv) Equally important, the *Second Amendment* and case law guarantee the right to bear arms and coupled with the *Fourth Amendment* and the lack of a “Contract of Carriage” makes implementation of the NPRM complicated. Some states such as Alaska require survival gear, including guns that are not easily stored outside the reach of passengers. The prohibited items list may also weaken aircraft security if protective details are prohibited from carrying weapons to provide security for their CEOs or aircraft!

**5) Finally, the NPRM may inadvertently force some airports to violate federal law (181)**

- i) Specifically, 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 relating to Interstate access, possibly resulting in becoming ineligible for AIP funding or becoming subject to other punitive actions

**In Conclusion**

The American Association of Airport Executives, The State of Colorado and Centennial Airport will each provide separate written responses that provide greater detail than was possible here today. That said, I believe that it has been demonstrated that this NPRM as written, is seriously flawed because of the numerous discrepancies noted in this response. It is flawed not only by virtue of the fact that the NPRM contained an overwhelming 44 unresolved questions posed by the TSA; its use of highly questionable data, faulty and incomplete financial analyses without the benefit of verification, is very disturbing. Most disturbing is the fact that the NPRM appears to contradict TSA's own intelligence assessment, which, coupled with the lack of sound threat assessment in view of existing security mandates and initiatives, makes this NPRM a leap of faith rather than a well-executed plan to improve security. We do not question that threats exist, but they must be weighed against mitigations already in place. Specifically, with this NPRM TSA;

1. Contradicted its own most recent intelligence report
2. Failed to conduct a proper GA threat assessment
3. Failed to conduct a cost-benefit analysis
4. Substantially underestimated costs to airports and aircraft operators
5. Substantially overestimated airport revenues
6. Completely omitted law enforcement costs to airports and aircraft operators
7. Failed to verify its own data against even one GA airport
8. Failed to address reimbursement or compensation for costs incurred
9. Ignored civil liberties, including private property and privacy rights, Moreover, if implemented...
10. Causes a significant unfunded mandate
11. Weakens security on corporate aircraft
12. Causes significant conflicts with existing federal and state law; and,
13. Causes some GA airports to consider closing or limiting access.

Therefore, it is strongly recommended that the TSA abandon this NPRM and start anew by including GA industry stakeholders affected by the NPRM. General Aviation is not opposed to working with the TSA in closing any potential gaps in security; however, *the current approach is not a failure of imagination but a failure of imagination without analysis.* Notwithstanding the current economy, this NPRM is broken, and has the very significant potential of closing airports, bankrupting businesses and damaging an industry to a greater level than any threat ever faced before by General Aviation.

Thank you for your time.