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 U.S. Department of Transportation  
 1200 New Jersey Avenue SE  
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 Room W12-140  
 Washington, D.C. 20590-0001

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**Comments of the National Association of State Aviation Officials on: Federal Register Docket TSA - 2008-0021 (October 30, 2008) – the Notice of Proposed Rulemaking (NPRM) on the TSA Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program.**

Since 1931, the National Association of State Aviation Officials (NASAO) has represented the *state government authorities* who serve the *public interest* in aviation transportation in all fifty states, Guam and Puerto Rico. NASAO and the individual states have had seventy-eight years of experience with general aviation (GA). In the immediate wake of 9/11, NASAO established an internal Standing Committee on Aviation Security (composed of state aviation directors in eight different geographic regions) and offered the Federal Aviation Administration (FAA) all available resources. When the fledgling Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) were established, NASAO again immediately offered its expertise, resources and full assistance.

NASAO has carefully reviewed and evaluated this proposal. We have consulted with NASAO’s members across the nation, the NASAO Standing Committee on Aviation Security and our colleagues in several of the associations representing various facets of aviation. While NASAO applauds TSA for holding a series of public hearings across the nation, we note that the general aviation professionals participating in the sessions have been uniformly negative in their critiques of the NPRM. As this association talks with its state government members around the nation, we find universal concern that this well-meaning NPRM will result in great damage to a vital form of transportation without enhancing security in any meaningful way. For instance:

The **State of Colorado**, which is filing comprehensive comments separately, believes this NPRM “will have a devastating impact on the element of the aviation industry the TSA is trying to secure and safeguard”.

The **State of Maryland** in its detailed comments to this docket notes: “(this) NPRM is not based on any vulnerability assessment”...That the “list of airports cited by TSA as impacted by this NPRM is incomplete and incorrect”...and that the “NPRM’s economic analysis is unreliable”.

The **Commonwealth of Virginia**, in its specific comments to the docket, says , “...the LASP proposal is far too broad in the scope of its reach , while at the same time not persuasive as to the security gain that might be achieved”...and, “We believe that the proposed NPRM will unduly degrade the entire premise of the GA business model”.

In the **State of Alaska**, lawmakers are petitioning the Secretary of the Department of Homeland Security to withdraw this NPRM because it risks destroying the entire rural Alaska aviation industry.

After deliberating on the specifics and scope of this NPRM, we have come to the conclusion that NASAO has no alternative but to OPPOSE this NPRM, in its entirety, because it is not in the public interest, for a number of significant reasons:

- 1) This NPRM does not provide *any* specific evidence of *any* genuine security threat by these aircraft and airports.
- 2) Yet, without *any* evidence of a *problem*, TSA proposes a myriad of complex, burdensome and expensive *solutions*.
- 3) This NPRM may assume statutory authority that TSA does not possess.
- 4) These proposed rules may be unconstitutional.
- 5) This NPRM neither recognizes nor acknowledges the significant application of a wide range of existing security enhancements (regulatory, statutory and voluntary) across the entire general aviation community since 9/11.
- 6) This NPRM arbitrarily chooses the 12,500 pound weight as the “threshold” for these proposed rules.
- 7) This NPRM imposes enormous and unnecessary unfunded federal mandates on individual aircraft owners and operators, airports and their state and local operators.

As a result, NASAO respectfully, but strongly, urges the Secretary of the Department of Homeland Security to retract this terribly flawed NPRM in its entirety. If after a period of appropriate internal review TSA decides that there is a genuine need to address the security posture of these aircraft and airports, NASAO encourages the Secretary of the Department of Homeland Security to *establish a rule making committee* comprised of experienced and knowledgeable General Aviation professionals to assist TSA in promulgating future regulations. (This model has worked well for the FAA in its rulemaking). As our colleagues at the General Aviation Manufacturers Association (GAMA) point out, “Negotiated rulemaking was created by Congress (5 U.S.C. 561 et seq.) to encourage agencies to use such processes when it enhances the informal rulemaking process.

NASAO served as the co-chair of an industry wide effort to establish the *Security Guidelines for General Aviation Airports* (TSA Information Publication A-001) adopted by TSA in May 2004.

NASAO stands ready to assist TSA in any effort that will genuinely and appropriately enhance aviation security and is confident that a broad based rulemaking committee would be well able to achieve TSA's goals. (We note for the record that NASAO is also already assisting TSA with its preparations and potential execution of a General Aviation Airport Threat and Vulnerability Assessment Survey).

**Some questions and observations:**

*A) What is the justification for this NPRM?*

In a genuine effort to protect Americans from the misuse or abuse of its aircraft, the general aviation community has changed dramatically since 9/11. There is an "Airport Watch" program in effect, co-sponsored by the Aircraft Owners and Pilots Association (AOPA) and the TSA. There is a toll-free hot line to report suspicious behavior (1-866-GA-Secure). There are restrictions and background checks in place for pilots and non-citizen student pilots. The existing "twelve-five" rule tightens security where commercial GA activity might be the target of a terrorist effort. There are many other actions and programs at the federal and state level designed to enhance security. NASAO is willing to examine any proposal that will have a positive and genuine affect on security.

But, to NASAO's knowledge, there has never been a genuine "terrorist attack", anywhere in the world that utilized a general aviation airplane, of any size. Last year, TSA itself wrote "there is little evidence to suggest that terrorists are turning their attention specifically to the general aviation sector in the homeland".

Please remember, this NPRM affects privately owned and operated aircraft and the airports they use. It is highly unlikely that the owner or operator of one of these aircraft would bring an "unknown" passenger aboard. We agree with our friends at the AOPA that this..."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".

