Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program
73 Fed. Reg. 64790 (October 30, 2008)

Comments on the Notice of Proposed Rulemaking
Submitted electronically at http://www.regulations.gov

Submitted by the
Aircraft Electronics Association

3570 NE Ralph Powell Road
Lee's Summit, MO 64064

601 Pennsylvania Ave, NW
Suite 900 South Bldg
Washington, DC 20005

For more information, please contact:

Jason Dickstein
AEA Washington Counsel

c/o Washington Aviation Group, PC and the
Law Offices of Jason A Dickstein
2233 Wisconsin Avenue, NW, Ste 503
Washington, DC 20007

jason@washingtonaviation.com
Tel: (202) 628-6777

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March 11, 2009

Department of Homeland Security
Transportation Security Administration
Docket Management Facility
1200 New Jersey Avenue, SE
West Building Ground Floor Room W12-140
Washington, DC 20590

ATTN: Docket Number TSA-2008-0021

Dear Sir or Madam:

Please accept these comments on the proposed rule, Large Aircraft Security Program, Other Aircraft Operator Security Program, and Aircraft Operator Security Program, which was offered to the public for comment at 73 Fed. Reg. 64790 on October 30, 2008.

Table of Contents

I. Who is AEA?....3
II. Detrimental Effect....3
III. The 12,500 Pound Weight Threshold Has No Rational Basis....3
IV. The Proposed Rule Fails to Address Any Real Threat to GA....4
V. Imposing the Prohibited Items List on General Aviation Will Not Benefit Security, But Will Harm General Aviation....5
VI. TSA Appears to have No Statutory Authority to Promulgate this Rule....5
VII. Conclusion....6

I. Who is AEA?

The Aircraft Electronics Association (AEA) is an international organization representing over 1,300 company members dedicated to the general aviation electronics industry. AEA recently celebrated its 50th birthday as a trade association – it has spent the lion's share of that time based in Missouri (although it was originally formed in Texas). AEA's membership includes avionics repair stations, manufacturers and distributors.

AEA supports efforts to improve safety and regulatory awareness among its members and in the industry as a whole, and is committed to national security and to keeping aviation protected from the threat of terrorism. All of AEA's 1300 members buy and sell – whether it is manufacturers who buy components to use in their products and then sell them to installers or dealers, or repair stations who buy and stock avionics articles for installation in customers' aircraft, and then sell the articles to the customer. Many of the products AEA's members deal in end up in general aviation (GA) aircraft. Thus, any rule that places a financial burden on GA directly affects AEA's members.

II. Detrimental Effect

The proposed Large Aircraft Security Program (LASP) rule would have a detrimental affect on GA while conferring no safety or security benefit to GA. The proposed rule would affect all aircraft with a maximum certificated takeoff weight of over 12,500 pounds, and would require the operators of these aircraft to have a TSA approved security program. Specifically, the NPRM states that such a security program would require the watch list matching of GA passengers, screening for unauthorized persons and weapons onboard the aircraft, and finger-print based criminal history checks on flight crew. Currently, the Transportation Security Administration (TSA) only requires security programs for, with some exceptions, commercial operators and air carriers.

It is AEA's position that the proposed rule fails to recognize the inherent difference between GA and commercial aviation, and the requirements it contains put an overly onerous burden on GA while conferring no stated or actual national security benefit. It is AEA's hope that these comments can help the TSA to craft a rule that supports aviation security while also allowing the continued success of the GA industry.

III. The 12,500 Pound Weight Threshold Has No Rational Basis

The proposed LASP rule defines a "large aircraft" as an aircraft with a maximum certificated takeoff weight of over 12,500 pounds. Despite sounding big, this qualifying weight minimum includes aircraft with only eight to ten seats, typically

known as light jets. The NPRM contains no explanation for the decision to base the rule on weight rather than operation characteristics, and additionally, the NPRM gives no information on how the TSA chose the weight threshold in the proposed rule.

In addition to our opposition to the current arbitrary threshold of 12,500 pounds, AEA is concerned that the TSA could decide in the future to extend the rule to include aircraft of lower weights arbitrarily and without explanation. Additionally, the Aircraft Owners and Pilots Association already estimates that 312 airports will be affected by the proposed rule, and there is concern that this number could rise dramatically if the rule was expanded, perhaps even putting some small airports out of business due to the cost of compliance.

AEA feels that the weight threshold chosen by the TSA for the proposed LASP rule is arbitrary. AEA does not support the implementation of the LASP rule, on the grounds that it would subject small aircraft to monitoring, and also due to the risk that the rule could be expanded in the future, without adequate explanation.

