Comments to the:

Transportation Security Administration
Large Aircraft Security Program
Notice of Proposed Rulemaking

Docket No. TSA-2008-0021

February 27, 2009

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Docket Management Facility
U.S. Department of Transportation
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Docket No. TSA-2008-0021 - Large Aircraft Security Program, Other Aircraft Operator Security program, and Airport security Program

To Whom It May Concern,

EAA represents *The Spirit of Aviation*™ through an active community of aviation enthusiasts, pilots, and aircraft owners. More than 160,000 EAA members worldwide share knowledge, camaraderie, and rewarding experiences that draw on their common passion for flying, building, and restoring recreational aircraft. EAA members unite though more than 900 chapters worldwide to promote the continued growth of aviation. Toward this end, they annually organize more than 10,000 aviation events and activities that promote aviation safety and education, encourage innovation, and create an environment for advancing the future of personal flight. These events include EAA AirVenture Oshkosh, among the world's premier gatherings for aviation technology, commerce, innovation, entertainment, and policymaking.

Basis for Comments

EAA has a long and demonstrated history of partnership with regulatory agencies. These relationships have developed from a reasonable approach to the challenges faced by the government and EAA's preference to work toward common solutions. We believe that some of the solutions offered in these comments can contribute once again to a sound and defensible public security policy for general aviation.

EAA is gravely concerned about the impact that the proposed Large Aircraft Security Program (LASP) would have on the general aviation community as a whole, but particularly on personal and business aircraft, historically significant vintage aircraft, and restored former military aircraft. The proposal will have a profound negative impact on the freedom of flight within this country, the role of the federal government in the lives of private citizens, the cost and accessibility of aviation for law-abiding citizens, and the economic viability of and access to airports.

Accordingly, any commentary, suggestions, and/or proposed solutions for improving specific elements of the proposed LASP offered herein are overshadowed by EAA's pervasive disapproval on the most fundamental and philosophical grounds.

EAA History with Regulation and Security

Throughout its 55-year history, EAA has participated in numerous rulemaking projects with other federal agencies, and genuinely understands the process. Indeed, EAA's very founding as an organization and community was based on the collaborative development of regulations and policies with the Civil Aviation Authority , predecessor to today's Federal Aviation Administration (FAA) that to this day permit U.S. citizens to design, build, and operate personal aircraft; a freedom that has been emulated around the world. EAA appreciates the opportunity to provide feedback in an effort to arrive at a final set of procedures that balances the need for security with citizen's rights to freedom of movement.

Since the terrorist attacks on September 11, 2001, EAA and other general aviation associations have aggressively promoted a number of security initiatives, airport watch programs, and helped shape the best practices promoted by the Transportation Security Administration (TSA) for general aviation airports. EAA has actively engaged with federal security agencies, including TSA, to develop reasonable and effective security recommendations and requirements. The general aviation community has genuinely been a consistent leader in promoting security and a partner with the TSA and its sister agencies. Like others in the aviation industry and transportation community, EAA's commitment to security is sincere.

Yet arguably, general aviation has paid the highest price in terms of loss of privileges and access due to attacks that had little or nothing to do with personal and recreational aviation. We want to work with the TSA to enhance general aviation security where practical and proven necessary while simultaneously facilitating operations that are essential to the survival of tens of thousands of U.S. businesses and jobs. The goals of enhancing security and facilitating freedom of movement do not have to be mutually exclusive; but achieving balance will require a thoughtful and careful, approach that is not present in the proposed rule.

Recommendation for Rulemaking Committee

Referencing the large number of adverse comments to the docket and the overwhelmingly negative response at the five public hearings TSA held around the country it is evident that significant public issues and concerns remain unanswered in the LASP proposal. EAA, along with other aviation organizations representing the spectrum of parties impacted by the proposed rule, believes that the creation of a negotiated rulemaking committee to bring TSA and industry together could address many of the concerns and challenges expressed by the public and in our comments.

On February 4, 2009, EAA along with three other general aviation associations, wrote directly to Acting TSA Administrator Gale Rossides requesting that a negotiated rulemaking committee be established whereby industry and government could work together to develop a security proposal that better matches the security needs of the nation with the rights of citizens to freedom of movement and the need to sustain economic health of the general aviation industry. Experience in other government agencies has shown time and again the importance, value, and success of government/industry rulemaking committees at arriving at workable solutions to seemingly impossible problems. EAA believes that both TSA and industry will benefit through combined efforts.

Executive Summary

EAA members and the broader flying public have grave concerns about the dramatic shift this proposal would have on the role government would play in the lives and freedoms of American businesses and families. They are deeply dismayed and disturbed that the federal government would inject itself into approving how, when, and with whom private American citizens may travel domestically. The idea that the American government would have to give tacit approval before U.S. citizens could travel in their own personal conveyance shocks and appalls everyone without exception.
The following is a summary of the key concerns EAA has identified in this proposal, the body of our comments contain more detail and additional concerns.

- **Legal Basis for Regulation of General Aviation** It is EAA's contention that TSA has not been granted the statutory authority to regulate general aviation in the manner that this Notice of Proposed Rulemaking (NPRM) proposes.

- **Vulnerability Assessment** EAA is concerned that the TSA is moving forward with sweeping security regulation of general aviation without first having completed a vulnerability assessment of general aviation operations as a whole.

  TSA's declared reason for the LASP proposal is the following:
  1. TSA has been given broad statutory authority by Congress
  2. "TSA is aware that as vulnerabilities within the air-carrier and commercial operators of civil aircraft are reduced, GA operations may become more attractive targets."
  3. Except for "limited security requirements," TSA does not require security programs for aircraft operators or airports and that "this situation poses a security risk."

  EAA disagrees with the first two points and feels that TSA has greatly overstated the existence of only "limited security requirements" for general aviation and the level of security risk that purportedly poses.

- **Constitutional and Societal Concerns** U.S. citizens have always been able to travel freely without having to seek government approval or permission. For the first time in our nation's 233 year history, the federal government, in the form of the Transportation Security Administration and Department of Homeland Security, is proposing to force U.S. citizens to seek permission and approval before they may travel in their own personal conveyance; in this instance an aircraft.

  The LASP, as proposed, would require a pilot to submit the names of family members, close friends, and business associates to the United States government for security screening before they could board a personally owned and operated aircraft. Most U.S. citizens would object to doing this to their family and friends, and even more would object to having it done to them.

- **Weight Threshold** EAA believes that the TSA should consider a significantly higher weight and exempt propeller driven aircraft including piston and turboprop aircraft, regardless of weight, because of their inherent lower flight speeds.

- **Background Checks of the Flight Crew** TSA has not offered any indication as to what criteria would be used to deny flight crew access to their aircraft and what due process would exist for pilots and aircraft owners to challenge the TSA background check findings or otherwise clear their name. Disqualifying a pilot from flying his or her own personal-use aircraft is tantamount to taking personal property and may well put in jeopardy the pilot's livelihood.

- **Watch-List Matching** Under the LASP proposal the TSA proposes that all operators of aircraft weighing more than 12,500 pounds must submit each passenger's name to newly created third-party vendors, Watch List Service Providers (WLSPs) for watch list and no-fly list matching. This may be a reasonable requirement for air carrier and charter aviation operations where passengers are largely unknown to the aircraft operator or pilots, but it has absolutely no place in recreational, personal, and business aviation.

- **Prohibited Items** The LASP proposal contains a list of more than 80 "prohibited items," many of which are routinely carried aboard personal and business-use aircraft because they are central to the mission of the flight and because the majority of these "large" aircraft do not have dedicated storage or cargo areas in which to house the prohibited items. EAA urges the TSA to acknowledge the different nature of private aircraft operations as unique from commercial air carriers when contemplating the carriage of prohibited items. Many of the aircraft proposed to be regulated under the LASP do not have inaccessible baggage compartments, making compliance with the prohibited items list virtually impossible.

- **Third-Party Oversight** EAA is strongly opposed to the TSA's proposal requiring each LASP operator to undergo a biennial security audit from a third-party vendor. Oversight of a program such as the LASP is an inherently governmental function, and the TSA proposal to delegate that responsibility to a third party is inappropriate.

- **Implementation Phased Approach** EAA believes the likelihood of a significant backlog of pending security programs awaiting approval is very high, given the extremely aggressive implementation schedule outlined in the NPRM. We do not believe that either industry or TSA has the ability to meet this schedule, based on the fact that there is no proposed template or guidance for developing and submitting security programs for either aircraft or airport operators available at the time of this NPRM.

- **Determination of Legitimacy and CHRC/STA of Related Individuals** The TSA has proposed to determine the "legitimacy" of each business applying for a security program under this NPRM. As we stated earlier in our comments, we do not believe the federal government has any role in determining whether a business or individual is "legitimate" as it relates to whether they would be granted a security program or otherwise be permitted to operate a privately owned aircraft.

General Concerns

One of the gravest concerns expressed by EAA members and the broader flying public is the dramatic shift in the role government would play in the lives and freedoms of American businesses and families. They are deeply dismayed and disturbed that the federal government would inject itself into approving how, when, and with whom private American citizens may travel domestically. The idea that the American government would have to give tacit approval before U.S. citizens could travel in their own personal conveyance shocks and appalls everyone without exception. To date, of the thousands of contacts EAA has had with members on this topic, we have yet to hear one member express approval or even sympathy for this governmental intrusion into the hard-earned rights of American citizens. They liken this proposal to the domestic passport procedures of the former Soviet Union and China and can hardly believe this could even be proposed in the United States of America. Indeed, many members cannot believe this proposal would even come up in this country and have a hard time taking it seriously because they know full well that the American public would never stand for such an intrusion by government into other modes of transportation such as cars, trucks, boats, campers, and the like. They cannot imagine that the U.S. government would go this far to trample on individual liberties in the name of security. EAA cannot express strongly enough the outrage and incredulity that our members and the general aviation community as a whole feel toward this proposal.

Of the more than 10,000 aircraft that would be impacted by the LASP proposal, the majority are owned by small businesses, private individuals, and non-profit organizations such as EAA. The latter instance is particularly true of historically significant aircraft that are preserved and operated for the benefit of the public and posterity, in some cases carrying thousands of history and aviation enthusiasts annually. In the case of aircraft owned by businesses, 85 percent of the U.S. businesses that use a general aviation are small and mid-size companies, not the multi-national conglomerates often envisioned by the public and Congress. These companies routinely operate to and from areas with little or no commercial airline service, and they often fly to multiple sites in a single day. Most importantly, these businesses frequently fly equipment that cannot be transported on a commercial airliner. For these companies, business aviation is not an alternative to the airlines; it is an essential and irreplaceable means of transportation. Without a business airplane, many of these companies would not exist. This proposed rule places significant burdens and disincentives on the operation of historic aircraft as well as personal and business air transportation.

In determining how to proceed forward with this or any other rule impacting general aviation, it is vitally important that we do this with careful analysis and forethought. Overly broad, restrictive, or unnecessary regulations that do not take into account the unique operational characteristics and sensitivities of business, personal, and historic aviation will needlessly destroy companies, museums, and the freedoms unique to our country. These are not unfounded fears; we have seen what the heavy hand of government can do to general aviation already. When the TSA, in partnership with the U.S. Secret Service and other federal agencies, implemented security regulations at Washington Reagan National Airport, 99 percent of the general aviation operations at that airport ceased and have never returned. According to the National Business Aviation Association, less than one percent of the companies that flew regularly to and from Reagan National Airport are willing or able to comply with the TSA-mandated security regulations now in place. While we accept at face value that Reagan National

Airport is unique in its proximity to the nation's capital, the experience there serves as a strong reminder of how heavy the hand of the federal government can be, even on the smallest aircraft that pose by far and away the least threat. Personal and business aviation in the United States should not be restricted to a relative handful of the wealthiest citizens or the largest corporations. The LASP proposal would go a long way toward eliminating a large percentage of general aviation activity in this country, which plays into the hands of those who object to the freedoms and way of life we enjoy in this country.

Personal and business aviation is a vital link in our nation's transportation infrastructure, an important engine for our nation's economy, and one of the most visible examples of the freedoms we stand for. EAA objects in the strongest terms to the TSA LASP proposal as currently written and urges the TSA to work collaboratively with the aviation community to address any legitimate security threats. Outlined below are our specific concerns, comments, and questions about various facets of the proposal.

Basis of the Rule

Legal Basis for Regulation of General Aviation

It is EAA's contention that TSA has not been granted the statutory authority to regulate general aviation in the manner that this Notice of Proposed Rulemaking (NPRM) proposes. Federal agencies can only issue regulations pursuant to authority specifically delegated to the agency by Congress. The TSA cannot unilaterally decide to regulate a particular sector of private transportation without Congressional authority, and in this case, we believe the agency lacks that authority. The Large Aircraft Security Program NPRM relies almost exclusively on TSA's organic authority granted by Congress under the Aviation and Transportation Security Act (ATSA). However, we assert that these provisions apply explicitly to an "air carrier" or "foreign air carrier" that is "in air transportation or intrastate transportation," specifically a "common carrier for compensation."

During the time since September 11, 2001, Congress has considered and rejected initiatives that would extend TSA authority to personal and recreational aviation. Congress transferred responsibility for aviation security from the FAA to TSA in 2001 when it enacted the Aviation and Transportation Security Act (ATSA). This was a perfect opportunity for Congress to expand TSA authority into the realm of personal, recreational, and business aviation but with careful deliberation it did not. In fact, Congress specifically determined that the way to address general aviation security was through the specifically authorized oversight and regulation of flight training facilities and airports while only granting TSA the authority to study and assess general aviation risk and vulnerability.

There is no question that Congress has been fully aware of general aviation, and that it knows precisely how to give the TSA authority over personal and business aviation if it were warranted. For example, Congress recently enacted the Implementing Recommendations of the 9/11 Commission Act of 2007. This Act required the TSA Administrator to work with U.S. Customs and Border Protection to mandate that general aviation operators submit passenger information and advance notification prior to entering U.S. airspace. Congress clearly understands the need for specificity when it comes to legislating general aviation security and has never intended that some catch-all clause in the TSA's organic authority would give the agency the authority to

regulate non-commercial general aviation security. This Act demonstrates that Congress recognizes general aviation as distinct and separate from commercial aviation.

