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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

Re: Docket TSA-2008-0021; Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program

The National Business Aviation Association (NBAA) represents the interests of 8,000 Member companies who operate general aviation aircraft as a solution to some of their travel challenges. Over NBAA's 60-year history, the Association and our Membership has been a fundamental participant in the development, analysis and implementation of numerous regulatory initiatives that have had a direct affect on our Membership. We believe that this involvement has helped to produce sound and effective safety policy related to the operation of general aviation aircraft for business purposes.

Our efforts on, and the commitment of the business aviation community to, reasonable and effective safety standards and practices has led to a safety record for corporate aviation that is equal to, and sometimes better than, the scheduled airlines. This safety record is not a product of regulators or government oversight. It's a result of applying practical safety strategies to manage and mitigate risk.

The business aviation community has a long and demonstrated history of partnership with government regulatory agencies. These partnerships are based on common objectives such as safety and security and underscore our preference for working towards common solutions. We believe that some of the solutions offered in these comments can contribute once again to sound and effective public security policy for general aviation.

History with Security

Having participated in countless rulemaking efforts with other Federal agencies, we truly understand how this process works. As this is the first time that TSA has subjected an operating security rule to public feedback prior to its implementation, we truly appreciate the opportunity to provide this feedback and we are determined to ensure that the final product results in the twin goals of enhanced security and mobility.

Since September 11, 2001, NBAA has been actively engaged with Federal security agencies, including TSA, to develop reasonable and effective security requirements. Business aviation takes a back seat to no one on the issue of aviation security. Our actions have clearly

demonstrated that our community utilizes some of the best security practices found anywhere. And, while those security measures may look different from those you require at airports serving scheduled airlines, they are no less effective.

Over the last eight years, we have partnered with TSA to trial a variety of programs that we believed would set the foundation for effective general aviation security. We strongly believed that through these partnerships, we could identify reasonable and effective measures that would prevent the grounding of general aviation in the event that such extreme measures were needed. Access to airspace and airports, after all, is why companies invest in these business tools. Unfortunately, we see the totality of the requirements contained within this NPRM as an unjustifiable encroachment into and erosion of individual rights and civil liberties.

We believe that the NPRM clearly reflects a lack of basic understanding of the business and general aviation communities. Application of the elements contained within this proposal to these communities today would not enhance security without causing catastrophic and permanent damage to intrastate, interstate and international commerce and mobility.

Rulemaking Procedures and Homeland Security Presidential Directive 16

Rulemaking Procedures

NBAA has submitted a Freedom of Information Act (FOIA) request to obtain studies the NPRM uses to justify TSA's position, including the 12,500 pound weight threshold. Federal rulemaking procedures, as defined by Executive Order 12866 and the Administrative Procedure Act (APA), outline the federal government's responsibilities and the public's rights with regards to creating new regulation. EO 12866 mandates federal agencies outline the costs and benefits of proposed regulation, and "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs". And APA guarantees public participation in rulemaking. Yet TSA attempts to do an end-run around both mandates. The public cannot meaningfully assess TSA's cost and benefit justification if the agency is unwilling to disclose the studies used to justify this entire rulemaking. NBAA understands that these studies are not classified. And even if the studies were classified, NBAA and others in the industry have individuals on staff, cleared by TSA, to review such materials. Yet the agency continues to ignore requests for disclosure of the documents, summaries, or even supervised reviews by individuals with Secret or higher clearance.

The Agency's categorical refusal to disclose essential documents violates all reasonable principles and processes in government for sound rulemaking policy. TSA should appropriately disclose the key documents on which it based its conclusions, postpone final action on the NPRM and provide another opportunity for public comment after all interested parties have had an opportunity to review the documents and engage in an appropriate discussion with TSA.

HSPD 16

On March 26, 2007, the White House released Homeland Security Presidential Directive (HSPD) Number 16, which focused on the National Strategy for Aviation Security. We believed this cohesive national strategy would help to focus limited government and industry security resources on those threat vectors posing the highest risk. It is clear that the TSA's Large Aircraft Security Program (LASP) proposal does not follow the strategies outlined by the White House in 2007.

HSPD-16 outlines a number of objectives. Two in particular include:

- Minimize the impact on the Aviation Transportation System and the U.S. economy; and
- Actively engage domestic and international partners.

HSPD-16 defines the Aviation Transportation System as: U.S. airspace, all manned and unmanned aircraft operating in that airspace, all U.S. aviation operators, airports, airfields, air navigation services, and related infrastructure, and all aviation-related industry.

Many will argue, and NBAA concurs, that this proposal will substantially impact the Aviation Transportation System and the U.S. economy. Many of the requirements outlined in the proposal will cost thousands, sometimes tens of thousands of dollars for each operator to implement and even more to maintain and demonstrate compliance. Not only will aircraft operators and airports directly covered by this proposal face a substantial financial burden, but those thousands of companies that support business aviation and general aviation airports will face the secondary and unanalyzed financial effects of an industry struggling to survive. General aviation provides jobs for over 1 million Americans and contributes over \$150 billion of economic activity. As the economy shrinks and companies face hard decisions about how to save costs, this proposal could substantially reduce the utility of these important business tools and thus, cause further job loss.

Additionally, we believe if TSA had actively engaged with their domestic aviation partners this that proposal would have represented a more balanced approach to TSA's security challenges.

NBAA, though questioning TSA's statutory authority to issue this regulation and approach to rulemaking, and handicapped by the inability to review TSA's throw weight data and other information, maintains that private aviation poses a significantly lower threat to homeland security than commercial aviation in the same size aircraft. These private aircraft operations should be considered separately from the commercial aviation operations of similar or same aircraft. The balance of these comments address specific concerns and outline reasonable alternatives to the security measures proposed in the LASP. Appendix A directly responds to

the questions TSA asks of the public in the Preamble of the NPRM. Appendix B presents a proposed Large Aircraft Security Program Restricted Items List.

Major Concerns

NBAA's review of TSA's proposed rule has revealed what we believe to be critical flaws in the Agency's analysis, applicability and fundamental knowledge about the business aviation community. It appears that the majority of TSA's proposal stems from a security strategy developed for the nation's commercial aircraft rather than a data-driven, risk-based approach for private aircraft operations.

Remarks from former Secretary of Homeland Security Michael Chertoff on November 17, 2008 confirmed this conclusion when he stated, "Putting it in plain English, we're going to synchronize and harmonize the requirements for general aviation operations above a specific weight threshold to be very similar to those for large charter and commercial operations."

Missing from Secretary Chertoff's remarks were data or studies suggesting that general aviation represents a threat similar to commercial operations. In fact, previous security experts within the Department have said just the opposite. Former TSA Administrator Admiral James Loy stated in a Congressional hearing on aviation security that we're getting to the point when the government will need to rethink many of the restrictions placed on aviation since the September 11 terrorist attacks. He continued by saying that in the highly emotional period right after the attacks, it was suggested by some security officials that the threat posed by general aviation was much greater than it actually is.