*B) Portions of the NPRM itself are frightening (intentionally?), but where is the documentary evidence of a potential threat and how was the cost/benefit analysis conducted?*

In TSA's "scenarios", it proposes a series of possible attacks and then assigns a "cost" to each of them. In Scenario 3, a GA aircraft (perhaps as light and small as a twin-turboprop) is used as a weapon against a building in a densely populated area. According to TSA, this scenario results in 3,000 fatalities, 9,000 injuries and losses of \$49 billion. Hysterical nonsense! Just because one can conceive of such an attack using a light airplane, that does not make it a genuine possibility, nor are the actual damages likely to be of this magnitude. Please recall that the tragic events of 9/11 required three large hijacked commercial airliners and the World Trade Center as a target to achieve such devastating results.

TSA's Scenario 4 involves nuclear or biological weapons aboard a GA aircraft targeting an urban center. TSA concludes losses of \$1 trillion. Frightening? Yes! Likely? No. It would be

far easier for a terrorist to use a rental truck. TSA's Scenario 4 would require failures in so many aspects of the homeland security system that the probability of such an attack is miniscule. TSA is in direct conflict with its own claims of being a "threat-based risk management agency" by inventing these outlandish scenarios. Probability is a necessary component of risk management and it is entirely ignored by the agency in this NPRM.

The justification for this NPRM cannot simply be a series of imaginary attacks using GA as a "weapon" when easier to control and use "weapons" are readily obtainable.

*C) Is this NPRM on firm legal and Constitutional ground?*

NASAO has been privy to the comments on this NPRM being submitted by the National Business Aviation Association (NBAA) and is favorably impressed by that association's argument that TSA does not have the statutory authority to regulate general aviation. Rather than restate NBAA's persuasive argument, we refer you to NBAA's formal comments to this docket.

Similarly, NASAO was examining the constitutionality of this NPRM, when we became aware of the comments submitted by the American Association of Airport Executives (AAAE). AAAE believes that this NPRM may violate the *Second and Fourth Amendments* to the U.S. Constitution. Again, we find their reasoning compelling and direct the reader to AAAE's formal comments to this docket.

*D) Why initiate for the specific category of 12,500 pounds and above?*

TSA argues that any alternative weight would mean the agency is moving away from ICAO standards. However, ICAO has not yet set a weight threshold with regard to the security of private aircraft operations. TSA has also refused to disclose any studies that would appear to justify this seemingly arbitrary weight threshold. We have informally heard that some present and former DHS employees are concerned that aircraft weighing more than 12,500 pounds could be used as missiles against nuclear power plants. GAMA points out that a Nuclear Energy Institute 2002 study concluded, "that the structures that house reactor fuel are robust and protect from impacts of larger (i.e. Boeing 767-400) commercial aircraft". Under these circumstances, clearly, lighter aircraft cannot be considered a "threat" to these facilities.

*E) Why prohibit more than 80 different items from private aircraft?*

These are **PRIVATE** aircraft. While it is wise to prohibit firearms from commercial mass-transportation modes like commercial airliners, why bother to prohibit guns from private aircraft? Presumably some of these airplanes are used regularly by people who hunt or enjoy target shooting. Again, we cannot conceive of an occasion where an owner/operator would willingly permit an "unknown" passenger aboard the aircraft who "theoretically" could hijack it.

Many of the other proposed prohibited items, like heavy tools or sporting goods, seem like logical things to carry on a business trip for many companies.

*F) How did TSA so seriously underestimate the costs to the airport and aircraft operators?*

Most of the states own and operate a wide variety of airports and aircraft. It is clear to NASAO that TSA has missed the true costs to operators by a wide margin! These proposed regulations are clearly unfunded mandates.

We again direct the reader to the fine arguments of AAAE and NBAA on the actual costs of this rulemaking. NASAO endorses their views.

*G) Why does TSA insist that airports be subject to Security Directives (SDs), but does not specify which ones?*

SDs have been used to explain, augment or amend TSA policies. It seems to NASAO that these SDs could be misused to implement totally new airport security requirements or expand requirements beyond original intent.

*H) The entire issue of "Third Part Audits" is problematic on several levels.*

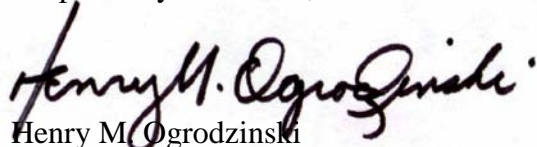
In discussions with our colleagues at the National Air Transportation Association, we agree with the premise they put forward, "...no other TSA-regulated party is required to contract with a third party audit to achieve the agency's responsibilities for oversight". This is a federal responsibility that should not be turned into an expensive unfunded mandate for the GA community.

## **Conclusion**

NASAO has serious concerns about the substance of nearly every page of this NPRM. We have heard similar valid concerns from our members across the nation, a variety of other associations and individual aircraft and airport operators. We have heard ample negative details from others who attended the public forums and who are commenting to the docket. This NPRM is not appropriate. It does not genuinely enhance security. It is a massively expensive unfunded mandate. NASAO does not believe that this NPRM can be saved by making minor changes...no matter how numerous. We believe that it must be entirely scrapped.

As previously stated, NASAO stands ready and willing to work with TSA to genuinely enhance security. We hope that the Secretary of the Department of Homeland Security will seriously consider establishing a rulemaking committee to propose and oversee measures to meet TSA's objectives. NASAO would be pleased to participate on any such panel.

Respectfully submitted,



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