EAA requests that the TSA specifically identify its congressionally delegated authority to regulate non-commercial general aviation because we see no evidence in the NPRM or in the legislative record to indicate that the agency has such authority. Based on a thorough review, it seems Congress has repeatedly declined to extend the agency this authority.

Rulemaking Procedures

The Administrative Procedures Act (APA) and Executive Order 12866 outline the responsibilities of the federal government and the rights of the public with respect to drafting and implementing new regulation. Executive Order 12866 mandates that federal agencies must study and present the costs and benefits and "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The Administrative Procedures Act guarantees public participation in rulemaking.

EAA recognizes the good-faith efforts displayed to date by TSA to include public input through written comments and public hearings. However, EAA and the general aviation community is frustrated because the TSA has neither published in the docket nor made available on a limited basis the studies used as the basis for justifying the entire rulemaking initiative. To fairly comment on the efficacy of the proposed regulations and the cost/benefit analysis, the public needs to be afforded an opportunity to assess the studies TSA used to justify the rulemaking in the first place.

From what we have been told, the studies we are referring to are sensitive, but not classified. Even if they are, TSA has provided security clearances to staff members of a number of aviation organizations to allow them to review such materials. EAA is aware that the National Business Aviation Association (NBAA) has submitted a Freedom of Information Act (FOIA) request to obtain the data used to justify the proposed rulemaking, including the throw-weight study used to support the proposed 12,500 pound threshold. We strongly support NBAA's efforts and urge the TSA to release this information to the public. Given that a number of general aviation association staff members hold security clearances of Secret or higher, we fail to see why TSA would continue to withhold these documents or refuse supervised reviews of the studies by these individuals. This seems to be in direct conflict with the spirit and intent of Executive Order 12866, the Administrative Procedures Act, and the very reason TSA undertook the effort to conduct security clearances on staff members of the representational general aviation organizations.

Threat Analysis

As EAA reviewed the LASP, one thing we were looking for was the justification TSA would present to the public for the imposition of such a sweeping intrusion into the private lives of U.S. citizens. We expected the TSA to identify specific threats it needed to address that would justify the federal government categorically approving and disapproving who could operate and or be carried on small, privately owned, personal and business aircraft. EAA is shocked to find that not only is there no specific justification for the proposed rule but also the LASP appears to contradict TSA's own intelligence evaluation conclusions.

TSA claims "broad authority" as the basis for developing and implementing security rules aimed directly at private businesses, non-profit organizations, and individual citizens. As outlined above, EAA cannot find any enabling legislation that grants this "broad authority" to approve and disapprove when private citizens may travel in their personal aircraft or whom they may take with them. But even if TSA can find some underlying authority on which to base these proposals, simply having the authority to regulate does not in itself lead to the need or justification for regulation. Similarly, the existence of a vulnerability does not necessarily indicate a threat sufficient to warrant new regulation.

Within the NPRM, the TSA states that "The TSA is aware that, as vulnerabilities within the air carrier and commercial aviation industry are reduced, GA operations become more attractive targets." On the surface this is a reasonable supposition but shallow at best. The same thing could be said of every other mode of transportation. Since security has been heightened in commercial aviation, every other mode of transportation begins to look more attractive as a target, including and especially cars, trucks, busses and subways--the preferred and proven method of terrorist attack the world over. But most importantly, the assertion that general aviation is a more attractive target as a direct result of security interventions in the air carrier and commercial aviation sectors is in direct contradiction to TSA's own Civil Aviation Threat Assessment published on December 30, 2008 by the TSA Office of Intelligence, which concludes that "there is little evidence to suggest that terrorists are turning their attention specifically to the general aviation sector in the Homeland."

Even if EAA did not question TSA authority to regulate general aviation, authority itself is not a justification for rulemaking. The premise of the LASP proposal appears to be an assumed threat against general aviation that is not borne out or supported by TSA threat intelligence. If the TSA LASP is to move forward in any form, EAA maintains that TSA must clearly articulate the threat, based on sound intelligence, to justify the enormous resources required for compliance and oversight, and the unprecedented governmental intrusion into the privacy, liberty, and freedoms of private American citizens, businesses, and organizations.

Vulnerability Assessment

EAA is concerned that the TSA is moving forward with sweeping security regulation of general aviation without first having completed a vulnerability assessment of general aviation operations as a whole. While this vulnerability assessment project has just begun on a trial basis for airports, no complete study has been conducted or conclusions drawn. Additionally, TSA is proposing to mandate for private operators procedures similar to those used in commercial air carriage and charter operations without first studying and demonstrating the effectiveness of the existing mix of regulatory and voluntary initiatives already in place for general aviation along with the costs and benefits of those programs. In essence, the proposal is presented in isolation of everything that has been implemented by the aviation community to date.

As we outlined in the Threat Analysis section above, TSA's declared reason for the LASP proposal is the following:

1. TSA has been given broad statutory authority by Congress
2. "TSA is aware that as vulnerabilities within the air-carrier and commercial operators of civil aircraft are reduced, GA operations may become more attractive targets."
3. Except for "limited security requirements," TSA does not require security programs for aircraft operators or airports and that "this situation poses a security risk."

As previously mentioned, EAA disagrees with the first two points and feels that TSA has greatly overstated the existence of only "limited security requirements" for general aviation and the level of security risk that purportedly poses. General aviation operations and airports have been subjected to a significant number of security requirements, and undertaken many more voluntary programs, since the terrorist attacks on September 11, 2001. These include the following among others:

1. Flight training security requirements
2. Mandatory security awareness training at flight schools and FBOs
3. Public and private air charter security regulations
4. Mandatory aircraft purchasing reporting and vetting requirements
5. Airman certification paperwork and tracking requirements
6. Vetting of FAA airmen certificate databases against TSA watch lists and other government security criteria
7. Temporary and permanent airspace restrictions
8. The Twelve-Five Standard Security Program
9. Agricultural aviation security awareness, documentation and security procedures
10. The Secure FBO program
11. Security Guidelines for General Aviation Airports (TSA IP A-001)
12. Airport Watch programs

EAA maintains that these interventions do not constitute "limited security requirements" and that this combination of mandatory and voluntary programs form the basis for a significant amelioration of any perceived threat or vulnerability. TSA itself maintains a website outlining these and a number of other programs the general aviation community has implemented in collaboration with TSA to date at:

http://www.tsa.gov/what_we_do/tsnm/general_aviation/security_initiatives.shtm.

During the more than seven years since the inception of the Transportation Security Administration, the general aviation community has worked diligently to implement improved security procedures throughout the training, certification, and operating regimes of personal, business, and non-scheduled commercial flight to address any perceived vulnerabilities. However, during this time period, the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) have identified only anecdotal evidence that terrorists have at one time or another contemplated the use of general aviation aircraft for illicit or destructive purposes and in all the documented instances to date those efforts were abandoned due to their ineffectiveness.

According to TSA's own "Civil Aviation Threat Assessment" published in December 2008 and the FBI Office of Information Analysis "Aviation Security Overview" published in 2005, there is no indication that general aviation has been further targeted by terrorists for the very reason they were abandoned as a choice weapon in the past--the complexity of their access and use and their relative ineffectiveness compared to other readily available conveyances. Further, in a security analysis of general aviation last updated on January 24, 2008, the Congressional Research Service clearly indicated that "no publicly available intelligence on terrorist operations since September 11, 2001, has indicated and specific threat involving GA aircraft domestically." Finally, the Federal Aviation Administration admitted in its 2005 proposal for the Washington, DC Metropolitan Area Special Flight Rules Area that "the DHS has no specific information that terrorist groups are currently planning to use GA aircraft to perpetuate attacks against the United States."

Despite repeated studies by TSA, FBI, and various interagency task forces indicating that general aviation has not been targeted as a weapon of choice for terrorist acts, the NPRM states that general aviation is vulnerable to misuse and therefore requires additional security regulation. However, the NPRM made no effort to demonstrate how general aviation poses a greater risk to the public or infrastructure than any other transportation mode including automobiles and trucks, the most commonly used weapon of choice by terrorists the world over and already used twice to attack targets in this country (World Trade Center 1993, Oklahoma City Murrah Building 1995). The NPRM also fails to demonstrate how general aviation aircraft compare as a threat to other potential risks faced by the public including mass transit (busses and trains have been repeatedly targeted through the world), maritime shipping and recreational boating (U.S.S. Cole, October 2000), and commercial trucking.

General aviation aircraft and personnel comprise a highly regulated community of relatively limited scope and that makes it an easy target for additional security regulation by TSA, whether it is warranted or not. Clearly, personal and business use automobiles, trucks, and boats pose the most likely threat, but they are so numerous, widely disbursed, readily accessible, politically sensitive, and unregulated that TSA would be hard pressed to impose regulatory based security requirements on these most likely terrorist weapons. EAA maintains that TSA is taking its collective eye off the ball of national security by misplacing inordinate government and industry resources to address areas of the least vulnerability and risk simply because it is expedient and easily regulated.

To date, TSA has not conducted a vulnerability assessment of the general aviation industry that takes into account the various mandatory and voluntary security measures and initiatives that have already been implemented by general aviation since air carrier aircraft were used as a terrorist weapon on September 11, 2001. The NPRM assumes vulnerability and risk as though there have been no security interventions taken at all, which is simply not the case. Media outlet's unsuccessful attempts to "hijack" general aviation aircraft suggests that while threats may still exist somewhere in the world, the mitigation strategies implemented to date have had a significant positive impact on the security state of general aviation and that to the degree there might be any vulnerability, it has been dramatically reduced to a manageable levels.

Before TSA undertakes the implementation of any new regulatory requirements that will cost taxpayers and industry potentially billions of dollars, a comprehensive vulnerability and threat analysis should be conducted that takes into account the regulatory and voluntary security initiatives that have been implemented to date and the relative risk and threat of general aviation

as compared to other presently unregulated transportation modes. To our knowledge, no such comprehensive analysis of general aviation has been conducted by DHS/TSA and in fact the intelligence and analysis developed to date indicates that general aviation poses no significant risk.

TSA's justification for the LASP is speculative and not based on analysis consistent with the "risk-based, threat-managed" approach espoused by TSA and DHS leadership in recent years. EAA urges TSA to undertake a careful security analysis of the general aviation community as it exists today to determine the actual level of risk and severity of threat posed as part of a holistic view of transportation security overall. We maintain that general aviation would not rise anywhere near the top of governmental priority for further regulation, and that the minor incremental enhancement to security (if any at all) would not remotely merit the societal and economic cost of implementing direct regulation of personal and business aviation.

Constitutional and Societal Concerns

Our nation was founded and grew into the world leader it became based upon the premise of freedom of movement. The first immigrants to this nation and countless generations to follow exercised their freedom to leave their homelands and travel to this land to build a new life based upon the ideals of freedom and personal liberty. The right to free movement across this continent and the liberty to associate with others is at the very heart of the American story itself and is one central unifying theme that sets us apart as a nation and a people. Our freedoms are the envy of the world and indeed the source of much of the intolerance and aggressions directed at us by people who wish to advance their goals to abolish our freedoms through acts of terrorism.

U.S. citizens have always been able to travel freely without having to seek government approval or permission. Throughout our history, citizens of this nation have been able to set forth on foot, horse, and boat without government restriction of any kind. This same freedom has always been extended to new modes of transportation as they evolved, including the steamboat, railroad, automobile, bus, and aircraft. There is ample precedent for freedom of movement applying to flying conveyances of every description dating back to the first balloons, the Wright brothers, and every recreational and business flier since.

For the first time in our nation's 233 year history, the federal government in the form of the Transportation Security Administration and Department of Homeland Security is proposing to force U.S. citizens to seek permission and approval before they may travel in their own personal conveyance; in this instance an aircraft. For the first time, the right of a U.S. citizen to travel freely within his or her own country is being compromised in the name of protecting ourselves. The moral, constitutional, and sociological hazard of this proposition is staggering, and it is the nearly unanimous view of EAA's members and the general aviation community that the government of the United States has gone too far and crossed a line in the liberties of American citizens that should never be crossed--our freedom of movement and right to assemble. Simply put, Americans do not want their freedoms stripped away in the name of being protected. The price is not worth the benefit, and to the millions who have died in battle or other service to our country protecting our freedoms, it is the highest possible insult.

Constitutional Implications

Far and away the most complex matters surrounding this NPRM deal with issues of civil liberties and federalism. As we comment on these issues it is important to recognize that EAA did not conduct an in-depth legal review of the NPRM as it relates to constitutional law. EAA has not formally discussed the constitutional implications of this proposal with the American Civil Liberties Union or other civil rights groups, though we have raised these issues before members of Congress who nearly all react with concern about the civil liberties implications of the proposal and the slippery slope it presents.

Based on the information presented in the LASP proposal, there is no evidence to indicate that TSA or DHS conducted a civil liberties legal review of this NPRM. Further, EAA and other industry association have specifically asked DHS staff whether such a review was conducted and so far the responses have been evasive, leading us to believe that no formal attempt was made to determine the constitutional or federalism impacts of the LASP proposal. Nevertheless, extensive case law exists that suggests that private U.S. citizens enjoy considerable protections under the law as it relates to privacy, freedom of movement, and private property.