Overview

The LASP would expand current commercial aviation security regimes to the non-commercial aviation community. In safety regulations, those published by the Federal Aviation Administration (FAA), it is widely recognized that commercial aviation and non-commercial aviation vary significantly in mission, risk, and operational practices. These differences remain when discussing the necessity for security regulations but, through this NPRM, TSA has chosen to ignore those crucial variations.

Current regulations for commercial aircraft of similar size (aircraft with a maximum takeoff weight [MTOW] of more than 12,500 pounds) include requirements for:

- Crewmember fingerprint-based criminal history records checks (CHRCs)
- Watch-list matching of passengers
- Compliance with the prohibited items list (PIL)
- Compliance with security directives and information circulars

- Designation of an aircraft operator security coordinator (AOSC), ground security coordinator (GSC), and in-flight security coordinator (ISC)
- Training for crewmembers and other identified personnel
- Development and maintenance of contingency plans to respond to threats

Not coincidentally, the proposed rule includes each of these requirements, originally intended for operations for hire or compensation *only*, and adds one more requirement: a biennial audit from a TSA-approved third party auditor. These requirements are not easily implemented in the not-for-profit world of non-commercial aviation. Not only are some virtually impossible to transfer, but the security risk associated with this aspect of the aviation industry is too remote to warrant such burdensome regulations.

12,500 Pound Weight Threshold

NBAA believes that TSA has chosen a weight threshold for this proposal based on a perceived ease of industry compliance and implementation rather than on a data-driven, risk-based analysis. In 2001, as part of the Aviation and Transportation Security Act (ATSA), Congress mandated that TSA “shall implement an aviation security program for charter air carriers (as defined in section 40102(a)(13) of title 49, United States Code) with a maximum certificated takeoff weight of 12,500 pounds or more.” The rapid development of ATSA allowed little time for a data-driven, risk-based analysis on an appropriate weight threshold for aircraft.

Leading up to the release of the LASP, TSA led many to believe that a recent study conducted by the Agency involving an analysis of several aircraft parameters resulted in a determination that the 12,500 pound weight threshold was in the ballpark for aircraft of concern. Without the ability to review TSA’s analysis as part of this rulemaking effort, it is difficult to accept TSA’s justification for this weight threshold when comparing very similar security measures for aircraft weighing ten to 75 times as much as an airplane as small as 12,500 pounds.

The Nuclear Regulatory Commission recently released a final rule covering design guidelines for future commercial power reactors that should account for aircraft impact assessments. Of concern for the NRC were “large commercial aircraft.” It’s doubtful that the NRC would view an aircraft weighing 12,500 pounds as an aircraft of concern for future design considerations. Previous analyses have determined that only aircraft weighing several times more than 12,500 pounds could cause sufficient damage to pose any real threat to well-protected national infrastructure such as nuclear power plants.

NBAA believes that an analysis that compares an aircraft’s weight-based destructive capability against protected critical national infrastructure would reveal an aircraft weight threshold much higher than the weight proposed by TSA. Unfortunately, because of TSA’s refusal to permit a review of studies that form the basis of this proposal, the industry is handicapped in any

attempt to respond effectively to questions related to an appropriate weight threshold. NBAA recommends that TSA delay determination of any applicable weight threshold until the Agency is able to appropriately disclose the information used to form the foundation of this rulemaking effort.

Third Party Watch List Service Providers and Auditors

The TSA proposes the extensive use of third parties to achieve a number of critical security functions, including the matching of passenger names against TSA's No-Fly and Selectee watch lists and to conduct on-site audits of aircraft operator security programs. Both of these concepts introduce vulnerabilities that would have previously not existed within an aircraft operator's security program.

Every security and law enforcement professional interviewed by NBAA confirms that a third party, introduced into a previously closed and secure system, is almost always the source of compromised information and security. Private aircraft operate within a very secure system today, some involving sophisticated processes, unencumbered by unproven and unrelated third-parties. NBAA believes that TSA should not use Third Party Watch List Service Providers and, if necessary, fully utilize the capability of the recently finalized Secure Flight system.

Additionally, NBAA remains extremely concerned that TSA has not only significantly underestimated the cost of the proposed requirement to contract with third party auditors to conduct on-site inspections, but that this proposed requirement would come at a cost of \$70 million more than if TSA were to conduct these inspections themselves. Oversight and surveillance of federal regulations is an inherently governmental function and should not be contracted out to a third party. To believe that effective regulatory oversight is possible through the use of unaffected contractors is shortsighted and contrary to well established government regulatory policy.

NBAA believes that only through direct oversight by TSA inspectors can appropriate oversight and surveillance occur. NBAA recommends that TSA eliminate the requirement for operators to contract with a third party auditor, which NBAA estimates would cost anywhere between \$5,000 and \$10,000 -- up to four times TSA estimates -- and instead develop a process for managing oversight within its own workforce.

Criminal History Records Checks (CHRC)/ Security Threat Assessments (STA)

NBAA would not categorically oppose CHRCs and STAs for flight crewmembers. However, these background checks *must* be transferable from one employer to another. The vetting itself should be connected with the *crewmember*, not the employer. For instance, some of NBAA's Members utilize contracted, temporary crewmembers. These pilots might fly for several aircraft operators in any given year. Needless to say, the pilot should not be required to obtain a

separate successful CHRC and STA for *each* operator. This would be an unnecessary expense for the pilot and aircraft operators and a redundant drain of government resources. TSA requested public feedback on the transferability of CHRCs and STAs, and NBAA is supportive of this idea. All covered employees, required to have a CHRC or STA, should be permitted to transfer a satisfactory CHRC and STA to another aircraft operator.

TSA proposes a 5 year expiration date for STAs. This is unwarranted and inappropriate, as it implies the federal government only checks on a crewmember's status as a "security threat" every 5 years. It is more likely TSA continuously vets crewmembers. If TSA and its security partners are completing regular vetting of crewmembers, as seems to be the most reasonable approach to aviation security, STAs should not expire.

Watch List Matching

TSA proposes that all operators submit each passenger's name to newly-created entities -- "Watch List Service Providers (WLSPs)" -- for watch list matching. This is a perfectly reasonable requirement for commercial aviation operations, where passengers are frequently unknown to the aircraft operator or pilots, but is completely nonsensical when applied to private aviation. NBAA Members' aircraft are valuable tools for their business. The aircraft are highly-regarded assets, and as such, are only used to transport specific individuals. These individuals are repeat passengers and are known to the company and the flight crewmembers. On occasion, these known individuals will bring other passengers along for a flight. However, it is rare that all passengers on a given flight would be unknown to the company or the flight crewmembers. As a result, watch list matching for all passengers is unnecessary and overly-burdensome.

Although TSA is adamant about the importance of watch list matching, and hesitant to allow any passenger on a general aviation aircraft without first being vetted, NBAA is curious as to how many "watch listed" individuals have attempted to board current general aviation aircraft (those regulated under the Twelve-Five Standard Security Program (TFSSP) and Private Charter Standard Security Program (PCSSP)). The Association has never been privy to this information, but, based on informal discussions with regulated operators, believes the number to be quite low -- or zero -- in the five years since the creation of the programs. Thus, the Agency already has 5 years of history to develop a risk-based policy for general aviation aircraft -- one that does not require watch list matching for all passengers.