IV. The Proposed Rule Fails to Address Any Real Threat to GA

The proposed LASP rule fails to address any real threat to or vulnerability of GA. GA is inherently different from commercial aviation, and is of a more personal and intimate nature. The pilot of a GA aircraft is likely to know all of the passengers in the aircraft and the passengers are likely to know one another, either because they are all employees or customers of the aircraft's operator or are all social acquaintances.

It would be absurd to require your boss and co-workers to undergo watch-list matching and go through a metal detector before piling into an eight-seat van to go to an important meeting. It is equally absurd to require this level of security before boarding an eight-seat light jet of the type that would be required to have a security program under the proposed rule.

The NPRM for the rule states that the LASP rule is being promulgated, in part, because increased commercial aviation security may lead terrorists to plan attacks on GA. Mere conjecture that there is an increased threat to GA, without facts to back it up, hardly seems to merit a rule of this magnitude. In the NPRM, the TSA references no studies on the potential vulnerability of GA following the increase in security for commercial aviation, and cites not a single example of a known terrorist threat or plot to attack GA.

Without a real security threat to GA, the proposed rule represents only an exorbitant cost to GA operators without any national security benefit conferred. AEA supports national security, but does not feel that merely asserting that GA is

vulnerable to terrorist threat, without further factual findings, merits the proposed LASP rule.

V. Imposing the Prohibited Items List on General Aviation Will Not Benefit Security, But Will Harm General Aviation

Currently, GA operators are not subject to the Prohibited Items list that commercial aviation operators are. Imposing this Prohibited Items list on GA would be harmful to the business of many GA operators, without addressing any security issue or providing any security benefit. Again, the proposed LASP rule fails to take into account the inherent differences between GA and commercial aviation with this aspect of the proposed rule.

Many GA operators are in fact businesses operating their own aircraft or aircraft leased to them. Many times, these businesses find it easier to fly items that they manufacture or distribute on their own aircraft if the item is subject to the prohibited list, rather than pay to have it specially shipped. This choice presents little or no security risk to the aircraft- after all, it is merely a company owned aircraft flying company product. On the other hand, making the Prohibited Items list apply to GA would cause the nonsensical situation where a business cannot fly goods it manufactures itself or is in the business of distributing on its own aircraft.

There have been no real past harms caused by GA not being subject to the Prohibited Items list. The TSA does not give any examples of a time that a threat to GA was posed due to the lack of the Prohibited Items list requirement. This speaks to the fact that the very nature of GA makes such a security program requirement unnecessary.

It is AEA's position that the proposed rule could detrimentally affect the viability of GA by imposing the Prohibited Items list requirement on GA operators, while the requirement itself would confer no security benefit.

VI. TSA Appears to have No Statutory Authority to Promulgate this Rule

TSA cites to a litany of laws that serve as the alleged basis for these regulations; however none of those laws actually provide TSAS with the legal authority to promulgate this rule. TSA's statutory mandate for screening passengers and cargo is generally related to air carrier service. See, e.g., 49 U.S.C. § 44901(a). It is inappropriate for TSA to extend its regulatory power beyond the statutory authority that has been granted to TSA.

TSA was supposed to have performed a threat and vulnerability assessment for general aviation airports. 49 U.S.C.A. § 44901(k)(1)(A). It was supposed to have been implemented based upon the principles of risk-management. 49 U.S.C.A. § 44901(k)(1)(B). The deadline for this was August 3, 2008 (one year after implementation). Following this, TSA was supposed to analyze the feasibility of providing grants to general aviation airports to help them upgrade security. 49 U.S.C.A. § 44901(k)(2). Airports would have presumably used the threat and vulnerability data to support their security upgrades.

There is no statutory support authorizing TSA to implement a security program for large general aviation aircraft, and the statute seems to suggest a very different path for general aviation security programs. In light of this, we believe that this security program is inappropriate and should be withdrawn.

VII. Conclusion

While AEA supports rules that enhance national security, it is AEA's position that the proposed LASP rule places an onerous financial burden on GA without providing any real security benefit. It is also appears that there is no statutory authority to promulgate this rule. Thus, AEA does not support the implementation of the proposed LASP rule.

Thank you for affording industry this opportunity to comment on the proposal to make it better serve the needs of the aviation community, and the nation as a whole. We appreciate the efforts of the TSA in this regard.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

Jason Dickstein
Washington Counsel
Aircraft Electronics Association

for

Ric Peri
Vice President of Government Affairs