Here are a few constitutional concerns that must be addressed:

- A personal-use aircraft is an aircraft used for personal transportation and for the carriage of family, friends, and business associates. The idea that an aircraft owner or pilot must screen family and/or friends against a federal watch or no-fly list is abhorrent. This is a governmental intrusion into personal life that would be as objectionable to any American citizen as mandatory federal screening of guests on a boat, in a car, or entering a home. It is an affront to every freedom we hold dear in this country. A pilot and his or her passengers are considered to be an assembly of persons who are protected by the *First Amendment* of the United States Constitution. The right to assemble is guaranteed under the Constitution and the fact that the assembly is in a flying vehicle is immaterial.
- The proposed requirement that the flight crew be subject to a background check poses significant concerns over the potential taking of property without due process guaranteed by the *Fourteenth Amendment* of the Constitution. With personal-use aircraft, the flight crew is usually also the owner; a certificated pilot. Under the LASP proposal, such owner-pilots could be barred from operating their own aircraft due to the results of a criminal history records check or other background investigation. This is, in effect, the taking of property without due process, particularly when TSA/DHS has a history of not sharing information leading to the denial with the effected party. EAA has grave concerns for the implications of this requirement and the lack of due process inherent in the findings.
- The LASP proposal extends the "Prohibited Items List" used to prevent passengers from carrying onboard certain potentially dangerous or threatening items in commercial air carrier operations to passengers and crew on privately owned/operated aircraft. The *Fourth Amendment* of the Constitution guarantees "the right of the people to be secure in their persons, houses, papers and effects." This legal tenant extends to vehicles and aircraft and appears to be ignored under the proposal as it relates to private individuals operating and traveling on private aircraft. Unlike airline passengers, where a "contract of carriage" exists between the air carrier and their customer waiving certain passenger rights, passengers on private aircraft do not waive any rights expressed or implied. There

is no legal contract in force and no international treaties apply that similarly waive or restrict the rights of passengers as they do in the case of commercial air carriage. Prohibiting items on board privately owned aircraft within reach of an operator or passenger is highly suspect and may in some cases conflict with existing laws. For example, it is a requirement in the State of Alaska that operators of private aircraft must carry survival equipment on board the aircraft and within reach including, axes, knives and firearms sufficient to protect one against attacks by large predators. The TSA proposal is in direct conflict with this long-standing and sensible requirement.

- While EAA views the proposed prohibition on the carriage of certain items as primarily impacting aircraft operators and passengers, there are many legal issues that are not addressed in the proposal impacting airports and fixed base operators (FBOs). For example, it is unclear what the legal responsibility or liability would be for airports and FBOs of confiscating, storing, disposing, or otherwise maintaining custody of private property (which can often be highly valuable) that is precluded from carriage on private aircraft under this proposal.
- Deprivation of private property and civil liberty rights also enjoy significant additional protections under *Fifth* and *Fourteenth Amendments* of the US Constitution.
- Individual privacy is also protected by law under the *Privacy Act of 1974* and in the absence of a commercial "contract of carriage," the LASP proposal likely violates civil liberties when screening passengers on private or business aircraft or checking briefcases or baggage containing classified or proprietary materials, documents, or products.
- The *Second Amendment* of the Constitution guarantees the right to bear arms and this has recently been reaffirmed by the U.S. Supreme Court in The District of Columbia v. Heller (2008). The LASP proposal appears to be in direct conflict with the *Second Amendment*, particularly when coupled with the security of possessions stipulations of the *Fourth Amendment* and the absence of "Contract of Carriage" waiving passenger rights. As mentioned above, exercising the "Prohibited Items List" on private aircraft is in direct conflict with some State requirements for personal safety and security and contradicts other federal aviation recommendations and requirements to carry tools and safety gear on board the aircraft. In addition, some corporate pilots, as well as protective details assigned to high-value business clients, are armed and the LASP proposal would adversely impact the security of these individuals and their aircraft.

While EAA has not conducted a formal or exhaustive legal review, the examples above serve to illustrate some of the potentially serious issues created by the NPRM. We maintain that uncertainty and public disapproval with these issues alone necessitates a substantial legal review by TSA/DHS as well as the Department of Justice to ensure that the rights of our citizens are not reduced or eliminated in the name of expedience or security. EAA further asserts that the LASP's reliance on aircraft weight as the primary discriminator misses the mark entirely. Because passengers on private-use aircraft are known to the owner and the flight crew (often one and the same), the need for screening, security programs, background checks, and prohibition of carry-on items is largely obviated or reduced to such a degree as to be a manageable risk. And it is these private operations that pose the least systemic risk that raise the vast majority of legal, federalism, and constitutional issues. EAA recommends that TSA apply security requirements based not on aircraft size, but upon the type of usage and operation. Air transportation being held out to the public involves significantly greater risks and vulnerabilities while posing significantly fewer legal implications due to the commercial agreement known as a "Contract of

Carriage" which waives certain rights of the passenger. Personal air transportation and personal freedom of movement are synonymous with all of the freedoms and liberties afforded by any citizen in their car, boat, or home. Limiting regulatory security requirements to commercial operations is the right way to approach both security and civil liberties.

Sociological Implications

The LASP, as proposed, would require a pilot to submit the names of family members, close friends, and business associates to the United States government for security screening before they could board a personally owned and operated aircraft. This creates an entirely new relationship between a U.S. citizen who owns and/or operates an aircraft and the government, and it is not a positive one. Under the NPRM, the pilot/aircraft owner is placed in the position of having to potentially act as an enforcement agent of the government directly against family, friends, and colleagues. This is a dramatic difference from the security programs conducted by the commercial airline industry where the no-fly list is applied to all passengers by a commercial entity with whom the passenger has contracted and paid for service. Under this commercial agreement certain rights are waived and there is a duty of care expectation that is higher both in terms of safety and security. This basic tenet is supported by the long-standing process of requiring higher levels of certification for commercial aircraft, airmen, and air carriers by the FAA than is required of private aircraft and pilots. The standard of care and duty of care are both higher in commercial operations.

However, in the case of private citizens acting as an agent of the government to screen other private citizens, the social and societal implications are dramatically different. Most U.S. citizens would object to doing this to their family and friends, and even more would object to having it done to them. We do not view our spouses, offspring, relatives, or friends as security risks that threaten the United States of America and nor do we want to unless we have reason or cause to do so. The proposed requirement to screen personal family and friends is an intrusion by the government into the closest interpersonal relationships of its citizens and as such tends to reduce the legitimacy of the United States government with its own citizens.

History has shown time and again that government that places the interest of the state over individual relationships creates general distrust and a reduction in the legitimacy of the government by the governed. This is very much the case with this proposed rulemaking. One of the most common comments we hear from the general aviation community at large is a comparison of the actions proposed by under the LASP to the practices of authoritarian nations such as the former Union of Soviet Socialist Republics that required its citizens to monitor and control family members for the purposes of the state. The idea of submitting family and friends names for government scrutiny prior to traveling in a personal aircraft (or boat, car, etc.) and having to enforce government edicts that individuals are not eligible to travel carries precisely the same connotation regardless of the purity of intent by TSA. A nation that requires such an intrusion and intervention into one's personal life suggests an authoritarian future where individual relationships are subordinated to the interests of the state.

America has always stood for freedom and liberty; because of that we have enjoyed a high level of respect around the world. Some might even call it a moral high ground. However, with each response to radical extremism and act of terror that reduces our freedoms or undermines what we as a nation have stood for, our self-respect as a nation and the respect we garner from others around the world diminishes. Perhaps it was best stated by one of our concerned members:

"This decline will be accelerated by the TSA expanding the LASP approach to smaller aircraft and to other personal-use vehicles such as boats and road vehicles. Many citizens will ask: what is next for America? Will we have internal passports like those used by the Soviet Union? Will every car have a transponder to tell the TSA where the individual citizens are? Will citizens have to register each vacation trip with the TSA to obtain approval? What privacy will be left in the future America? All of these negative images of the future revolve around the basic concept: beware of a situation where your rights are converted into privileges."

EAA thinks that quote encapsulates the sentiment of nearly every member of the general aviation community we have heard from, whether they are directly impacted by the LASP proposal today or simply fear that they might be at some point in the future.

Aircraft Operator Concerns

Weight Threshold

TSA has specifically requested public input concerning the proposed weight threshold of 12,500 pounds. This is a difficult issue for the public to address because TSA has not been forthcoming with the data generated as part of the "throw weight" study cited as the basis for establishing the proposed 12,500 pound threshold. However, based on accident and incident experience in the field and the limited briefing we received from TSA about the results of the "throw-weight" study, EAA believes that the TSA should consider a significantly higher weight and exempt propeller driven aircraft including piston and turboprop aircraft, regardless of weight, because of their inherent lower flight speeds.

There is a persistent and lingering perception by the public, politicians, and the media that aircraft somehow present an inordinate threat to public safety and security. This perception long predates this past decade but was dramatically and understandably heightened by the use of commercial airliners as a weapon of terror in the attack on September 11, 2001. While this collective fear is difficult or impossible to erase or argue with on an emotional level, fear is often irrational, and the distinctions between the aircraft specifically chosen by the terrorists for the 9/11 attacks and the aircraft being contemplated for regulation under this proposal are significant. According to the 9/11 Commission Report, Boeing 757 and 767 aircraft were chosen by the terrorists specifically because they were among the largest aircraft in domestic flight service and carried enormous fuel loads, which make up a large percentage of the destructive power of an aircraft in terms of translational kinetic energy. They also specifically targeted flights that departed from airports closest to their intended targets so that the remaining fuel load on board the aircraft would be maximized. These aircraft were also among the fastest in domestic service with maximum cruise speeds of 560 miles per hour and maximum speeds approaching the speed of sound. The mass of the aircraft, the speed at which it can travel, and the fuel load all combine in an exponential manner to make up the total translational kinetic energy potential of a given aircraft.

The kinetic energy of any aircraft is a function of one-half the weight times the velocity squared, therefore as weight and speed increase, the destructive potential increases exponentially. Clearly, the terrorists knew exactly what they were doing when they chose the aircraft they did to carry out the attacks on 9/11. General aviation aircraft would never have allowed them to achieve their goals. As an example, compare a Boeing 767-400ER with a maximum takeoff

weight of 450,000 pounds traveling at its cruise speed of 560 miles per hour to Beechcraft King Air 200 with a maximum takeoff weight of 12,500 pounds traveling at its cruise speed of 256 miles per hour. While the B-767 weighs 36 times more than King Air 200, due to the exponential function of its higher mass and speed, the B-767 produces more than 172 times more kinetic energy than the King Air. Put another way, it would take 172 King Airs impacting at the same point at the same time to equal the force emitted by one large air carrier aircraft.

A similar relationship exists between slower piston-powered aircraft and faster turbojet aircraft. Again, because the kinetic or distributive energy of an aircraft is a function of one-half the weight times the velocity squared, even a relatively large piston-powered aircraft contains a fraction of the destructive potential of smaller turbojet aircraft. As an example, EAA operates a vintage World War II era Boeing B-17 and displays it across the country. This aircraft was once rated at a maximum wartime takeoff weight of 65,000 pounds, but under its civilian FAA type certificate can fly at no more than 54,000 pounds. EAA operates its B-17 at no more than 43,000 pounds because we do not carry any armament, cargo, or full fuel loads. The B-17 cruises at 170 miles per hour and carries around 1,200 gallons of aviation gasoline. Even if EAA's B-17 could be operated at its maximum certificated takeoff weight, its kinetic energy would be approximately equal to the very lightest business jet or roughly 16,000 pounds at 500 miles per hour. That B-17, being one of the largest piston aircraft in civilian use, weighs 3.4 times more than the smallest business jet but carries the kinetic energy roughly equal to that very small aircraft.

This is an important factor to consider when weighing the impact of this rule on owners and operators of restored vintage and historically significant aircraft. There are more than 1,600 piston-powered aircraft in the FAA aircraft registration database that weigh more than 12,500 pounds. Many of these are restored World War II vintage aircraft, but only a very small fraction of these are in airworthy flying condition. The majority are in unairworthy condition on static display in museums across the country. Another significant portion of the large piston aircraft fleet is in commercial cargo service and is already covered under other TSA security programs. However, as our example above illustrates, even the handful of the very largest of these piston aircraft carry limited kinetic energy due to their modest size by today's standards and slow cruise speeds. History is very instructive on this point. In July 1945, a B-25 with a maximum takeoff weight of 41,000 pounds flying in dense fog flew directly into the 79th floor of the Empire State Building. The incident was tragic, and 11 office workers were killed in the impact and resulting fire along with the crew of the bomber, but despite the fire from the full fuel load carried by the aircraft, damage was primarily restricted to five floors and the structural integrity of the building was not compromised in any way.

Light aircraft simply do not have the potential kinetic energy to do significant damage to structures on the ground beyond a wood frame house. We have seen what happens when accidents have occurred involving high-rise buildings and light aircraft most recently with the Cory Lidle Cirrus SR20 accident along the East River in New York. There is no doubt that damage occurred as a result of the accident, but it was hardly catastrophic and did not compromise the structure of the building. Similarly, we have seen incidents where deranged individuals have attempted to use light aircraft as a weapon or method of suicide. The 2002 crash of a Rockwell Commander into the Pirelli Building in Milan, Italy, the Cessna 172 flown into the Bank of America Building in Tampa, Florida, and the 1994 crash of a Cessna 152 into the White House demonstrate the ineffectiveness of light aircraft as a weapon of terror and clearly illustrate the significance of aircraft size and speed to potential kinetic force. We also

know from decades of business-class aircraft and regional airliner accident investigations precisely what the destructive potential of business-class aircraft is to structures on the ground. In all instances the damage is highly localized and rarely extends beyond a single structure.

One of the truly confounding things in trying to comment on the weight threshold proposed in the LASP NPRM is a seeming lack of a national standard for homeland security initiatives. As an industry we have been told that it is the policy of DHS and TSA to address potential threats from a risk-based, threat-managed approach, and that emphasis is placed on addressing those areas of vulnerability that could pose an systemic economic, infrastructure, or societal threat. In other words, the nation does not have unlimited resources to counter every vulnerability, so effort needs to be focused on areas that present systemic risk and significant threat. This is a logical approach from our point of view and to that end we have supported significant regulatory-based security programs for those segments of the aviation industry that could be vulnerable to attack or misuse causing systemic risk to our transportation system or infrastructure on the ground.

However, in pursuing what industry considers light to medium-sized aircraft under the LASP proposal, TSA appears to be shifting from the stated policy of protecting against systemic or catastrophic risk to trying to regulate security protection on a house by house, block by block basis. Aircraft under 100,000 pounds simply do not represent a systemic risk based on translational kinetic energy, unless it has now become the policy of the federal government to try to protect every unhardened commercial or wood frame structure from terrorist attack. In that case, aircraft should be the very least of TSA's concerns given that cars and trucks can park in front of nearly any building in the nation and suicide bombers can walk into most any building unchallenged.