NBAA believes that TSA has provided insufficient justification to warrant such an extreme invasion of privacy as to require an aircraft operator to submit names of passengers for review. This mandate would be no different than suggesting that an operator of a private Sport Utility Vehicle would need to submit passenger names to the Department of Motor Vehicles before transporting known associates and friends.

Rather than violating the privacy afforded with private transportation, NBAA recommends that TSA consider that operators develop, as part of their security program, a duress communication system. This system would allow subtle communications between affected individuals and the GSC and ISC to allow the rapid involvement of law enforcement officials. The TSA has already proposed that the GSC and ISC would serve several important security functions. It seems reasonable that the GSC and ISC would also serve another important function by determining if persons on board the aircraft pose any threat to the safety and security of the operation.

TSA additionally requests feedback on a requirement to submit names within a minimum timeframe of departure. If the agency continues with the proposed WLSPs, the free market will determine an adequate submission time. Firms with quick turn around times will be favored, and slower firms will be avoided. Our Members are more concerned about the time TSA will need to adjudicate possible matches, not because we expect to have positive matches, but because the government's watch lists are notoriously flawed, resulting in numerous false hits.

Some of NBAA's Members already hold TFSSP or other full security programs, and currently conduct their own watch list matching. NBAA recommends these operators be permitted to continue conducting watch list matching until such time as Secure Flight is implemented and available to all TSA-regulated aircraft operators.

Prohibited Items list

The proposal contains a list of more than 80 "prohibited items," some of which may need to be routinely carried aboard business aircraft (everyday tools, for example) because they are central to NBAA Members' business needs or are the very products produced by the company. It really makes no sense for a company sending a team of employees to fix a problem with one of their assembly lines not to be able to access to their tools in flight. Nor does it make sense for a sporting goods manufacturer not to be able to access their products in flight as they try to prepare for a sales presentation. Given that most airplanes used in business aviation have little or no cargo space, it will often be hard to determine where the equipment will be stowed.

Instead of forcing a solution clearly designed for commercial airlines onto general aviation, NBAA recommends the introduction of a Restricted Items List (See Appendix B) to highlight the extra care needed when carrying the listed items. As TSA has heard at public hearings and in comments to the docket, many of the items regularly carried aboard private aircraft appear on the TSA's Prohibited Items list. It is simply unworkable to suggest that operators not carry these items since many of the aircraft involved do not have storage areas that are inaccessible during flight and the items carried are critical to the business of the company.

In order for an operator to carry items listed on the Restricted Items list, NBAA recommends that the operator's security program should address the following items:

1. Procedures to control access to the restricted item(s) while on board the aircraft.

2. Procedures to secure the restricted item(s) while carried on board the aircraft.
3. Procedures to identify the restricted item(s) to the GSC and the ISC.

NBAA strongly believes that this would satisfy TSA's concerns regarding access to certain items on board the aircraft while establishing an approval process for some operators who need to carry these items as a regular part of their business.

Security Directives

TSA proposes to require aircraft operators comply with Security Directives (SDs). SDs are frequently used by the agency to amend or clarify current policy, so SDs are intentionally flexible in nature. NBAA is concerned by the recent use of SDs in the airport realm, where it could be argued the Directives are being used to create new regulation rather than clarify existing rules or policies. The Association *strongly* urges TSA to consider LASP operators as separate and distinct from Aircraft Operator Standard Security Program (AOSSP) operators – i.e. airlines. As such, LASP operators should not be subject to the same SDs as AOSSP operators. A precedent for separate SDs already exists. For example, DCA Access Standard Security Program (DASSP) operators are not subject to AOSSP SDs. The agency should similarly issue unique SDs for LASP operators, and do so with restraint. SDs are meant to address immediate, urgent issues. Wide-sweeping changes should be achieved through rulemaking.

Designation of AOSC/ISC/GSC

NBAA does not oppose the designation of an Aircraft Operator Security Coordinator (AOSC), In-flight Security Coordinator (ISC), or Ground Security Coordinator (GSC). But, it is critical that TSA understand the nature of non-commercial aircraft operations. In some cases, an individual owns and flies his or her own aircraft. There is no "crew" to speak of, no employees, and no staff – just an individual with an aircraft. In this case, the individual must be permitted to be named for all three of these positions – AOSC, ISC, and GSC. TSA states in the Regulatory and Economic Analysis that one individual cannot serve in more than two roles per flight. This is an impossible requirement for a very small operator with a single-pilot aircraft.

Identifying three separate individuals for each role is difficult even in much larger operations with a fleet of aircraft and several crewmembers because the nature of non-commercial aviation is "on demand". These aircraft use any one of thousands of airports in the U.S. – not just their "home base". This means that, frequently, the only employees of the operator at a given location are the two pilots – if indeed the aircraft has two pilots. NBAA recommends the roles of the ISC and GSC be combined, and one individual be named for the combined position for each flight. In the vast majority of cases, this individual would likely be the pilot in command. TSA asks the public if there is a best practice or common policy that addresses the ISC/GSC issue, and NBAA believes there is – the pilot in command is always responsible for the safety *and security* of any given flight. In business aviation, this means our Member companies already place significant

responsibility and oversight duties on the pilot in command to maintain a secure flight environment. We ask TSA to recognize this common practice, and allow operators to continue to utilize the pilot in command as the individual responsible for security and be named as both the ISC and GSC.

Training

NBAA does not oppose security training requirements for flight crewmembers and covered employees. However, this training should be commensurate with the type of operations being conducted. In fact, NBAA suggests TSA develop online training courses for all covered individuals. This would not only make training less expensive and cumbersome for employers and employees, but would also make oversight by TSA easier and less costly. A review of training records for a given individual could be completed any time, any where, by a TSA inspector. Care should also be taken to avoid redundant training requirements for individuals named as AOSC, GSC, and ISC. As discussed above, in some cases, the same individual will serve for two or more of these roles. If the training is identical for GSC and ISC, for example, the identified individual should only be required to take one training course, not both identical courses.

Federal Air Marshals

TSA proposes to add §1544.223(g), which would allow TSA to require operators of aircraft with MTOW over 100,309.3 pounds to put a Federal Air Marshal (FAM) on board, "pursuant to prior notification, if the need arises". NBAA is deeply concerned with this new requirement. First, these aircraft are *private* vehicles – owned and operated by private citizens or companies. What gives TSA the authority to mandate that law enforcement be transported in a private vehicle? Is the TSA suggesting it has the authority to mandate that law enforcement officials be transported in any private vehicle including a private citizen's car? Second, it is highly unlikely the confidentiality of a FAM could be maintained on a private aircraft, even one with a MTOW over 100,309.3 pounds. As NBAA has explained time and again, the operators of these aircraft know their passengers and the passengers know each other. The crewmembers know the passengers. So the unknown person on the flight must be the FAM. What benefit can be realized from a FAM on board in these cases?

