

**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
Aviation Suppliers Association**

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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.

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Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace. ASA primarily represents parts distributors.

ASA members buy and sell aircraft parts to a variety of sources, including general aviation operators. Thus, when a proposed rule places a financial burden on those who own and operate aircraft (ASA's customer base) the proposed rule affects ASA's members as well. ASA and ASA's members are committed to safety and to national security, and seek to aid the TSA in creating rules that protect aviation from terrorist threat while also allowing the many different segments of the aviation industry to remain viable.

Comments on the Proposed Rule

General Comments

According to the introduction to the NPRM on the Large Aircraft Security Program (LASP), the proposed rule would require security programs for all operators of aircraft with a maximum certificated takeoff weight of over 12,500 pounds. The rationale given for this requirement in the introduction is that the mitigation of vulnerabilities and risks to commercial aviation due to security procedures may have increased the likelihood that terrorists will target general aviation (GA) operators.

Currently, the TSA requires security programs only for air carriers and commercial operators (with some exceptions). A security program is described by the introduction in the NPRM as being a set of security procedures that would meet the applicable TSA recommendations (which could include such criteria as specific measures to screen cargo, to transport Federal Air Marshals, to use personnel identification systems, and to provide training to employees). The LASP specifically would require fingerprint-based criminal history records checks for flight crews, watch list matching of passengers, biennial security program audits, passenger and property screening, and checks onboard for unauthorized persons and for weapons.

The proposals in these comments are meant to support aviation security while making feasible the continued successful operation of GA. To avoid overburdening the GA community while continuing to ensure the safety of the

American people, any definable security threats must be addressed reasonably and not arbitrarily. Additionally, any rule that applies to GA must recognize that GA aviation is inherently different than commercial aviation, and should be treated as such. Currently, the proposed rule fails to take the unique character of GA into account, and unnecessarily burdens GA without addressing any real threats or making aviation any safer.

No Real Threat is Addressed by the Proposed Rule

The proposed rule in question does not address any real threat or vulnerability. While the NPRM states that the Large Aircraft Security Rule is being promulgated, in part, because increased security for commercial aviation may make GA a more attractive target to terrorists, the TSA fails to give any examples of this so-called increased threat. The TSA references no studies that have been done regarding an increased threat to GA following the implementation of security programs for commercial aviation, and cites no examples of any terrorist or terrorist organization attempting to target GA or planning to target GA.

Mere conjecture that there may be an increased threat does not seem to merit requiring GA operators to have a security program. The small and intimate nature of GA is such that frequently, the pilot of the plane knows all of the passengers socially, or the passengers are employees or clients being flown on a company plane who are all known to one another. It seems that given the difference between GA and commercial aviation, there should be some less-intrusive alternative to the proposed rule if further security is deemed necessary. Additionally, there should be a reason for any potentially costly increase in security, which seems to be lacking in the explanation in this NPRM.

The idea that there is an increased threat to GA which needs to be addressed is not backed up by facts, and thus ASA feel that this line of reasoning does not support enacting the proposed rule.

The Weight Threshold is Arbitrary

The weight threshold in the proposed rule is arbitrary and nonsensical. A so-called "large aircraft" as defined by the TSA is an aircraft with a maximum certificated takeoff weight of over 12,500 pounds. This qualifying weight minimum includes what are typically referred to as light jets, which have only eight to ten seats (holding as many passengers as the typical minivan).

Even most large jets typically weigh less than the smallest airliner included in the proposed rule. The proposed rule contains no rationale for making the application of the rule weight-based, as opposed to operation-based. Nor does the rule point out what additional risks presumably are faced by aircraft over this minimum weight threshold as opposed to those under it. Additionally, the rule contains no

reasoning behind TSA's pick of 12,500 pounds as the weight minimum for application of this rule. With no insight into the process given, what is to stop the TSA from later arbitrarily extending the rule to aircraft that weigh less than the current 12,500 pound threshold?

Additionally, though the Aircraft Owners and Pilots Association estimates that 312 airports would initially be affected by the proposed rule, this number of airports affected could expand drastically if the rule was expanded in scope. With no reasoning given for the scope of the current rule, there is no assurance that this won't happen at some point in the future.

With the reason for choosing the parameters of the application of the proposed rule unclear and apparently arbitrary, ASA feels that the proposed rule presents the danger of being arbitrarily expanded in the future, and thus does not support its implementation now.

Imposing the Prohibited Items List Has No Benefit and Harms GA

Imposing the Prohibited Items List currently imposed on commercial aviation on GA would be disastrous for the business of many GA operators without conferring any true security benefit. Many GA operators are businesses that fly their own aircraft (or aircraft leased to them) for the purpose of shipping items that they manufacture or distribute, but that fall on the prohibited items list and thus cannot be flown commercially. Imposing

Additionally, there may be instances where companies need to fly an item on the prohibited items list somewhere quickly on their companies' aircraft, such as certain tools flown out to fix an oil rig. The unique nature of GA, where most passengers on aircraft are known to the aircraft's operator, means that GA has been used to transport items on the commercial aviation prohibited list for many years without incident.

It seems unnecessarily harmful to GA to impose the Prohibited Items list on the industry when there have been no real past harms associated with the lack of this particular security requirement. ASA's position is that imposing the Prohibited Items list on GA would cause many business that operate GA a lot of money to find alternative shipping or make other arrangements to transport goods that they manufacture themselves, without making the nation any securer from terrorist threat.

TSA Appears to be Going Beyond its Statutory Mandate

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.

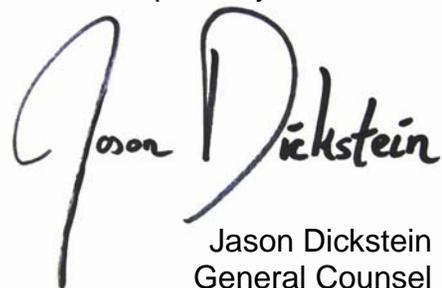
There is no statutory support authorizing TSA to implement a security program for large general aviation aircraft, and the statute seems to suggest a very different path for general aviation security programs. In light of this, we believe that this security program is inappropriate and should be withdrawn.

Conclusion

ASA feels that the proposed Large Aircraft Security Rule unnecessarily burdens aviation without addressing any real security issues. While ASA supports rules that enhance safety and security, ASA believes that the LASP is overly broad, arbitrary, unsupported by statutory authority and ill-defined. Thus, ASA does not believe that the LASP should be implemented.

Thank you for affording industry this opportunity comment on the proposed rule to make it better serve the needs of the public. We appreciate the efforts of the TSA in this regard. Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jason Dickstein". The signature is written in a cursive, flowing style.

Jason Dickstein
General Counsel
Aviation Suppliers Association