In the past when EAA and others in the aviation community have raised concerns about aircraft weight as a measure of risk, we often have been told that the real issue is not weight at all but who and what the aircraft might be carrying, hinting at concerns for the delivery of chemical, biological, radiological, or nuclear explosive (CBRNE) weapons. At this point any discussion of aircraft weight becomes nearly irrelevant because it does not necessarily take a large aircraft to carry such things. It is for this very reason that no one in the aviation community believes that the proposed 12,500 pound threshold in the LASP proposal has any basis in security fact, or is likely to remain the "floor" for any length of time. If TSA is primarily concerned with CBRNE delivery by aviation means and not protecting structures on the ground on a house-by-house basis, then it is considered to be a given by nearly all in our community that TSA will require security programs, background checks, and watch-list matching for light, personal-use aircraft at some point in the future.

Of the threat scenarios presented in the NPRM as justification for the economic and societal costs of this proposal--the fourth scenario that imagines mass casualties and economic disruption--in theory most justifies the rule. Yet, this scenario, which imagines the spread of chemical, biological, or radiological agents, has the least to do with aircraft weight and thus the population of aircraft proposed to be regulated under the LASP. Indeed, the aircraft most suited to this scenario are not proposed to be covered under the current LASP. And therein lies the distrust of the would-be regulated public of this proposal and the underlying reduction in the legitimacy of the regulator as a result. From the public perspective, TSA is focusing on aircraft weights that are not relevant to systemic risk. By not proposing to regulate the aircraft that could most pose a threat as a delivery mechanism, the LASP proposal as a whole carries no credence

with the potentially regulated parties and fails to support, from a security standpoint, the objectives stated by TSA.

One of the concerns TSA expressed regarding moving to a higher weight threshold was that doing so would shift the U.S. away from International Civil Aviation Organization (ICAO) standards, thus forcing the U.S. to file an exception. EAA does not concur with TSA's assessment. ICAO has used a weight threshold of 12,500 pounds in its draft Recommended Practices for corporate aircraft operations. ICAO recommended practices are not "standards" and in reality TSA is likely setting the stage for the U.S. to file a future exception to ICAO standards in the event that ICAO sets a different weight threshold for security standards and practices for private or corporate aircraft. Indeed, there are reports that the European Commission has considered the appropriate weight threshold in the EU to be 30,000 kg or approximately 66,000 pounds. To the extent that TSA is actually concerned over conflict with ICAO, it is in the TSA's best interest to wait to determine the appropriate threshold until ICAO has established worldwide standards.

There is a perception in the flying public that the proposed 12,500 pound threshold is random and not based on any particular science or threat analysis. To some degree, EAA agrees; however, there is history that led to this threshold, and it is probably worth reviewing that history since most of the people who were working for TSA in its early days are no longer with the agency or have moved on to other areas of responsibility. It is true that the original identification of 12,500 pounds as a threshold for commercial and air charter operations was not based on any specific threat profile or kinetic analysis and that to some degree it may be an accident of history.

In the post 9/11 frenzy to try to address real and perceived vulnerabilities in aviation security, Congress and the fledgling TSA organization were in a highly reactionary mode to improve both the reality and public perception of aviation security. During this dark period of our national history, anything that flew was feared and anything that flew was targeted for additional security regulation and intervention. Early proposals from Capitol Hill called for security regulation of aircraft weighing more than 6,000 pounds and, at one point as low as 3,000 pounds. At the time the focus was more on the pilots of these aircraft than the aircraft themselves. The aviation community and calmer heads in the fledgling TSA knew there was little or no threat from light aircraft, and the focus at the time was to try to find a "line in the sand" that was both defensible and understandable.

Since pilot training was a point of key importance, the FAA's 12,500 pound requirement for pilot aircraft type ratings seemed to be a defensible point on which to base airmen security requirements including, background checks, alien flight training security requirements, and later by default the air charter so called "12-5 rule." Ever since then, the 12,500 pound threshold has been perpetuated from one TSA requirement to the next without necessarily justifying that number from a security standpoint. In the frenzy of late 2001 and early 2002, the 12,500 number was convenient and understandable, but it was an FAA airman certification number that had nothing to do with whether an aircraft was actually "large" or "small" in terms of potential kinetic energy from the perspective of security. It was an unrelated number about which every pilot had some understanding. At least the aircraft could be readily identified by the aviation community because you needed an FAA type rating to operate it. That was the extent of it.

Air traffic control organizations all over the world have a very different view of aircraft size than that presented by TSA. The definition used by the FAA and ICAO for determining the aircraft's size is as follows:

H — Heavy (aircraft with a maximum certificated takeoff weight of 136,000 kg/300,000 lbs. or more).

M — Medium (aircraft with a maximum certificated takeoff weight of less than 136,000 kg/300,000 lbs., but more than 7,000 kg/15,500 lbs.).

L—Light (aircraft with a maximum certificated takeoff weight of 7,000 kg/15,500 lbs. or less).

What TSA recognizes as "large" aircraft under the LASP is considered by the aviation industry worldwide to be "light" aircraft. This is another point undermining TSA's credibility in the eyes of those they propose to regulate.

The LASP NPRM estimates that more than 10,000 operators would be affected by the proposed rules and more than 12,000 aircraft would fall under the requirements. Much of the cost and complexity of the proposal is driven by the very large number of aircraft and operators that would have to be regulated and the oversight required to approve and audit 10,000 individual security programs, conduct background checks on tens of thousands of airmen and millions of potential watch-list passenger screenings. EAA maintains that raising the threshold in terms of weight and aircraft speed to the point where kinetic energy genuinely could become a security issue would reduce 80 to 90 percent of the cost and impact of the rule while meeting the vast majority of security intent. Here is an examination of the aircraft fleet proposed to be regulated under the LASP:

Airplanes – Piston-Powered	1,647
Airplanes - Restored Military Turbojet	165
Helicopters	98
Airplanes - 12,501 to 66,000 pounds	8,741
Airplanes – 66,001 to 75,000 pounds	1,291
Airplanes – 75,001 to 100,309 pounds	450
Airplanes – Above 100,309 pounds	270
Total	12,662

Based on our previous discussion on the translational kinetic energy of various sizes and speeds of aircraft and the assumption that TSA is continuing to adhere to the stated national policy of protecting against serious systemic economic or infrastructure security risk, EAA recommends increasing the proposed threshold weight to at least 66,000 pounds and more appropriately to 100,309 pounds and eliminate all propeller-driven aircraft entirely.

As mentioned previously, propeller-driven piston or turboprop aircraft lack the speed necessary to make them a formidable weapon regardless of weight. While the vast majority of propeller-driven aircraft fall below EAA's proposed 66,000-pound minimum threshold, there are a handful of vintage aircraft owned and operated by museums and other non-profit organizations that fall above this weight. These are highly specialized, rare or unique aircraft like the sole remaining flying example of a B-29 from World War II, the only flying Boeing 337 airliner, and a couple of

Lockheed Constellations, among others. These aircraft are flown occasionally for public display under tight safety restrictions by specially trained crew and are not aircraft the average person or even pilot would be able to operate. Thus they pose very little security risk.

Based on the FAA aircraft registration numbers above, increasing the threshold weight to 66,000 pounds would eliminate 84 percent of the aircraft and an even larger percentage of the operators that would be impacted by the proposal, leaving just over 2,000 aircraft affected by the rule. Increasing the weight slightly to 75,000 would eliminate an additional 1,291 aircraft leaving only 720 affected by the proposal. Increasing the threshold to 100,309 pounds would impact only 270 of what could genuinely be considered heavier aircraft to be regulated and overseen by TSA.

Raising the threshold would also eliminate the vast majority of costs and complexities of the proposed LASP. For example, with 2,000 or fewer aircraft to oversee, the need for withholding the watch list and no-fly list should be less of an issue because there are substantially fewer entities who would have access to the lists. Additionally, with at least 84 percent fewer aircraft and nearly 90 percent fewer operators, TSA would not need to rely on third-party vendors to conduct audits, background checks, and passenger screening, negating a large portion of the expense to industry and oversight by TSA. Most importantly, TSA will be appropriately focusing its resources on the heaviest personal and business-use aircraft and not expending ever-increasing resources on ever diminishing returns. Most importantly, raising the weight threshold would eliminate the most severe economic impact on individuals, families, and small businesses that represent the lowest threat and can least absorb the additional economic, social, and administrative burdens associated with the proposal as currently written.

In summary, in the absence of publicly available information on the translational kinetic energy effects of aircraft involving barriers (throw-weight analysis), we can infer from past accidents and suicide-related incidents that smaller aircraft simply do not have the capability of causing significant damage to buildings or nationally sensitive infrastructure. Larger aircraft vaporize almost completely on impact but have the capability to cause extensive damage in part because of their extensive fuel loads as well as their high velocity, as was the case in terrorist attacks of September 11, 2001. For this reason, EAA recommends that the TSA limit the imposition of any additional security protocols to aircraft over at least 66,000 pounds and only impose the most stringent security requirements such as security programs and passenger screening to the largest aircraft weighing more than 100,309 pounds. All propeller-driven aircraft and aircraft weighing 66,000 pounds and under should be exempt from the LASP, except for those used in commercial service or air charter where the public is being carried under a “Contract of Carriage.”

Private Operations versus Commercial Operations

EAA’s review of the TSA proposal has revealed what we believe to be critical flaws in the Agency’s analysis, applicability and fundamental knowledge about the recreational, personal, and business aviation community. It appears that the majority of the TSA 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.”

Secretary Chertoff's remarks contradict the words of former TSA Administrator Admiral James Loy during Congressional hearing on aviation security. Admiral Loy said that we're reaching the point when the government will need to rethink many of the restrictions placed on aviation since the 9/11 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. There clearly appears to be a lack of consensus within the TSA and the Department of Homeland Security.

Despite this, the TSA has repeatedly publicly acknowledged the differences spanning the general aviation community and the vast differences between general aviation and commercial and air charter operations. In fact, the TSA web site lists one of its core responsibilities as, "Recognizing the diversity that exists in the industry and that 'one size' security does not fit all stakeholders." Despite this clearly stated mission, a stated goal of the LASP proposal is to "establish a consistent set of regulations for air carriers and commercial operators, as well as GA operators using large aircraft." As the agency itself has previously affirmed, a "one size" security solution does not work for the entire general aviation community let alone combining one system for general aviation and commercial/charter/air taxi operations. Therefore, rather than solely distinguishing aircraft based on an arbitrary weight, EAA proposes that regulations also be considered on the basis of two distinct types of operation and thus risk profiles: private and commercial.

Personal and business aviation operations are substantially different than commercial aviation operations; that is why is why the FAA treats them as separate and distinct in their safety regulations. By thoroughly understanding these differences and regulating accordingly, the FAA has been able to develop regulations that have resulted in safety records that are commensurate with the level of risk and the differences in the duty of care associated with personal transportation versus holding out to the public for compensation. EAA maintains that the same can and should be done with security regulations and procedures.

One of the clear distinctions between personal and business aviation and the commercial air carriers is obvious: commercial airline aircraft typically weigh around 160,000 pounds at the low end of the scale and go up from there to in excess of 900,000 pounds. The LASP proposal impacts personal-use, restored vintage, and business aircraft as small as 12,500 pounds. As discussed in the section on the weight threshold, the smaller air carrier aircraft such as a Boeing 737 weigh in at more than 160,000 pounds or more than twelve times the weight of a 12,500-pound Beechcraft Super King Air or Cessna Citation. But that is not at all the entire story because that same entry-level air carrier aircraft possesses 530 times the potential translational kinetic energy due to its size and speed. The potential threat from even the smallest of commercial air carrier aircraft is exponentially higher than so-called "large" general aviation aircraft. To put it into perspective, the entire cabin of a 12,500-pound airplane such as the aforementioned King Air – from windshield to back bulkhead – would comfortably fit sideways into the planes used in the attacks on September 11, 2001. The TSA's proposed "large aircraft" security program will apply to some very small aircraft.

Another key difference between general aviation and commercial operations is that the commercial air carriers and charter operations transport unknown passengers. These businesses hold themselves out to the general public and transport anyone who purchases a ticket. By contrast, recreational, personal and business aviation is used to transport only individuals who are known to the aircraft owner, operator, or company. Comparing commercial aviation

operations to personal and business aviation operations would be like comparing a city bus to a company passenger van or personal automobile. Knowing your passengers and traveling companions changes everything. The proposed rule doesn't appear to recognize that fact.

The LASP proposes to extend existing commercial aviation security programs to private personal and business use aviation. Current regulations for commercial aircraft with a maximum takeoff weight of more than 12,500 pounds include:

- 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

The proposed LASP takes these air carrier and charter requirements, originally only intended to be implemented on operations for compensation or hire, and adds yet an additional requirement: a biennial audit of the security program by a TSA-approved, third-party auditor anticipated to cost in excess of $3,000. These requirements are not easily implemented for personal-use aircraft and some are virtually impossible. None of the requirements are warranted by the extraordinarily low level of risk and threat posed by recreational and business aviation.

Criminal History Records Checks / Security Threat Assessments

Background Checks of the Flight Crew

The proposed LASP requires a background check of the flight crew, which raises very serious concerns for owners of personal use aircraft. TSA has not offered any indication as to what criteria would be used to deny flight crew access to their aircraft and what due process would exist for pilots and aircraft owners to challenge the TSA background check findings or otherwise clear their name. Disqualifying a pilot from flying his or her own personal-use aircraft is tantamount to taking personal property. In addition, there is a high likelihood that not only will property be taken but also the individuals' livelihood may well be in jeopardy if the pilot depends on an aircraft for a living or is in fact a professional pilot.