The Association has been told by the agency that a FAM would only be assigned to a flight upon receipt of a "credible threat," but every Member NBAA has discussed this with confirms that a threat significant enough to require a FAM on board their flight would be significant enough for them to *cancel* the flight! NBAA believes this mandate provides no additional security. If TSA intends to include this requirement in the final rule, it must be more descriptive in the events that could trigger a FAM on board a flight. "If the need arises" could simply be read to mean "because TSA needs a FAM in Los Angeles, but he's in San Diego". That's a need, but not a legitimate reason to require a FAM on board.

Additionally, TSA states the regulation would be limited to aircraft with maximum take-off weight (MTOW) over 100,309.3 pounds, but the current regulation has no such limitation, and the proposed changes do not address weight. Proposed §1544.103(e), *Form, Content, and Availability, Content of a security program for a large aircraft operator*, references proposed §1544.223(i), *Transportation of Federal Air Marshals*. However, proposed §1544.223(i) only states “Upon prior notification from TSA, large aircraft operators must carry Federal Air Marshals, in the number and manner specified by TSA.” Heretofore, “large aircraft” has meant aircraft with a MTOW over 12,500 pounds. If TSA intends for §1544.223(i) to apply only to aircraft over 100,309.3 pounds, then that distinction has not been adequately made in the proposed regulation text. NBAA recommends §1544.223(i) be removed due to a lack of sufficient security benefit as discussed above, or at least be revised to clearly indicate how and why TSA would require a FAM, and that this applies only to aircraft over 100,309.3 pounds.

Airport Concerns

The LASP would also require over 300 general aviation airports to comply with a partial security program. The partial security program is outlined in CFR 1542, and would include designation of an airport security coordinator (ASC); description and training of law enforcement, where applicable; procedures for storing, maintaining, and distributing records; and incident management procedures. NBAA’s primary concerns are the unintended consequences the airports’ security programs could have on NBAA Membership. Specifically, the Association is very concerned about the requirement for these airports to comply with Security Directives. As discussed above, NBAA believes the SDs issued to partial security program holders should be unique to these airports, and should not be the same SDs issued to full security program holders. Also, any SDs issued to partial security program holders should be based on specific information relevant to the airports identified in the proposed rule.

Cost Benefit Analysis

NBAA understands the difficulty of estimating the benefits that would come from preventing a terrorist attack. However, TSA’s cost benefit analysis is insufficient to justify this proposed rule. TSA claims the proposed rule would increase security and governance benefits four-fold: first by enhancing security through expansion of the mandatory use of a security program; second by harmonizing security measures used by a single operator in various operations; third by augmenting TSA oversight through third party audits; and fourth by consolidating the regulatory framework for operators that currently operate under a variety of security programs. TSA then goes on to say it “cannot quantify these benefits”. Instead, the agency presents four scenarios and assigns each an estimated cost, seeking to justify a breakeven point with the costs of implementation and continued compliance with the proposed LASP.

TSA's scenarios range from Scenario 1, large aircraft being used as a missile to attack an unpopulated or lightly populated area with minimal loss of life, moderate injuries, and destruction of the aircraft to Scenario 4, a "catastrophic situation" in which a large aircraft is used to deliver a nuclear or biohazard device to an urban center with significant loss of life and property damage. Scenario 1 is estimated to cost \$32 million, should it ever occur, while scenario 4 would cost an estimated \$1 trillion. Scenarios 2 and 3 involve an aircraft being used as a missile to attack a populated (2) or densely populated urban (3) area. These scenarios would supposedly result in higher loss of life than Scenario 1, and higher in Scenario 3 than 2, with corresponding property damage. However, without access to TSA's throw weight and damage studies, NBAA finds it difficult to accept these scenarios at face value. Scenario 3 would supposedly lead to 3,000 fatalities. It is virtually impossible to imagine an aircraft weighing 12,500 pounds causing 3,000 fatalities and \$49 billion in damages (including value of a statistic life for each fatality). Until NBAA is permitted to review the agency's "research" on throw weight and potential damage, the fatality rates and damages assessed to Scenarios 2 and 3 seem so far-fetched that the Association will not address them in these comments, but will focus on Scenarios 1 and 4.

The costs estimated for Scenario 1 seem to be reasonable estimates should a large aircraft be used in a terrorist event. TSA estimates the cost of Scenario 1 to be \$32 million. However, the total 10-year cost of the program is estimated at \$1.4 billion. Clearly, and the agency itself recognizes this in its cost benefit analysis, the benefit of the program in avoiding Scenario 1 does not justify the costs associated with implementation and compliance of the program. So, the agency came up with new scenarios – including Scenario 4 – with a new cost estimate - \$1 trillion. But consideration of Scenario 4 to justify the costs of this proposed rule is contrary to all traditional definitions of risk, the agency's own risk model, and, frankly, common sense.

The agency consistently claims to follow the TVC model for risk management,

$$\text{Risk} = \text{Threat} + \text{Vulnerability} + \text{Consequence}$$

where threat is partially a function of the availability and costs of obtaining and implementing technologies for the use in one form of terrorism (say, the use of a private aircraft) versus technologies for the use in another form (say, a cargo van). It is a measure of likelihood that a specific type of attack will be attempted against a specific target. Threat is also categorized as either general or specific, and it is difficult to imagine the agency is aware of a specific threat towards private aircraft but has decided not to inform the industry of the threat. Therefore, NBAA assumes the "threat" in this equation is a general one. Vulnerability is a measure of the likelihood that safeguards against a particular type of attack will fail. Where in this cost benefit analysis does TSA account for probability? Clearly, the consequences of an event as described in Scenario 4 would be very costly in terms of loss of life and infrastructure, but what is the availability and cost of obtaining the devices needed in this scenario (threat) and how many

safeguards – including those of the government through Customs, Department of Defense, and others - have to fail before that type of attack would be successful (vulnerability)?

Outside of the security world, “risk” has other definitions:

- **Risk** = rate of occurrence multiplied by the impact of the event
- $R = s, p,$ and x where s is the risk scenario and each s has a probability p of occurring and a consequence x if it occurs.

Although the equations are presented with different terms, “probability” is a critical component of risk in each. Yet TSA does not include any discussion of probability when justifying this proposed rule. Anyone who watches television or movies can dream up scenarios ranging from a giant gorilla taking over New York City to winning millions in the lottery and retiring to the beach. Just because a scenario can be thought up does not mean it is a probable outcome. Where does TSA determine the odds of an occurrence such as Scenario 4?