Our values as a nation require that any taking of property or livelihood by the government must be handled through an open and fair proceeding that includes full due process. The first step in this process is making it clear to all affected parties what specific offensive actions or conditions will result in disqualification. This cannot be a hidden series of criteria nor can it be subjective or open to administrative changes at will. The public has to know the ground rules and the basis on which it is being judged. Further, any pilot who is disqualified from flying and his legal representatives must be permitted to see and review all of the evidence used to make a negative finding and have the full ability to challenge that evidence or otherwise clear their name.

Furthermore, any pilot who is disqualified from flying as the result of a Criminal History Record Check must be able to appeal any TSA decision to a higher and completely independent authority in government and further have the right to openly challenge such decisions in federal court without undue interference or withholding of evidential documents by TSA in the name of security. This is a basic premise of American values of fairness and the basis for the credibility and legitimacy of our government to its citizens. The TSA and all of government must maintain the highest standards of fairness and openness and cannot be perceived as restricting the opportunities and freedoms of its citizens because of some secret or circumstantial "evidence" of wrongdoing. Any background check procedure with less than this level of review will be viewed as suspect and illegitimate by the general aviation community.

EAA is adamantly opposed to any flight crew background check requirements until TSA can clearly outline the disqualifying criteria, present a fair and open system of due process for reviewing records leading to a disqualification, and develop an independent appellate process for challenging any disqualification.

A major concern for EAA and its members is the prospect for conducting security threat assessments and/or background checks beyond those individuals directly involved with operating the aircraft. The LASP proposal asks if TSA should apply stringent background check requirements to officers, directors, owners, and other key individuals of a company that owns a business-use aircraft. The proposal states this would assist TSA in determining if the aircraft operator is a legitimate business. A review of the Aviation and Transportation Security Act of 2001, and subsequent modifications and additions to the legislation, states nothing about granting the TSA this type of broad authority. It is deeply troubling that the TSA would even consider this type of intrusive review of a company and believe that somehow such a violation of privacy would reveal relevant information about possible threats posed by a business aircraft. Any logic that TSA could present to support such an invasive inquisition into the lives of business personnel would also support a similar move to investigate non-flying family members of people who own and operate personal use aircraft. This is a frightening prospect in the extreme and one that should never even be contemplated in a country that views itself as supporting individual liberty and freedom. These sorts of violations of civil liberties and privacy should be left to the authoritarian states we purportedly oppose the world over. EAA strongly urges the TSA to eliminate this requirement from any further consideration.

Five-Year Expiration

EAA opposes the proposed expiration of any Security Threat Assessment (STA) and/or Criminal History Records Check (CHRC) for flight crew members. The TSA already conducts ongoing matching of the FAA airmen certification databases against watch and no-fly lists, bringing into question the need for STAs and CHRCs in first place. But in light of periodic matching, EAA cannot support the cost and administrative burden of requiring periodic renewal of data TSA already has access to. CHRCs do not and should not expire provided an individual is continuously employed. If a flight crew member were to be convicted of a charge significant enough to be a disqualifying offense, the individual would likely be unemployable while being tried and certainly while being detained.

Transferability Between Employers

The TSA also proposes that a valid Security Threat Assessment be transferable from one employer to another. While EAA is opposed to STAs and CHRTs for general aviation flight crew members, to the extent that TSA ever does implement such requirements EAA fully agrees that STAs must be portable from one employer to another. We also believe that any CHRCs must be fully portable as well. This is not simply a matter of convenience; it is a necessity for pilots, many of whom fly numerous aircraft owned by many different businesses, organizations, and individuals. Some contract pilots fly for dozens of different operations. These flights often occur with short or no notice, making a separate STA for each customer virtually impossible. Transferability of an STA avoids the need to conduct redundant assessments, saving both the industry and the government considerable time and money.

Contract Employees/Management Companies

A serious concern for EAA is the lack of any recognition for management companies and private contractors. As a business expands and travel needs become more complex, it's easy to see how the use of a business aircraft can offer much needed productivity enhancements and time savings. What is not always as easy is finding the talent and technical expertise that ensure the high safety standards embraced by this community. Aircraft management companies and individual contractors allow businesses to retain the technical and management expertise of a company or individual with decades of operational experience. Unfortunately, the proposal makes no allowance for a management company to facilitate execution of an owner's security program. Additionally, contract pilots, flight attendants, and other contractors who provide an indispensible service for business aviation have no clear guidance on how the rule would affect them. While the rule asks whether a pilot's security threat assessment should transfer from company to company, contract pilots are usually not employees of the business they fly for. Failing to include recognition of these vital segments of the business aviation community will cause great harm to businesses that rely heavily on the technical experience, capability and professionalism of contract pilots.

Watch-List Matching

Under the LASP proposal the TSA proposes that all operators of aircraft weighing more than 12,500 pounds must submit each passenger's name to newly created third-party vendors, Watch List Service Providers (WLSPs) for watch list and no-fly list matching. This may be a reasonable requirement for air carrier and charter aviation operations where passengers are largely unknown to the aircraft operator or pilots, but it has absolutely no place in recreational, personal, and business aviation. EAA and its members operate aircraft for business and pleasure and in many instances they are one of the most valuable assets owned by an individual or company. The aircraft are highly regarded assets and in the case of vintage or historically significant aircraft are virtually priceless and irreplaceable. As such, these aircraft are only used to transport specific individuals known to pilot and/or operator. Most of the people who fly in personal and business-use aircraft are repeat passengers who are well known to the individual, company, organization, and flight crew members. In the case of personal aircraft they are most likely family members and close friends. On occasion, these known individuals will bring other passengers along for a flight. However, it is extremely rare that all passengers on a given flight would be unknown to the owner, company, or the flight crew members. As a result, watch list

matching for all passengers is unnecessary from a security standpoint and overly burdensome for private aircraft owners and operators.

While TSA has remained adamant about the importance of watch list matching and hesitant to allow any passenger on a general aviation aircraft without first being vetted, EAA is curious as to how many people on a watch listed have attempted to board general aviation aircraft currently regulated under the Twelve-Five Standard Security Program (TFSSP) and Private Charter Standard Security Program (PCSSP). TSA has to date never been willing to share this information with the aviation industry, but based on feedback from regulated operators, we believe the number to be quite low and likely zero in the five years since implementation of the programs. While TSA would likely claim that these programs serve as a deterrent to anyone on the watch list trying to fly on regulated commercial and charter aircraft and thus that proves the success of the programs, we know from experience that false positive responses come up routinely in the air carrier use of watch lists. EAA maintains that the five-year history with TFSSP and PCSSP should be ample experience to develop a risk-based policy for general aviation aircraft that does not involve watch list matching.

EAA does not agree with the need to conduct background checks and watch list screening on general aviation passengers and crew. However, since the TSA seems intent on implementing flight crew and passenger background screening, we are perplexed that the agency discarded the concept of applying the Secure Flight program currently in development to general aviation operations. The Secure Flight program is about to be rolled out for airline passengers, yet under the LASP proposal TSA intends to create a completely separate and in many respects redundant system including a new group of regulated companies, the WLSPs, to complete the same Secure Flight tasks at the expense of private aircraft owners and operators. EAA does not understand why TSA did not simply propose to expand the Secure Flight programs and protocols to general aviation, thereby saving potentially hundreds of millions of dollars and significant duplication of effort.

EAA maintains that the cost analysis for the WLSPs and the passenger watch list screening presented in the NPRM is fundamentally flawed and vastly understated. It appears from the analysis presented in the LASP proposal that TSA assumes that all operators of general aviation aircraft weighing more than 12,500 pounds use flight planning or tracking services for each flight, that these flight planning and tracking service providers will become WLSPs, and that they will only charge a nominal fee for watch list matching. This is far from the reality of daily flight operations in general aviation. First and foremost, most personal and business aircraft operators do not use these services at all and for the most part those that do use such services employ them predominantly for foreign flights only. Even if these services were routinely used, the proposed accreditation and resource requirements for WLSPs would make it highly unlikely that these companies would provide watch list matching services for the nominal fee estimated by TSA.

In the face of these operational realities, TSA estimates the cost of compliance for each aircraft operator to be $491 per year, despite the fact that TSA is not proposing to establish fee structures for WLSPs. Market forces will clearly require that prices far exceed the pennies per match predicted by TSA. The closest existing real-world example of the actual costs of providing watch list matching services comes from TSA's own fee structure. Under TSA regulations, general aviation passengers wishing to fly into Ronald Reagan Washington National Airport must do so using the DCA Access Standard Security Program (DASSP). Under this program the

TSA itself charges operators a fee of $15 per passenger per flight for watch list vetting. Based on this real-world experience, if we assume a $15 per passenger fee as the sole cost of the program, each operator could receive only 32 passenger checks each year for TSA's estimated $491. However, third-party WLSPs will be in businesses to earn a profit while the federal government is only permitted to recover direct expenses, so it is inevitable that WLSPs will charge a significantly higher fee for the service. If the agency persists in forcing general aviation operators to conduct passenger watch list screening in the face of unanimous public opposition and beyond the authority granted by Congress, the only method that makes economic and administrative sense it to conduct the program through the Secure Flight infrastructure or substantially re-evaluate the economic impact of this proposed requirement.

EAA maintains that the estimated $300,000 startup cost for prospective WLSPs is significantly below the actual cost it would take to stand up such a business. But regardless of the cost, it is difficult to imagine that any business, existing or proposed, would invest in establishing a watch list matching service because there seems to be no relevant role for WLSPs after Secure Flight is fully implemented. The business model has no longevity and would go the way of buggy whips as individual citizens participate in Secure Flight to save the hassle and cost or repeated screening and commercial airport security delays.

One of the areas that TSA has requested feedback on is a proposed requirement to submit names within a minimum timeframe of departure. One of the most important features of general aviation is its flexibility and rapid ability to respond and change plans as necessary. This makes general aviation a unique and important tool in business and a variety of time-sensitive and mission-critical applications including life-saving flights. The only acceptable process for general aviation watch list matching from a timeliness perspective would have to be nearly instantaneous service with no restrictions on when names are submitted to review. Anything less than this would be crippling to many general aviation operations. The point of far greater concern to general aviation operators is the time TSA will take to adjudicate possible watch list matches, not because we anticipate the likelihood of positive hits, but because the government's watch lists are notoriously large and flawed.

An additional concern is for the impact on air ambulance and other time-critical medical operations. TSA has made no provisions or allowances for situations where flight is time-critical or where passenger information may not be available. This can certainly be the case in air ambulance or medical evacuation flights. Both Beechcraft and Lear configure aircraft that would be impacted under this proposal in an air ambulance configuration. EAA is concerned that the proposed LASP could have serious medical or even life-threatening implications for passengers who are either delayed from medical treatment or worse, precluded from flying due to false positive watch list matches. Regardless of how TSA proceeds with watch list matching, Secure Flight, or any other alternative to the existing proposal, provisions need to be made for emergency, medical, or life threatening flights. TSA also needs to give serious consideration to how it will accommodate flights carrying organs for transplant, which have a very short window available to move the organ from the donor to the recipient and which may be across the entire country. There is no time for bureaucratic delays while TSA or its third-party vendors debate whether passengers or flight crews are eligible for flight. We urge TSA to give these flights particular consideration when formulating this or any other security rules impacting personal or business class aircraft.

In summary, EAA is patently opposed to subjecting known passengers such as family, friends, and business associates to any form of watch list screening on personal and business-use aircraft. As we described earlier in our comments, we do not believe that TSA has the authority to impose such requirements on private citizens in their own aircraft, and we believe that even if TSA had the authority that it would be a gross overstepping of the rightful role of government in the lives of private citizens. That being said, we also find significant flaws with the proposed processes and reported cost estimates outlined in the LASP and feel that a complete overhaul would be required before any such system could even be workable for general aviation.

Concerns with the No-Fly List

The proposed LASP heavily depends on the current watch list that flags individual passengers for further security scrutiny or potentially bars them from flying. This watch list and the attendant matching processes have some significant and well-publicized problems that EAA maintains should be addressed before any effort if made to apply it to general aviation aircraft of any weight. In fact there is some question concerning effectiveness of the watch list in principle. Clearly anyone intending to do harm or travel without being noticed is going to change their name and identity to avoid being picked up by the well-known watch list matching process. In addition, more often than not, perfectly innocent and well-meaning American travelers are wrongfully identified as being a danger to flight security. There are many well-publicized instances of individuals who, in addition to being wrongfully identified, cannot remove their names from the list.

In addition, there is a serious question about the constitutionality of the No-Fly list in view of the basic American right to the freedom of movement and travel. Ever since the days of the pioneers, Americans have exercised their freedom to travel and move at will within America. Blocking a law-abiding American from traveling is a serious violation of this fundamental right. Even delaying or harassing an American who is traveling is a violation. EAA's understanding is that this issue is currently being litigated by the ACLU and others. There also needs to be a formal legal process that would allow innocent American citizens to remove their names from the No-Fly list.

Secure Flight

The TSA suggests that the new Secure Flight program might one day be available to LASP general aviation operators and questions how to handle the proposed LASP, watch list service providers, and other elements of the proposal once Secure Flight is up and running. As of October 2008, TSA had completed testing of Secure Flight and a final rule establishing the program had been published in the *Federal Register* making the program available at no charge to commercial air carriers in the very near future. Given that TSA is in the advanced stages of implementing a broad-based program for vetting airline passengers to bypass or expedite security screening, EAA does not understand why the agency would separately propose a seemingly redundant and costly program for general aviation passenger watch list matching that would include a new layer of bureaucracy in the form of third-party commercial WLSPs and security program auditors. If TSA continues on the path of regulating general aviation security against the pervasive will of the community, a similar option as the Secure Flight program should be available to LASP operators and commercial and charter operators such as those subject to the TFSSP to meet any vetting requirements imposed on either private or commercial operators.

Watch List Matching and CBP

EAA fundamentally disagrees with the need to conduct background checks of flight crews and watch list screening of passengers on domestic general aviation flights. However, in the event that TSA continues to move forward with regulation of general aviation, EAA agrees that any watch list matching through the LASP should not be necessary for international flights already required to submit passenger and crew information to the Customs and Border Protection electronic Advanced Passenger Information System. This avoids unnecessary, redundant submissions and processing. Additionally, should TSA move forward with LASP in some form or other, EAA encourages the TSA to add the LASP to the list of recognized programs exempted from the international airspace authorization (waiver) requirements. Although EAA acknowledges this will require a change to the current airspace authorization Notice to Airmen (NOTAM), this step would provide a more seamless process between the TSA, FAA, and CBP, while maintaining an equivalent level of security.