The U.S. Navy uses the following criteria for scenario TVC assessment:

Table 1: Threat Assessment Criteria

Category	Scenario Relative Threat Assessment Criteria
Very High - 5	This scenario is at least an order of magnitude more likely to be initiated than other “typical” scenarios (based on subject matter expert evaluation)
High - 4	This scenario is at least twice as likely to be initiated as other “typical” scenarios (based on subject matter expert evaluation)
Medium - 3	Default relative threat level for a “typical” scenario (use this threat level unless the description for one of the relative threat levels is more fitting)
Low - 2	This scenario is at least half as likely to be initiated as other “typical” scenarios (based on subject matter expert evaluation)
Very Low - 1	This scenario is at least an order of magnitude less likely to be initiated than other “typical” scenarios (based on subject matter expert evaluation)

Table 2: Vulnerability Assessment Criteria

Category	Vulnerability Assessment Criteria (including detection, security response, attack complexity, and target hardness considerations)
Very High -	An attack would be defeated or unsuccessful less than 10 out of 100 times

5	(likelihood of successful attack: > 90%)
High - 4	An attack would be defeated or unsuccessful up to 1 out of 4 times (likelihood of successful attack: 65% to 90%)
Medium – 3	An attack would be defeated or unsuccessful up to 1 out of 2 times (likelihood of successful attack: 35% to 65%)
Low – 2	An attack would be defeated or unsuccessful up to 3 out of 4 times (likelihood of successful attack: 10% to 35%)
Very Low – 1	An attack would be defeated or unsuccessful more than 90 out of 100 times (likelihood of successful attack: < 10%)

Table 3: Consequence Assessment Criteria

Category	Death or Injury	Assets and Infrastructure	Mission Capability
Very High – 5	> 1,000 deaths or serious injuries	> \$1 billion	Creates critical long-term vulnerabilities in national defense
High – 4	100 to 1,000 deaths or serious injuries	\$100 million to \$1 billion	Creates critical short-term vulnerabilities in national defense
Medium – 3	10 to 100 deaths or serious injuries	\$10 million to \$100 million	Long-term disruptions in military actions
Low – 2	1 to 10 deaths or serious injuries	\$1 million to \$10 million	Short-term disruptions in military actions
Very Low – 1	No deaths or serious injuries; only relatively minor injuries	< \$1 million	No serious military or defense impact

The Navy then tallies the “score” from each table to rank risk, and manages risk accordingly. TSA cannot plausibly suggest – let alone demonstrate -- that Scenario 4 is at least “an order of magnitude more likely” than the other scenarios. Although Scenario 4 hypothesizes a sensational set of facts, it has absolutely no relevance to the actually inquiry TSA must conduct.

NBAA recognizes the difficult task TSA was faced with in determining the benefits of avoiding a tragic event, but the analysis the agency presents to the public in the NPRM falls far short of EO 12866 requirements. One such EO 12866 mandate states, “Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation **only upon a reasoned determination** that the benefits of the intended regulation justify its costs” [emphasis added]. Scenario 4 may be a sensationalized hypothesis, but it is plainly not a “reasoned determination” – it’s a giant gorilla marching through Times Square.

NBAA also questions many of the cost estimates presented by TSA in the NPRM and related Regulatory and Economic Analysis. To start, the agency assumes each newly-regulated aircraft operator will spend an average of 12 man hours to implement the security program. TSA used an average hourly rate of three positions from NBAA’s Compensation Report (Aviation Department Manager I and II and Chief Pilots) of \$62.43 to determine the cost of “security program and profiles”. NBAA does not question the hourly rate, but does question the assumption an operator will only need 12 hours to implement the program. Experience with TFSSP operators indicates that even program revisions can take 10 hours or more to implement into an operator’s practices. Applying a security program to an operator that has never been subjected to a program before will undoubtedly take more than 12 hours to integrate in to an operator’s procedures. Part 91 operators who have adopted DASSP provide a good analogy. These operators report spending several days’ worth of man hours to implement the program. Most operators will spend the 12 hours TSA accounts for just reading and considering the implications and consequences of the program, much less completing the security profiles and implementing the program. NBAA’s Members expect this process to take over 50 man hours, more than quadrupling the cost of this portion of the program.

NBAA is curious as to why TSA so quickly discarded the application of Secure Flight to general aviation operations. Secure Flight will soon be available to airlines, yet the agency insists on creating a new group of regulated companies – WLSPs – to complete a task at the expense of aircraft operators. These costs were not adequately reflected in the agency’s economic analysis. It seems TSA believes all general aviation aircraft operators use flight planning or tracking services for each flight, that these service providers will become WLSPs, and will then charge nothing or only a nominal fee for watch list matching. Nothing could be further from the truth. In reality, most private aircraft operators use these services for foreign flights only. And in light of the accreditation and resource requirements for WLSPs, it is unlikely that these companies will provide watch list matching services free of charge. In spite of these truths, TSA manages to estimate the cost of compliance for each aircraft operator to be \$491 a year. TSA has opted not to

set a fee structure for WLSPs, so NBAA has elected to demonstrate these costs based on the agency's own fee structure. Currently, TSA vets names of passengers utilizing the DCA Access Standard Security Program (DASSP). The agency charges operators a fee of \$15 per passenger for watch list vetting. If we assume a \$15 per passenger fee for watch list matching, each operator would only receive 32 checks in a given year for TSA's estimated \$491. Of course WLSPs will be for-profit businesses, and the federal government is only permitted to recoup actual expenses, so WLSPs are likely to charge a higher fee for watch list matching. The agency *must* either provide watch list matching through Secure Flight, or re-evaluate the economic impact of this proposed requirement. The estimated \$491 is woefully short of any realistic figure, and is evidence of the agency's failure to comply with fundamental rulemaking principles before publishing this NPRM.

NBAA also disagrees with TSA's estimated costs for audits. Only the smallest of operators will be able to have a reasonable audit completed in 8 man hours. A mid-sized operation – say 3-8 aircraft – would probably take 2 or more days. NBAA's research indicates this could cost between \$5,000 and \$10,000, plus travel expenses.

TSA averages the opportunity costs for crewmembers and other covered employees to complete STA requirements to be 30 minutes, for a cost of \$25.70 per covered employee. Since most operators covered by this proposal have bases at airports without a TSA presence, NBAA finds this number to be a best-case scenario, not an average. To truly account for opportunity costs, TSA must include the time required to complete forms, drive to and from the fingerprinting collection location, have fingerprints taken, and confirm successful completion of the STA. NBAA estimates this time to be an average of 2 hours for a cost of \$102.80 per covered employee – four times TSA's estimate.

TSA also underestimates the costs of complying with the Prohibited Items List. The agency estimates the cost of a lock box, necessary for transporting firearms, to be \$100 per box, and suggests the boxes can be moved between aircraft. It is simply not practical for aircraft to "share" equipment when the aircraft typically don't return to a home base after every flight. Each aircraft transporting prohibited items would need to be equipped with a lock box.

Further, the agency itself does not seem confident in its cost and burden estimates. This is evidenced by TSA's questions regarding determination of economic impact on the industry. TSA asks if the agency over-estimated or under-estimated the number of small entities affected; whether the rule would be a significant impact on covered aircraft; and for ways to quantify the impact of the rule on new and existing operators. The agency determines that the airport rules would not impose a significant economic impact, and then asks if the proposed rule would have a significant economic impact on the 68-74 publicly owned small airport operators identified by the agency. Why, at this stage of rulemaking, can TSA not determine with some confidence the impact on small entities, as required by the Regulatory Flexibility Act (RFA) and the Small

Business Regulatory Enforcement Fairness Act (SBREFA)? If the agency is seeking ways to quantify the impact of the rule, how valid are the costs presented in the NPRM?