Submission Time

The LASP proposal seeks additional input from industry as to whether TSA should establish a minimum time, prior to a flight, for submission of passenger data to WLSPs. As discussed above, EAA is opposed to the requirement to use a third-party vendor for name matching. However, if such a mandate is placed on LASP operators, EAA does believe that TSA should establish any form of minimum submission deadline. Among the many benefits of general aviation is its ability to travel to many locations and the ability to be flexible with timing and mission. Any security program that interferes with this flexibility or causes undue delays will have a significant adverse impact on general aviation. Part of the criteria for the commercial air carrier Secure Flight program is for TSA to process names in real time. EAA would expect third-party vendors of TSA to conduct watch list matching in real time for general aviation as well. Vendors who do not complete the task quickly enough will simply not be used by operators unless TSA artificially limits the number of vendors so that there is no competition in the marketplace for the best service and all providers are equally slow. One of the primary concerns of this program overall is what would be required to adjudicate any positive watch list hit, how long it would take to resolve, and what the responsibility of the pilot-in-command is to the passenger who is potentially stranded as a result of a disqualifying notification from TSA. The speed with which such conflicts could be resolved is critical.

Master Passenger List

To the extent that any watch-list matching is implemented now or in the future, EAA agrees with the TSA proposal for a master passenger list and believes this is crucial for individuals who regularly fly their family members and friends as well as for companies who routinely fly the same employees, vendors, or customers. Provided TSA moves forward with passenger screening requirements we believe it is imperative that provisions be made to alleviate any burden on repeat passengers. This is one concept in the proposal that acknowledges the differences of general aviation from air carriers by the fact that many personal and business-use aircraft frequently carry repeat passengers, not random or one-time fares as on commercial airlines.

However, it is not clear from the NPRM how a LASP operator would be alerted to a change in a passenger status should a passenger on a master list be subsequently found on a watch list. Without a clear and deliberative process, a general aviation operator could inadvertently

transport an individual who has been unknowingly (and likely erroneously) placed on a watch list while the operator believes they are fully in compliance with LASP requirements. EAA requests that should TSA continue forward with watch-list matching requirements that a detailed process for advising operators of changes to passenger status be included in any final program.

Privacy Notice and Records Retention

EAA is profoundly concerned with the role general aviation aircraft operators and crews are forced into under the LASP as it relates to gathering, processing, submitting, and maintaining passenger and flight crew personal information. We do not believe the federal government should place private citizens in the position of having to gather personal information from their friends, family, and business associates and provide that information to the government. The idea of individual aircraft owners and pilots having to provide privacy notices to their passengers and be held liable for the safe handling of that privacy information borders on the absurd. EAA does not believe that individual citizens should be placed in the position of being agents of the state to monitor other private citizens.

We also do not believe the requirement to maintain that information for three years, as contemplated in the LASP proposal, is reasonable. Anyone who has possession of personal information of other individuals or entities, including gender and date of birth, is responsible and strictly liable for its protection under a variety of laws including but not limited to the Computer Fraud and Abuse Act of 1984, the Electronic Communication and Privacy Act of 1986, and the Identity Theft Assumption and Deterrence Act of 1998. Individual pilots and aircraft owners and the third-party WLSPs would be strictly liable under these laws. EAA maintains that it is not the role of private citizens to be placed into this position by the U.S. government. We are deeply opposed to any requirement that makes our members liable for other citizens' personal information security.

Costs

As stated above, EAA believes the TSA has significantly understated the actual cost of developing and using a watch-list matching program. EAA maintains that if TSA persists in implementing the LASP, TSA should assume responsibility for all watch-list matching through the Secure Flight Program, as it proposes to do with commercial airline passengers. If TSA moves forward with mandated use of watch-list service providers, EAA believes that more specific and accurate cost data needs to be presented to industry for review. EAA's members do not use the flight planning and tracking services that the TSA expects (erroneously, in our opinion) will provide watch-list matching, so, in addition to the actual cost of the matching service itself, this requirement presents a new and very significant per-passenger or per-flight cost to general aviation operators. That cost is not reflected at all in the NPRM or in its related Regulatory Flexibility Analysis. EAA requests the TSA provide detailed per-flight cost estimates for these services, as the fees are a new, and likely significant, cost of compliance for most general aviation operators.

Prohibited Items

The LASP proposal contains a list of more than 80 "prohibited items," many of which are routinely carried aboard personal and business-use aircraft because they are central to the mission of the flight and because the majority of these "large" aircraft do not have dedicated storage or cargo areas in which to house the prohibited items. EAA urges the TSA to acknowledge the different nature of private aircraft operations as unique from commercial air carriers when contemplating the carriage of prohibited items. Many of the aircraft proposed to be regulated under the LASP do not have inaccessible baggage compartments, making compliance with the prohibited items list virtually impossible. The TSA has asked if this requirement should be different for private aircraft operations and the resounding response from the general aviation community is absolutely. EAA strongly urges the agency to apply the prohibited items list to air carrier operations ONLY, and not to personal and business-use aircraft.

It is inconceivable that we as a nation would prohibit our citizens from carrying hunting and sporting equipment, liquids and gels over three ounces, tools, knives, scissors, knitting needles, household chemicals, or any of the other items on the TSA list in their sedans, station wagons, and mini-vans because these vehicles do not have a dedicated storage area inaccessible from the passenger seats. It would not only be impossible, it would be downright silly. Similarly, the application of the prohibited items list to privately owned general aviation aircraft is an unnecessary burden that in many instances would preclude the use of the aircraft entirely while providing no measurable additional security.

Very few aircraft below 100,000 pounds gross weight have external baggage compartments that are not accessible from the interior of the aircraft. Companies and private citizens routinely carry computers, communication and test equipment, tools, parts, products and personal effects that would be prohibited under the proposed LASP rules. Many of the areas general aviation aircraft travel to are remote and not easily accessible by other means of transportation. The flexibility to provide this type of transportation is the fundamental benefit of owning a personal aircraft or having a corporate flight department. The inability to carry such items would have a serious adverse impact on business in this country and would, in many instances, preclude the need for and use of general aviation aircraft, devastating an entire industry.

Finally, and most seriously, the "prohibited items" provisions have serious consequences to those general aviation operations that serve as the only lifeline to citizens in outlying areas. Many farmers and ranchers use aircraft to travel vast distances, often carrying firearms and equipment necessary for their work. General aviation aircraft are often the only means of providing supplies of every description (most of them "prohibited") to villages in Alaska and other remote regions. There is no way these people could survive without general aviation aircraft and there is no way general aviation aircraft could provide for these remote outposts and villages under the LASP proposal in general, but the "prohibited items" provisions in particular. In Alaska, for example, nearly all the provisions carried aboard aircraft would be considered "dangerous" by TSA. Pilots themselves are required to carry readily accessible firearms as part of their survival gear to fend off large wildlife in the course of normal daily operations in remote regions.

TSA's "prohibited items" proposal is illustrative of the larger point that TSA and the LASP fails to recognize or even begin to take into account the real and significant ways that general aviation

differs from the airlines in terms of mission profile or threat risk. The LASP can and will have dire unintended consequences if major changes aren't made.

Security Directives

Under the LASP, the TSA proposes that regulated general aviation aircraft operators be required to comply with Security Directives (SDs). Security Directives are frequently issued to amend or clarify existing regulation or policy, and for this reason SDs are intentionally flexible in nature and readily issued. They also do not require public notification, input, or oversight. However, once an individual or entity is regulated by TSA, compliance with SDs becomes mandatory and carries the weight of law.

EAA is concerned by the recent use of SDs extending to airport operators, where it is being argued that the SDs are in effect creating new regulation and dramatically expanding the scope of TSA authority rather than clarifying existing rules or policies. As of this writing, EAA is actively engaged with TSA on the matter of SD# 1542-04-08F that, unilaterally and without public comment, attempts to expand air carrier sterile area security requirements to the entire airport, including the general aviation sections of the airport outside the 1542 secure zone. Through an internal SD, TSA is attempting to implement a new requirement for background checks, security badges, and personal escort of visitors on general aviation operators outside the traditional secure zone for commercial operators. EAA argues that this is rulemaking by policy, and instances such as this serve as a significant cautionary note to general aviation operators, who in the future would be subject to the whims of the TSA through the issuance of SDs should the LASP program go into effect as proposed.

EAA strongly urges TSA to consider LASP operators as distinct and separate from air carriers. As such, LASP operators should not be subject to the same SDs as Aircraft Operator Standard Security Program (AOSSP) operators. The precedent for separate SDs exists in that today DASSP operators are not subject to AOSSP SDs. If the TSA implements elements of the LASP program in the future, it should similarly issue unique SDs for general aviation operators and do so with considerable restraint. SDs are meant to address immediate, urgent security issues based on current threat analyses. Sweeping changes in policy should only be achieved through rulemaking allowing for public review and comment.

Security Program Audit

Third-Party Oversight

EAA is strongly opposed to the TSA's proposal requiring each LASP operator to undergo a biennial security audit from a third-party vendor. Oversight of a program such as the LASP is an inherently governmental function, and the TSA proposal to delegate that responsibility to a third party is unconscionable. Although the TSA frequently refers to the FAA's designee program when discussing the third-party auditor requirement, the agency misses one vital difference between the proposed program and the FAA program: for all services which an FAA designee is permitted to charge a fee, there is an equal service provided by FAA at no charge. Conversely, the TSA does not propose a no-cost alternative for operators.

The specifics about the proposed audits are not well articulated in the NPRM, leaving important questions to be answered about the scope and requirements for the proposed audits, the fees involved for conducting and complying with the audits, and the timeframe required for each audit. In spite of these questions, it is clear that outsourcing security is contrary to the national philosophy of using federal screeners and the development of Secure Flight.

EAA recognizes the need for oversight of security programs, though we adamantly disagree that any such program is necessary for general aviation aircraft. If TSA persists in implementing security programs for personal and business-use aircraft operators, EAA recommends that operators be able to conduct an internal audit, utilizing a checklist or guidelines provided by the TSA. The operator could maintain the internal audit results until the next audit in order to facilitate oversight through TSA random inspection procedures. It is very notable that no other TSA aviation security program requires payment to a third party for oversight. All other operators, including air carriers that are required to comply with a TSA security program, are subject only to random compliance checks by TSA inspectors.

Fees/Inaccurate Assumptions

The TSA estimates that the average security program compliance audit will cost $2,257. EAA believes this estimate is exceptionally low based on the cost of third-party compliance audits elsewhere in the aviation industry, such as compliance with supplier standards, manufacturing standards, and quality assurance standards, which carry much higher price tags. Of great concern to EAA is the TSA assertion that the security audit requirement "should be easily integrated into most GA operator's existing audit schedules." We are not sure where TSA gets this information because the vast majority of EAA members, and other operators who would be impacted by the LASP, are not currently subject to any audit requirements. The TSA's assumption that most general aviation operators undergo an annual or biennial security audit is entirely incorrect and is another sign that TSA is not aware of the operating environment of general aviation and the absence of fit between the proposed regulations and operational imperatives of personal and business-use aviation. EAA urges the agency reconsider its cost data suggested in the NPRM.

Assignment of Auditors

The TSA seeks input as to whether auditors should be "assigned" to an operator for each audit to ensure consistency and avoid potential conflicts. As discussed above, EAA is strongly opposed to oversight by a third-party audit and believes that any auditing should be performed by TSA inspectors at TSA cost.

In addition, should the third-party auditing be mandated for LASP operators in the future, EAA is opposed to the assignment of auditors. TSA is not proposing to establish or enforce standard pricing for audit services, so prices will likely vary from one auditing organization to another. Forcing an operator to use a particular auditor establishes a monopoly for these services, giving them license to charge unreasonable prices to their "captive customers." It is not uncommon in other auditing professions to prohibit the audited party from using the same auditor for two consecutive audits. Normally it is permissible to use the same auditing firm for consecutive audits, but the individual auditors themselves cannot conduct back to back audits. EAA finds this practice acceptable because it avoids the appearance of impropriety, minimizes the temptation to "play the system," and helps ensure consistency in the application of audit

standards. Again, EAA is opposed to the assignment of auditors to operators by TSA or anyone else.

Security Coordinators

Aircraft Operator Security Coordinator/In-flight Security Coordinator/Ground Security Coordinator

EAA does not believe that the designation of an Aircraft Operator Security Coordinator who would be available to the TSA on a 24-hour basis (or would designate an alternate) is appropriate for private aircraft operations for personal or business use. This is especially true with the TSA proposal to also designate a ground security coordinator (GSC) or in-flight security coordinator (ISC) for private operations. It is critical that the TSA recognize the operational nature of most private 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 would have to perform the functions of all three of these positions. Even in operations with a small fleet of aircraft and several crew members, the nature of private 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. In these instances EAA recommends the roles of the ISC and GSC be combined, and one individual be named to the combined position for each flight. In the vast majority of cases, this individual would likely be the pilot in command. However, none of these positions and titles have much relevance to personal flight operations where the owner and operator are one and the same person.

The TSA is asking the public if there are existing industry practices that would provide a reasonable alternative to designation of an ISC and GSC for each flight. Although the responsibilities of the ISC and GSC are not definitively described in the NPRM or existing regulation, EAA believes the pilot in command of a personal or business aircraft currently holds the responsibility for the safety and security of the flight and thus many of the functions intended to be performed by the ISC and GSC. The pilot in command of a flight should continue to be responsible for those functions, without a requirement for a designated ISC or GSC for private aircraft operations.