Overall, the cost estimates presented in this proposal seem insufficient to provide reasonable justification for the rule. In fact, TSA asks the public to comment on no fewer than 12 issues related to cost estimates, burden, and determination of significant economic impact. NBAA believes the appropriate time to research the economic impact of a rulemaking of this magnitude is *before* publication of an NPRM – not in the preamble.

Proposed Alternatives

NBAA would appreciate the opportunity to work with TSA to develop a more feasible, common sense approach to security for private aircraft operators. The Association encourages the agency to convene a TSA/Industry rulemaking committee to draft another proposed rule. NBAA is not opposed to a security program for private aircraft operators, but proposes the following requirements:

- Crewmember fingerprint-based criminal history records checks (CHRCs)
- Compliance with the LASP Restricted Items List (Appendix B)
- Compliance with LASP specific Security Directives and Information Circulars
- Designation and online training of an aircraft operator security coordinator (AOSC)
- Recognition of pilot-in-command as inflight and ground security coordinator
- Development and maintenance of contingency plans to respond to threats
- Biennial internal audit, retained for at least two years for TSA oversight purposes

Figure 1: NBAA Proposal Compared to TSA Proposal

TSA-Proposed LASP	NBAA-Proposed LASP
Crewmember fingerprint-based criminal history records checks (CHRCs) and STA	Crewmember fingerprint-based criminal history records checks (CHRCs) and STA
Compliance with Prohibited Items List	Compliance with Large Aircraft Security Program Restricted Items List (see Appendix B)
Compliance with security directives and information circulars	Compliance with LASP-specific security directives and information circulars, based on specific and credible threat
Designation of AOSC	Designation and online training of an aircraft

	operator security coordinator (AOSC)
Designation of ISC and GSC	Recognition of pilot-in-command as inflight and ground security coordinator
Training for crewmembers and other identified personnel	Online training for AOSC, ISC, and GSC
Biennial third-party audit	Biennial internal audit, retained for at least two years for TSA oversight purposes

Justification and Unintended Consequences

NBAA maintains TSA does not have the statutory authority to regulate general aviation, as this NPRM proposes to do. A federal agency may only issue regulations pursuant to the authority delegated to the agency by Congress (American Library Ass'n v. FCC, 406 F.3d 689, 691 [D.C. Cir. 2005]). TSA cannot unilaterally decide to regulate a particular sector of transportation without Congressional authority to do so, and in this case, the agency lacks that authority. The NPRM relies almost exclusively on provisions outlined in Chapter 449 of Title 49 of the U.S. Code. But these provisions apply *explicitly* to an “air carrier” or “foreign air carrier” that is “in air transportation or intrastate transportation”. Under Chapter 449, an “air carrier” is defined as “a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation”. “Air transportation” is further defined as “foreign air transportation, interstate air transportation, or the transportation of mail by aircraft”. These terms are then further defined to mean “the transportation of passengers or property by aircraft *as a means of common carrier for compensation*”. A federal agency only has authority expressly permitted by Congress. The omission of general aviation from Chapter 449, and the specificity of “*for compensation*”, necessarily excludes private aviation from Chapter 449. In fact, a fundamental basis of U.S. law is that “mention of one thing [commercial aviation] implies the exclusion of another thing [general aviation]” (Ethyl Corp. v. EPA, 51 F.3d 1053, 1061 [D.C. Cir. 1995]). The exclusion of private aviation in Chapter 449 was intentional and complete. It leaves no room for TSA to wriggle under Chapter 449 as proof of authority to regulate private aviation.

Over the years, Congress has frequently considered – and rejected – bills and amendments that would have extended TSA’s authority to general aviation. Congress transferred responsibility for enforcing Chapter 449 to TSA in 2001 when it enacted the Aviation and Transportation Security Act (ATSA). Here was a clear opportunity for Congress to expand TSA’s authority into the private aviation realm. In fact, the Senate’s version of ATSA would have given TSA express authority to regulate general aviation security. But the final version of ATSA limited TSA’s authorization to regulate “air carriers” in operations for compensation. The ATSA Conference Report clearly indicates Congress wanted TSA to study general aviation security further before

Congress would grant the agency authorization to regulate it. This conclusion explicitly limits TSA's authority through ATSA to commercial aviation.

It's not that Congress is unaware of general aviation, or that it is uncertain how to give the agency authority over private aviation. Congress recently enacted the Implementing Recommendations of the 9/11 Commission Act of 2007. This Act required TSA's Administrator to work with Customs and Border Protection to mandate *general aviation* aircraft to submit passenger information and advance notification requirements before entering U.S. airspace. It is clear that Congress understands the need for specificity – a "catch all" clause will not provide TSA with authority over private aviation security. Further, this Act demonstrates Congress recognizes that "general aviation" is distinctly separate from commercial aviation, which is covered by Chapter 449.

NBAA requests TSA to specifically identify its Congressionally-delegated authority to regulate general aviation. Based on the Association's in-depth review, it seems Congress has repeatedly declined to extend the agency this basic authority.

Because we believe that TSA lacks the authority to regulate general aviation, the Agency should suspend the LASP rulemaking effort and convene a meeting with stakeholders in the General Aviation community to solicit ideas for a more practical approach to enhancing security.

Additionally, this proposed program, if implemented as originally presented to the public in the NPRM, will have considerable unintended consequences for an industry that is already suffering. Business aviation is a critical component of the nation's transportation sector, providing access to remote areas, transporting patients for medical care, and helping small and mid-size companies survive in this tightening economy. TSA estimated the "hard" costs of implementing this program – auditing fees, training costs, and so on – but what about the "soft" costs? How many operators will discontinue mercy or "angel" flights because of red tape created by the proposed rule? How many humanitarian aid flights to natural disasters areas will now be pointless because tools and needed supplies can't be carried without violating the Prohibited Items List? The agency must consider the full impact of this proposed rule, not just the effects on the over 10,000 aircraft operators and over 300 airport operators.

Some of these unintended consequences were revealed during a recent meeting with the Small Business Administration. Participants at this meeting discussed several existing regulatory requirements, such as those from the Environmental Protection Agency, that require companies to provide a rapid response capability to oil spills, which includes the ability to provide the tools and equipment necessary for cleanup operations. Some of that equipment appears on the Prohibited Items List that TSA has proposed to apply to these operators.

This is just one example of the unresolved and unaddressed conflicts contained within the TSA's proposal. It is imperative that TSA coordinate the requirements contained within the final

security program with other government agencies to ensure that a limitation imposed by TSA does not prevent a company from meeting regulatory requirements established by other elements within the government.