The TSA has repeatedly expressed concerns about an inability to know precisely who owns and operates aircraft within the National Airspace System, and the inability to make that determination in real time when an aircraft is entering restricted airspace or otherwise behaving in a manner that is outside the perceived norm. EAA maintains that the solution to this problem rests with the information collected and retained by the FAA in its aircraft and airmen databases. Since TSA routinely queries the FAA database to determine the ownership of aircraft it is tracking, much of the frustration and lack of information derives from the quality and specificity of information collected about aircraft owners. One of the most commonly cited problems by TSA is the instance where a query of the FAA database returns the ownership of the aircraft as a leasing corporation or bank who holds the lien rather than the actual operator of the aircraft. EAA believes this problem could be easily remedied by requiring emergency contact information in the aircraft registration database, including the actual operator of the aircraft and a means of contacting the operator and backup emergency contact. This would give TSA far greater insight into who is operating the aircraft and why it might be behaving the way it is. It would also

provide TSA with a potential avenue for determining who is using the aircraft at a given time should an emergency situation require such inquiry to resolve a problem. Taking these relatively simple long-terms steps would greatly reduce the need for extensive and expensive security programs for general aviation aircraft.

Implementation

Phased approach

EAA believes the likelihood of a significant backlog of pending security programs awaiting approval is very high, given the extremely aggressive implementation schedule outlined in the NPRM. We do not believe that either industry or TSA has the ability to meet this schedule, based on the fact that there is no proposed template or guidance for developing and submitting security programs for either aircraft or airport operators available at the time of this NPRM, so everyone would be starting from scratch. Additionally, under the proposed 49 CFR 1542.105(a), airport operators would need to submit their security programs to TSA for approval at least 90 days before an aircraft operator is anticipated to begin operations under their Part 1544 or 1546 security program. Given that each of the implementation phases is only 120 days in total duration, we do not feel there is any chance that airport and aircraft operators will be able to meet the deadline for submission let alone TSA review, comment, rewrite, and approve the plans unless the program is to be simply a rubber stamp approval of a common template program, in which case the value of the program would come into serious question. Based on the number of aircraft and airport operators cited in the NPRM, EAA recommends that each implementation phase be at least eight to twelve months.

Determination of Legitimacy and CHRC/STA of Related Individuals

The TSA has proposed to determine the "legitimacy" of each business applying for a security program under this NPRM. As we stated earlier in our comments, we do not believe the federal government has any role in determining whether a business or individual is "legitimate" as it relates to whether they would be granted a security program or otherwise be permitted to operate a privately owned aircraft. We question TSA's authority and qualifications to make such a determination. Only a few of the businesses that would require a security program under this proposed rule will be listed in *Dunn & Bradstreet*, as the TSA suggests. And certainly none of the individuals who have the means to purchase and operate an aircraft covered by this proposal will be listed. Aside from questioning TSA's qualifications to judge "legitimacy," EAA wonders how the TSA intends to determine "legitimacy" of an individual or a small company. EAA strongly disagrees that TSA should become the arbiter of who has legitimate reason or need to operate aircraft in this country, and we are deeply opposed to the notion of performing Security Threat Assessments on aircraft owners or proprietors, partners, executives of businesses, and family members as posited but not specifically proposed in the NPRM.

First Aircraft

EAA questions how operators, purchasing their first aircraft, would obtain an LASP approval to take delivery of a new aircraft from the factory or even conduct a used aircraft transaction. TSA did not address whether an operator would need to be in possession of an aircraft before qualifying for the LASP, or if a written statement of intent to purchase an aircraft would be

sufficient. TSA needs to evaluate how aircraft purchase transactions would play out under the LASP proposal, including at what point owners would have to submit fingerprints for flight crew CHRCs and/or STAs. This element of the proposal has not been well thought out or presented to the public.

Program Applicability to Nationality of Operator or Aircraft

The NPRM indicates that the LASP would apply to all U.S. operators of aircraft weighing more than 12,500 pounds, but other elements of the proposal are tied to the registry of the aircraft. 49 CFR Part 1546 is clearly intended for foreign commercial air carriers, as identified by the Department of Transportation. But 49 CFR Part 1544 was originally intended for 14 CFR Part 119 operators, and it is assumed that these air carriers operate U.S. N-registered aircraft. Therefore, the proposed changes to 1544.1 "Applicability - The operations of aircraft operators engaged in any civil operation in an aircraft with MTOW of over 12,500 pounds" is not clear as to who would be subject to the LASP proposal; U.S. operators, U.S. registered aircraft or both. Should TSA move forward with some form of the LASP proposal, EAA recommends that TSA change 49 CFR 1544.1 to specifically indicate the program applies to U.S.-registered aircraft only. The proposed language is not sufficient and will cause significant confusion unless it is modified prior to publication as a final rule. Consider how the existing proposed language might apply to the following examples:

- A non-U.S. citizen or non-U.S. company operating an N-registered aircraft
- A U.S. citizen or U.S. company operating a foreign-registered aircraft
- U.S. citizen living abroad, or a U.S.-based company in a foreign location, operating an N-registered aircraft

The NPRM is not clear whether and how the proposed security program would apply to any of the aforementioned circumstances. This is another example of how the NPRM does not fit the real-world operations characteristics of general aviation.

Unauthorized Persons

The TSA proposes to require all operators to check property on board for unauthorized persons. However, the agency does not explain how operators will comply with this mandate. EAA does not understand what TSA intends by this requirement or how it applies to aircraft in this size category. This seems to show a lack of understanding as to the size and configuration of aircraft less than 100,319 pounds (45,500 kg).

Law Enforcement Contact/Federal Air Marshal

The NPRM proposes that each operator of an aircraft covered by the LASP be required to provide employees (or have in their possession in the case of sole owner/operators) current information for obtaining law enforcement assistance at each location the operator flies. Other than dialing 911 at any airport in the country, this proposed requirement seems impossible. The very nature of general aviation is the flexibility to operate anywhere at any time, meaning an aircraft operator constantly flies to different locations. Beyond dialing 911, EAA does not understand what TSA is trying to propose or require, particularly for flights to areas not served by 911, including rural areas in the continental U.S. and Alaska as well as foreign airports. This

appears to be a significantly flawed requirement that again attempts to overlay scheduled air carrier procedures over the inherently different operating characteristics of general aviation.

The TSA's proposal would also require owners of some airplanes to develop procedures for carrying a federal air marshal (FAM) when told to do so by the TSA. EAA is hard pressed to imagine any instance where it would be necessary, appropriate, or even rational to carry a federal air marshal on a privately owned and operated aircraft. TSA indicates that it would be the responsibility of the aircraft operator to ensure that the FAM could blend in with other passengers, but it does not explain how this could possibly be explained to family, friends, and business associates. Further, EAA does not believe that it is within TSA's authority to require the carriage of armed law enforcement on privately owned and operated aircraft. Without thoroughly examining the legalities of this point, it seems that significant constitutional issues would arise from such a demand without a court order.

The American public would never tolerate a proposal that private automotive vehicles or the proverbial church van be forced to carry armed law enforcement agents at the behest of a federal agency. The outrage expressed by private aircraft owners is no different and no less justified.

Finally, a brief consultation with management of the FAM program indicates they are appalled that TSA would be proposing to put their personnel on private aircraft and that even the federal air marshals do not support this proposal. EAA urges TSA to drop all reference to and plans for requiring the carriage of federal air marshals or other law enforcement agents on personal or business use aircraft. There is little doubt that these requirements would be tested almost immediately in the court system and we do not believe that TSA would prevail under these circumstances.

Airport Operator Concerns

List of Airports

The LASP proposal would require more than 300 general aviation airports to comply with a partial security program. The partial security program is outlined in CFR 49 Part 1542, and would include designation of an airport security coordinator (ASC); description and training of law enforcement officers and agencies; procedures for storing, maintaining, and distributing records; and incident management procedures. EAA's primary concern is for the unintended consequences the airport security programs could have on EAA members and other operators of business and personal-use aircraft. Specifically, EAA is very concerned over the requirement for these airports to comply with SDs. As discussed above in the specific section on SDs, EAA 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.

Applicability

EAA is concerned with the proposed reliance on the FAA designation of reliever airport status as the primary criteria for applying Airport Operator Security Programs (AOSP). There are many reliever airports that do not serve a significant number of large aircraft operations or, for one reason or another, are unsuitable for regular use by large aircraft. Some of the criteria we believe are necessary for an airport to be considered suitable for regular service by large aircraft would

include runways of more than 5,000 feet in length, taxiways and runways that are reinforced to withstand regular service by aircraft with single-wheel weight in excess of 12,500 pounds, and the public availability of Jet A fuel. Rather than applying these sorts of operational considerations to determine which airports would logically support large aircraft service, TSA has adopted the U.S. Department of Transportation designation of reliever airports as the basis for requiring an AOSP.

We maintain that using the reliever airport status as the basis for requiring an ASOP and a "partial" program under 49 CFR Part 1542 is fundamentally flawed. TSA justifies this position stating that reliever airports "…perform the function of relieving congestion at a commercial service airport by diverting G.A. from the commercial services airport to the reliever airport and provide more G.A. access to the overall community." This statement is true as far as it goes but fails to recognize that reliever airports relieve the congestion of small general aviation aircraft at the commercial services airport so that large aircraft have more uncongested access to airport and airspace at the major commercial airports. Based on this, many reliever airports are not designed to handle large aircraft operations. A review of the reliever airports that are not already FAA Part 139 commercial service airports indicates that fully 42 percent of all the airports listed by TSA for security programs lack at least one of the criteria set forth above as necessary to support regular large aircraft operations. Based on this quick analysis, EAA maintains that the use of reliever airport status is not a good measure of whether large aircraft would operate consistently on these airports, if at all. We believe that TSA should use objective standards such as those we list above including runway length, weight bearing capacity, and fuel availability as the basis for determining which airports would require additional security initiatives.

Economic Burden

The NPRM states that "TSA believes that the requirements of the partial program for airport operators would not be burdensome for reliever airports…to adopt or carry out." EAA strongly disagrees. Based on data collected from numerous general aviation airports, TSA's conclusions appear to be based on flawed data. TSA asserts that the LASP would in fact pose an unfunded mandate on aircraft operators (a point that EAA does not dispute) but that there would be no unfunded mandate imposed on airport operators. Just on the surface the basic math does not add up when TSA asserts that the direct cost to the agency of approving and overseeing the airport security programs would be $136 million, while the cost of actually implementing and conducting the programs themselves would only be $5.5 million. If the nation could actually implement new security programs at more than 300 airports throughout the country for less than six million dollars, it is inconceivable that it would cost TSA 22 times that amount to oversee the administration of those programs. Something is terribly flawed in this logic.

The American Association of Airport Executives (AAAE) conducted a survey of more than 90 general aviation airports including 45 of the 273 reliever airports that would be regulated under the NPRM. The AAAE results from the 45 reliever airport operators surveyed showed some significant flaws in the TSA economic impact assumptions:

- 24% permit aircraft operations 24 hours per day but do <u>not</u> have full time staff on hand – TSA assumes that staff is already on hand to perform the airport security coordinator (ASC) duties around the clock.

- 64% report that staff would have to be added to meet the ASC requirements outlined in the NPRM - TSA assumes that existing staff are available to take on the additional ASC duties.
- 22% may have to consider giving up their reliever airport status or ban large aircraft operations – TSA does not take this impact into account at all.
- 15% would either close or consider closing if they cannot meet the requirements – nothing in the regulatory flexibility study accounts for this dramatic impact.
- 88% will pass the cost of all additional security requirements on to tenants and aircraft operators – these costs are not accounted for by TSA for either the airport operators or the aircraft operators to whom the costs would reportedly be passed.
- 60% estimate the annual costs associated with the ASC and "partial" program at more than $40K, many over $200K – these estimates are several orders of magnitude greater than anything TSA projected.
- 71% believe the LASP proposal will not improve airport security!

There is no doubt that the NPRM dramatically underestimates the costs associated with airport compliance with the proposal. Here are a few examples:

- It is estimated that drafting a partial security plan would take at least 40 hours and likely much more for anyone without experience in this area – TSA estimates 8-16 hours.
- The hours spent drafting a security plan is time taken away from other duties that already need to be completed by airport staff; there is no excess personnel capacity necessitating the hiring of additional staff or paying for overtime – TSA does not take this cost into account.
- 22% of reliever airports surveyed estimated the actual cost of drafting the security plan will be more than $10,000 per airport, with the largest GA airports estimating the cost at over $20,000 – this is 10-15times greater than the TSA's projected cost.
- The cost of ASC training for each staff member including travel, overnight lodging, labor cost, and per diem is estimated at between $1,900 and $2,400 per staff member – TSA only assumes eight hours of time at $31 per hour.

The AAAE survey of reliever airports indicated the following based on staff and facility size:

- 11% estimated the cost of ASC training at no more than $2,500.
- 61% estimated the cost of ASC training at between $2,500 and $5,000.
- 15% estimated the cost of ASC training at between $5,000 and $10,000.
- 13% estimated the cost of ASC training at more than $10,000, with many projecting costs in excess of $20,000.

Based on the information gathered by AAAE, EAA does not agree with the TSA assumption that there is no significant impact on airport operators and maintains that the LASP proposal would constitute an unfunded mandate pursuant to the Unfunded Mandate Act of 1995. We urge the TSA to reexamine its cost assumptions across the board but in particular for airport operators, as we see little parity between the TSA projections and the estimated costs by actual operators in the field.

Law Enforcement Involvement/Cost

The NPRM states that "TSA also believes that the requirement for these airports to implement security programs will not place a significant burden on local law enforcement agencies, because TSA expects that there will be few incidents requiring law enforcement response at these airports." EAA strongly disagrees with the TSA assumption that there would be no significant burden on local law enforcement but agrees that there would be few if any calls requiring law enforcement response, drawing into question why TSA would require the extensive and expensive programs in the first place.

Perhaps the most glaring omission of the cost-benefit analysis is the cost associated with the training and duty requirements for law enforcement officers (LEOs). Reliever airports do not employ law enforcement personnel of their own but rather rely on local community law enforcement agencies for support. LEO manpower is a carefully scrutinized expense that is borne by local governments and their citizen taxpayers. The presumption by TSA that a local law enforcement agency has sufficient overhead manpower to be able to absorb additional law enforcement duties at the airport without impacting other duties for which it is already responsible to the community is irrational and unjustified. Many airports report they are required to enter into reimbursement agreements with their local law enforcement agency for LEO support, and this is not accounted for in the LASP proposal at all. EAA maintains that any additional federal burden on local government manpower that is proposed to have long-term impact should receive direct funding for manpower, training, and all travel expenses related to that training.