Finally, the TSA needs to develop a waiver concept or process as part of this effort. We have reviewed all comments to the docket and those of the public hearings and it is clear from the hundreds of individual cases that are well articulated in the record, that these NPRM proposals, if implemented, would preclude safe, secure and legitimate operations. There are bound to be unforeseen situations involving certain provisions of the proposal that TSA will need to accommodate as part of this process. A one-size-fits-all approach has always proven problematic for government agencies and regulated parties to implement. A permissive process to approve alternate means of compliance, contained within the regulatory structure of this security rule, would allow TSA to address unforeseen and unintended consequences without devoting substantial resources to their solution.

Recommendation for Rulemaking Committee

NBAA has outlined above several significant concerns with this proposed rulemaking. TSA's "Transportation Systems: Critical Infrastructure and Key Resources Sector-Specific Plan as Input to the National Infrastructure Protection Plan", dated May 2007, recognizes "a flexible, common-sense approach to GA airport security is important if the industry is to retain its economic vitality." It also claims the agency will continue to use a threat-based, risk management approach to GA security. NBAA believes the agency has missed the mark. NBAA and our Members are anxious to work *with* TSA to establish reasonable, meaningful security measures. We believe in doing our part to ensure the safety and security not only of our passengers and aircraft, but of our neighbors and nation's infrastructure. But the Large Aircraft Security Program, as presented in the NPRM with its unfeasible mandates, ill-conceived justification, and poorly accounted-for costs, is not the answer. NBAA asks the agency for the opportunity to participate in a rulemaking effort that would provide the desired level of security in a reasonable, common-sense approach.

As we first stated at the first public hearing in White Plains, New York on January 6, 2009, it's clear that significant issues germane to this proposal remain unanswered. We believe that the creation of a rulemaking committee to bring TSA and industry together would address many of the concerns and challenges expressed at your public hearings and also in our comments. On February 4, 2009, NBAA, along with three other general aviation associations, again wrote directly to Acting TSA Administrator Gale Rossides to develop a rulemaking committee. Finally, our comments will again stress the importance, value and success of government's use of rulemaking committees. We believe that TSA and industry will benefit through our combined efforts.

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Thank you for the opportunity to provide these comments. We stand ready to support any TSA efforts to improve this proposal to prevent the harm and unintended consequences this version of the proposal will surely have. Please contact us if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Bolen', with a long horizontal stroke extending to the right.

Ed Bolen
President and CEO

Appendix A
Response to Specific TSA Questions

The TSA asked over forty questions of the public in the NPRM. Although NBAA does not have significant concerns with these questions, the Association addresses each here to assist the agency in gathering information. A page reference will be provided for any question already addressed by the main portion of this document.

1. Comment on weight threshold of aircraft covered by this proposal.

See page 5.

2. Comment on the phased approach and on determining which phase would be applicable to each large aircraft operator based on the location of the aircraft or headquarters.

NBAA does not believe the phased approach is a good implementation plan. The Association believes a randomized approach, based on the company's headquarters, is a better solution. It is not practical to base the implementation on the location of the aircraft. Although most aircraft consider one location to be "home base", some are seldom at that location or are split between a few bases.

3. Comment on whether the Security Threat Assessment (STA) should be transferable so that the flight crew member would need to undergo only one STA every 5 years, regardless of the number of employers the flight crew members may have within the 5-year period.

See page 6.

4. Comment on recommended methods for positively identifying pilots and effectively linking them to the aircraft they are operating.

This concept of positively identifying pilots and linking them to aircraft is clearly outside the scope of this rulemaking. NBAA is participating on a working group outside of this particular NPRM to address pilot identification.

5. Comment on the role that watch list service providers may continue to have if the responsibility for watch list matching shifts to the US government in the future. For example, would watch list service providers offer their services to consolidate passenger information from large aircraft operators and to transmit the passenger information to Secure Flight?

There seems to be no relevant role for WLSPs after Secure Flight is fully implemented. What incentive is there for companies to incur the estimated \$330,000 in start up costs (which incidentally NBAA believes is a very low estimate) if TSA will eventually conduct all watch list matching? It seems unlikely a company would commit the funds necessary to be qualified as a WLSP if the revenue expected is temporary.

6. TSA is considering whether to require all individuals to provide their gender and date of birth to assist in the watch list matching and resolution process.

NBAA believes these data points should not be required, but rather should be given for watch list matching on a voluntary basis.

7. Comment on whether TSA should establish a minimum time for submission of passenger information to the service providers, what that minimum time should be, and the reasons supporting the suggested minimum time.

TSA does not need to establish a minimum time for submission of passenger names. If required to use WLSPs, operators will use the providers that can meet their needs – specifically, those that return watch list data within a reasonable timeframe. NBAA's concern with submission time is not with the service providers, but with the time TSA will take to adjudicate false hits.

8. Comment on whether full program aircraft operators should be permitted to conduct watch list matching for passengers on flights operated under their LASP using the system or process that they use for flights operated under their full security program, including TSA's Secure Flight Program when it is available.

Full program holders should be permitted to continue vetting their passenger's names under their existing processes until Secure Flight is expanded to GA operators.

9. Comment on how a privacy notice could be provided during the collection of information while considering the feasibility, costs, and effectiveness of providing such notice.

It is very difficult to provide a privacy notice to passengers of LASP aircraft. In most cases, the passengers do not book flights. It would be extremely uncommon for all passengers on a given flight to be in communication with the aircraft operator prior to a flight. NBAA recommends TSA allow aircraft operators handle privacy notification in a way that best suits their operations.

10. Comment on whether the proposed record retention for the Secure Flight Program should be applied to large aircraft operators and watch list service providers to ensure that personally identifiable information is not retained longer than necessary.

NBAA believes personal information should be retained for the same period of time as the Secure Flight Program requirements.

11. TSA is considering requiring large aircraft operators and watch list service providers to retain passenger information for passengers who are cleared, for 3 years, to facilitate the audit that large aircraft operators would undergo every 2 years under proposed 1544.243 and compliance oversight.

As stated in the main body of this document, NBAA is opposed to watch list matching for all passengers. However, if watch list matching is required, it is reasonable to request operators and WLSPs retain passenger data for three years.

12. Comments on whether the watch list matching service providers should serve as part of the long term solution to large aircraft watch list matching, such as by gathering the passenger information from the aircraft operators and submitting it to TSA for watch list matching, then receiving the results from TSA.

The only reasonable “long term solution” to watch list matching is Secure Flight. In fact, TSA is under Congressional mandate to assume all watch list matching responsibilities. There seems to be no relevant role for WLSPs after Secure Flight is fully implemented. There is no logical reason to use WLSPs after Secure Flight is expanded to GA operators. In fact, each “link” in a chain creates a possible point of failure, and introducing another entity – the WLSP – to the watch list matching process creates a potential vulnerability.

13. Comment on whether maintaining the watch list matching service providers may reduce the costs associated with a transition to the Secure Flight Program.

NBAA cannot think of a single way in which WLSPs would reduce the costs associated with Secure Flight. WLSPs present a considerable cost to the operator – far exceeding those estimated by TSA – and the Association is unable to determine a cost-savings for the agency in such a transition.

14. Comment on whether to include a system of assigning auditors in the final rule and on methods of doing so.

Auditors should not be assigned. Operators should be permitted to choose their own auditor based on price, service, or other preferences. Unless TSA intends to set pricing for auditors – and it seems the agency does not intend to – it cannot command an operator to use a particular

auditor. If the agency is concerned with conflicts of interest, its concerns are without cause. TSA has already proposed sufficient conflict of interest policies.

15. Comment on whether it is necessary to require full program aircraft operators that also operate flights under a LASP to contract with a third party auditor to conduct a biennial audit of their operations for compliance with their security program and TSA regulations.

Full program aircraft operators should not be required to contract with a third party auditor. Rather, TSA inspectors should continue to handle all oversight functions.

16. Comment on large aircraft operators that are not carrying persons or property for compensation or hire – specifically, should “weapons” be limited to guns and firearms? Further, should there be a different requirement depending on whether the aircraft has a MTOW of 45,500K or less or more than 45,500 kg?

Appendix B presents NBAA’s proposed Large Aircraft Security Program Prohibited Items List. All aircraft subject to the LASP, regardless of MTOW, should be permitted to use this PIL. See page X for NBAA’s full discussion on prohibited items.

17. Comment on whether there is a more cost effective means of meeting the same or substantially similar security goals of the aircraft operator security coordinator requirement.

NBAA has commented extensively in our response regarding alternatives to many of the measures proposed by TSA.

18. Comments on the use of a single individual for multiple security coordinator roles.

See page 9.

19. Comments on whether other types of airports should also be required to adopt a security program, such as the partial program.

This NPRM is TSA’s opportunity to identify airports the agency wishes to comply with the partial security program. If the agency intends to include additional airports, it must do so through separate rulemaking.

20. How should TSA determine whether an airport “regularly serves” a large aircraft with MTOW of over 45,500 kg or a passenger seating configuration of 61 seats or more?

NBAA and its Members are truly incredulous that TSA identifies over 300 airports that must comply with a partial security program under the LASP, and then asks the public to help define

the criteria for identifying these airports. How, exactly, did the agency identify the first 300+ airports, if it has not yet clearly determined the qualifications of such an airport?

21. Comment on whether the content requirements of the partial program and the supporting program should be amended.

NBAA will not comment on the changes to the supporting security program, as NBAA's core membership is not affected by the minor changes proposed to CFR 1542.103(b), *Supporting program*. NBAA's main concerns with the partial program are outlined on page 11.

22. Comments on whether auditors with these important duties should be subject to a qualification such as US citizen, US national or lawful permanent resident of the US.

NBAA does not believe auditors should be required to be US citizens, US nations, or lawful permanent residents of the US.

23. Comments on auditor qualifications as well as other requirements that TSA should consider for auditors of LASP.

NBAA proposes TSA acknowledge auditors trained by IATA for the International Operators Safety Audit (IOSA) to be accredited for TSA auditing. Also, NBAA suggests TSA recognize education in place of the five years' experience proposed in the NPRM. There are simply not enough auditors currently qualified to complete the number of audits that would be necessary in the first two years of the LASP.

24. Comment on whether it should require certain individuals with the aircraft owner company should undergo a STA.

NBAA does not believe TSA has the statutory to vet individuals outside of the crewmembers and employees with direct contact with SSI or classified information. Exactly how wide of a net does the agency believe it can cast?

25. Comment on whether we should provide additional features of subpart K (Fractionals) in these regulations such as the requirement that the program manager brief the fractional owner.

No, NBAA does not believe a briefing requirement is necessary. And if TSA intended to include it in the final rule, the agency should have included in the proposal.

26. Comment on limiting the number of entities that would be approved watch list service providers, including what criteria would be used to determine which applicants would be approved and how many watch list service providers should be approved.

There should be no limit to the number of approved WLSPs. The market will determine a reasonable number.

27. Comment on whether to require covered personnel (at watch list service provider) to be US citizens, US nationals or lawful permanent residents of the US.

NBAA does not believe WLSP employees should be required to be US citizens, US nations, or lawful permanent residents of the US. NBAA is not aware of a similar requirement for current full program employees who conduct watch list matching.

28. Comments on which standards and controls in the NIST Special Publication 800-53 should apply to watch list service providers systems.

NBAA is not familiar enough with NIST 800-53 to provide meaningful comment.

29. Comments to evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency including whether the information will have practical utility

NBAA believes that based on the substantial modifications proposed by these comments, that this question cannot be adequately answered.

30. Comments to evaluate the accuracy of the agency's estimate of the burden.

See main document

31. Comments to enhance the quality, utility and clarity of the information to be collected

NBAA believes that the Office of Management and Budget (OMB) could provide more substantial comments on how to efficiently collect information from the public.

32. Comments to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

NBAA believes that adopting the recommendations contained within the main document would alleviate many of the information collection burdens.

33. Requests detailed comments to enable quantification of the impact for new and existing operators.

See main document.

34. Comment on agency's preliminary conclusions of impact of rule on small businesses.

NBAA is unable to complete a detailed economic evaluation in the time granted for public comment. However, as discussed in the main document, the Association is concerned with the agency's lack of confidence in their own conclusions from the economic analysis.

35. Comment on the assumption of 0 – 46 small entities in this industry would be impacted by rule.

See main document.

36. Comment on whether TSA may have under or over estimated the number of small entities affected.

See main document.

37. Comment on preliminary determination of whether this would be a significant economic impact on covered aircraft.

See main document.

39. Comments on whether a self assessment tool should be mandatory for airports.

NBAA believes self assessments for airports should remain voluntary. Regardless, a self assessment was not proposed as a requirement of this particular rule, and therefore is outside the scope of this specific rulemaking. If TSA wishes to require a self assessment of these airports, it should pursue that initiative in separate rulemaking.

40. Comments on whether it should adopt a self paced training program for affected airports that would reduce the impact of this requirement

Yes, a self-paced online training program is reasonable to complete the training requirements for Airport Security Coordinators at affected airports. Online training should also be considered for AOSCs, GSCs, and ISCs.

41. Comment on preliminary conclusion that airport rules would not impose a significant economic impact.

See question 34.

42. Comment on whether the proposed rule would have a significant economic impact on the 68-74 publicly owned small airport operators that TSA identified in its research.

See question 34.

43. Comments on use of TSA inspectors to conduct audits

NBAA is shocked that TSA has proposed delegating oversight of this program to third party auditors. The Association believes the agency is Congressionally-mandated to directly oversee its security programs.

44. Comments on TSA's no determination of significant economic impact on small entities.

See question 34.

Appendix B

Large Aircraft Security Program Restricted Items List

Sharp Objects

Item

Meat Cleavers

Guns & Firearms

Item

Gun Lighters

Gun Powder including black powder and percussion caps

Firearms

Explosive & Flammable Materials, Disabling Chemicals & Other Dangerous Items

Explosive Materials

Blasting Caps

Dynamite

Fireworks

Hand Grenades

Plastic Explosives

Flammable Items

Gasoline

Gas Torches

Lighter Fluid

Disabling Chemicals & Other Dangerous Items

Liquid Bleach

Tear Gas