According to the AAAE survey, many of the airports in Alaska, because of to their remote locations, as well as the busier general aviation airports in the continental U.S. estimate their annual law enforcement officer costs to be in excess of $200,000, while smaller reliever airports estimate the cost between $50,000 and $100,000 annually. This is one of the largest single potential expenses of the LASP proposal, yet it appears that the TSA completely omitted these costs from its economic and regulatory flexibility analyses.

Finally, local law enforcement agencies conduct their duties and training beyond the oversight of airport management and are in no way accountable to reliever airport operators. Therefore, the proposed requirement that airport operators ensure and be legally responsible for the availability and commitment of law enforcement assets to airport security under 49 CFR Part 1542.215(b) is unworkable and unrealistic. EAA urges TSA to reexamine its assumptions on the relationship between airports, their local jurisdictions and sponsors, and the availability and culpability of local enforcement agencies to the airport operators.

Reliever Airport Revenue Estimates

In justifying the costs and benefits of the LASP proposal, the TSA failed to properly calculate the estimated revenues general aviation airports generate on an annual basis. Apparently the TSA employed inaccurate North American Industry Classification System (NAICS) and U.S. Census Bureau data to conclude that the average annual revenue of general aviation airports is $3.8 Million. There is no evidence to indicate that the TSA collected data from individual airports proposed to be regulated, nor did the TSA verify its own estimates against a sample of general aviation airports.

Data from the American Association of Airport Executives indicates that only the largest metropolitan general aviation airports reported numbers equivalent to or exceeding the TSA estimate. The vast majority of reliever airports reported annual gross revenues of less than $1 million, with many reporting revenue of $500,000 or less. Most importantly, gross revenue is not in any way an accurate measure of the fiscal health or financial viability of a general aviation airport. As stand-alone Enterprise Funds, general aviation airports are restricted from making a profit or taking on debt and most receive supplemental funding from their local sponsoring or supporting municipal or county governments in the form of General Fund contributions. It is vitally important to understand the local airport's financial condition, including the ability to absorb potentially significant costs associated with the implementation of the LASP proposal.

TSA does not propose to refund, reimburse or otherwise compensate general aviation airports or aircraft operators for any of the costs proposed under this NPRM. At the same time TSA substantially overestimates the revenue produced by airports to cover these costs. The only available means of absorbing the expenses identified as a result of the LASP proposal is to pass the costs on to general aviation aircraft operators who in the end will bear the entire economic burden associated with TSA security mandates.

Other Airports/Definition of "Regularly Serves"

The list of additional non-reliever airports that would be subject to this rule was not released by TSA until early January, 2009, more than half-way through the extended public comment period and well after the expiration of the original comment period in December 2008. EAA does not understand the criteria on which TSA based its decisions; some of the listed airports have in excess of 300,000 annual enplanements, while others report only a few hundred annual enplanements. The TSA states that the list includes those non-reliever airports that "regularly serve" aircraft weighing more than 100,309 pounds in service for compensation or hire. The TSA then proceeds to seek public input into the definition of what "regularly serves" should mean. There are several conflicting points that immediately become apparent. First, EAA is unclear as to how commercial air carrier operations over 100,309 pounds at a given non-reliever airport have any bearing on or relevance to the proposed LASP for non-commercial aircraft operations over 12,500 pounds because the large commercial operations are already covered under existing TSA full security programs. Second, we are puzzled that TSA would publish a list of airports that "regularly serve" large aircraft operations and then seek public input into what the definition of regularly serve should be. TSA did not present for public consideration the criteria or airport characteristics that were applied to arrive at the list published in January 2009.

As a result of the significantly delayed publication of the affected non-reliever airports, these operators largely have been denied a reasonable opportunity to respond to the NPRM as guaranteed by federal rulemaking procedures. Therefore, EAA recommends the TSA should not apply the LASP airport operator security requirements on any airports until the agency clearly identifies the objective criteria that drive the need for additional security programs at reliever and non-reliever airports alike. As we mentioned in our comments above, 42% of the reliever airports listed by TSA fail to have at least one of the three necessary criteria we identified for regular large aircraft service; runways more than 5,000 feet in length, taxiway and runway reinforcement to support single-wheel weights of more than 12,500 pounds, and the availability of commercially available jet fuel. We anticipate that a significantly larger percentage of the non-reliever airports on the additional TSA list would not meet these criteria for large aircraft

operations and, therefore, it would not be reasonable to subject these airports to additional security requirements.

TSA has not been clear on precisely what its goal is in identifying specific airports for further regulation. If the goal is to apply a partial security program to busy general aviation airports near major metropolitan areas regardless of aircraft operation size criteria, then reliever airports could in fact be logical criteria, though EAA disagrees with the basic assertion of need for any additional security requirements. Operations for compensation or hire in aircraft weighing more than 100,309 pounds must comply with a strict security program, regardless of the airport being flown from. That aircraft operator security program should ensure the security of flight, with no further need for a mandated security program for the airport itself.

Partial Program Details

Training Requirements

If TSA persists with implementation of security programs at reliever and non-reliever airports, EAA recommends that TSA develop a training program for airport security coordinators (ASC) that is distinctly different from the existing AOSC training. Current TSA training is geared toward airport operators with full security programs and is overly detailed for airports operators with partial programs. Presenting too much information in the training setting, much of it Security Sensitive Information (SSI), could actually be detrimental to security, and would tend to encourage airport operators to exceed the intended security parameters and policy intended by TSA. EAA suggests that an online training course be developed that is targeted toward partial program holders. However, in cases where an ASC has already received training for a full program, that training should meet the requirements for the partial program under the LASP.

Implementation

Airports May Be Forced to Violate Federal and State Law

As noted above, the survey of general aviation reliever airports conducted by the American Association of Airport Executives indicated that 22% of the airports concluded that if the airport could not meet the financial requirements of the NPRM, they would consider or be forced to give up the reliever status of the airport or ban the operation of aircraft weighing more than 12,500 pounds. There is no question that such action would constitute a violation of the FAA Federal Airport Grant Assurances or U.S. Commerce laws that guarantee access to those airports. The latter has very significant consequences for airports, including the loss of federal grant funds necessary to maintain these airports.

The inability of some airports to meet the LASP requirements notwithstanding, other airports or their surrounding communities may see the airport security requirements as an opportunity to restrict aircraft weighing more than 12,500 pounds as a means to control aircraft noise or limit airport access to large vintage or historically significant aircraft. While such a ban is still a violation of the Federal Grant Assurances, the specter of communities using security as an excuse to suppress aircraft noise or limit access to certain classes of aircraft looms large and will become a conflict between DHS, DOT/FAA and Commerce if left unresolved.

Special Considerations for Alaskan Airports

The entire LASP proposal presents significant and unique implementation challenges and compliance issues for Alaskan airports and aircraft operators. More than any other place in the U.S., Alaska relies on general aviation as a fundamental mode of transportation and, in many instances, as the only means of moving people and goods necessary for survival. Even within the aviation community, few people fully understand the unique nature of aviation operations in Alaska, and it is evident that the LASP program as proposed cannot work in this environment. EAA itself is not expert in Alaskan aviation operations and airports, so we will be paraphrasing and repeating information gathered from other comments to the docket and State officials to help summarize some of this information.

There are approximately 260 rural airports operated by the Alaska Department of Transportation, scattered over a massive geographic area. These airports are the lifeline for the communities they serve which can range in size from a maximum of 13,000 residents to as few as 15 people. Transportation services are extremely limited and communities depend on aircraft for everything, from food and medicine to mail and building supplies. Even fuel is flown into communities that do not have road access or summer barge service.

A typical non-certificated airport in Alaska has the following characteristics:

- Local population typically of 15-750 people
- No road access
- No local law enforcement agency (state troopers are flown in when needed)
- Gravel runway, sometimes with edge lighting
- No airport staff
- Runways are not monitored
- No facilities or terminal, the only building on the airport might be a storage shed for snow removal equipment
- Snow removal is performed by a contracted individual in the local community
- Few if any based aircraft
- Scheduled passenger service exists via small aircraft such as a Cessna 207, Piper Navajo or Cessna Caravan, and larger aircraft such as a Beech 1900
- Freight and cargo service is provided using small aircraft and occasionally larger aircraft such as a Beech 1900, DC6, DC4, C130, or C46
- Medical evacuation is provided via a Navajo, King Air, or helicopter

Aircraft travel can be very unpredictable and is frequently limited by weather, seasonal flight schedules, and, in many cases, the availability of a charter aircraft to the community. During the winter months, travel to many villages is limited to a couple of times per week for scheduled operations, and almost exclusively during daylight hours in the southern half of the state. The northern half of the state experiences only two or three hours of daylight during the middle of winter, which further restricts travel. Hotel accommodations for travelers are either non-existent or occasionally a ‘bed & breakfast’ type of arrangement can be negotiated through a local family. Most people who travel into rural areas carry coolers with several days of food and other provisions.

The majority of Alaska airports has no staff and is maintained via contracts issued to a resident in the local community. The State of Alaska provides equipment, fuel, and a place to store the equipment; the contractor provides maintenance labor to keep the airport open. Runways are not monitored and maintenance includes snow removal in the winter, grading the runway (the majority of these runways are gravel) in the summer, removing brush and the performance of small repairs, such as replacing runway light bulbs. Any requirement for airport security programs would be enormously costly, provided that qualified and trained personnel could even be found. Security services would likely need to be contracted at great expense because there is no existing staff other than a regional airport manager who has oversight responsibilities for a large number of these rural landing facilities.

Law Enforcement Officer

Only a few of the largest communities have a local police force that could conceivably meet the proposed Law Enforcement Officer (LEO) requirements for these small remote landing facilities. Some of the communities have what is known as a village public safety officer (VPSO), who has received a minimal amount of police training and provides the community with a contact to the Alaska State Troopers. A VPSO only has the authority and ability to detain someone until the Alaska State Troopers can respond by aircraft.

Most villages do not have any police or security assets and rely on phone or radio contact to the nearest State Trooper outpost for police emergencies. In the winter months assistance to a village may take several hours or days, depending on the level of the emergency and the prevailing weather pattern at the time. Providing an LEO that meets the TSA proposed requirements under the LASP is neither a logical or practical solution for a remote Alaskan village airport. Strangers are recognized instantly at these landing facilities and would have to arrive in the village by aircraft under any circumstances. If TSA were to require the presence of an LEO, that person would have to be located, hired, trained, housed, and equipped. Cost estimates for supplying LEOs to a rural Alaska airport starts at about $200,000 per year and increases dramatically depending on the location. This is not feasible for an airport that likely only serves one or two flights per day during the summer, and only two or three flights per week in the winter.

Airport Security Coordinator

As indicated above, village airports in remote Alaska are primarily operated with contractors providing day-to-day maintenance. If an ASC is required at these locations, a contractor would have to be hired and trained to meet those requirements. The cost of providing an ASC to each village would be enormous, and perhaps not even possible because of the extremely small potential work force, the requirement for training, and the ability to be housed near the airport. In its efforts to implement the baggage and passenger screening programs for commercial air carrier service, TSA learned that it is difficult to locate potential staff in the villages that meet the hiring standards and requirements. This situation would be significantly more difficult in trying to hire a local airport security coordinator to develop, approve, and oversee security programs at Alaska airports.

Alaska State Senate Resolution No. 6

To underscore the severity of the impact on aircraft owners and operators as well as airports and landing facilities in Alaska, the Alaska State Senate passed its Resolution No. 6 on February 23, 2009 calling on "the Transportation Security Administration to cease consideration of the proposed rule to require security measures under a Large Aircraft Security Program for general aviation and commercial aircraft having a gross take-off weight of at least 12,500 pounds." The full text of the Senate Resolution is presented in Appendix B of EAA's comments. EAA urges the TSA to reconsider the entire LASP proposal for its impact on Alaskan aviation activities in particular and either dramatically alter the proposal in consultation with pilots, airport operators, and State officials or exempt Alaska entirely from the any additional security requirements.

Issues Beyond the Scope of LASP

Positively Identification of Pilots/Linking Pilots to Aircraft in Flight

EAA has been an active participant in the TSA's discussion of positively identifying pilots with the aircraft they are operating, particularly in real-time when an operation raises security concerns while in flight. No specific measures are discussed in the proposed rule that address this issue and EAA does not believe that this rulemaking activity is the place to pursue the matter further. EAA will continue to work with the TSA to determine reasonable methods of achieving this goal outside of this particular rulemaking.

Summary

EAA and its more than 160,000 members do not question the need for adequate security in the post-9/11 world, and EAA has consistently supported reasonable and effective means of enhancing general aviation security where it could be argued that actual security would be enhanced and that the proposed measure blended well with the unique operational environment of personal and business aviation. EAA believes that in its current form the proposed LASP would not provide measureable increases in the security of non-commercial general aviation operations, while dramatically increasing the economic, social, and civil liberties costs to an unacceptable level. EAA understands the TSA desire to consolidate all security programs -- commercial, charter and private -- under one regulatory umbrella, but EAA does not believe that it is either realistic or necessary to do so.

EAA has identified many elements of the LASP proposal that are either impossible to implement, overly costly, or administratively impractical for general aviation operators and airports, and TSA itself has left many questions unanswered in its own proposal. Finally, EAA maintains that the impact on the privacy and freedoms of individual aircraft owners, pilots, and their families, friends, and business associates is so severe that the intrusion of the federal government into the private lives of U.S. citizens should be soundly called into question. We believe, based on our own analysis and a review of the more than 2,500 written comments to the docket, that the proposed rulemaking is sufficiently flawed that it should be completely withdrawn and other alternatives examined in collaboration with the general aviation community.

On February 4, 2009, EAA, along with three other general aviation associations wrote to Acting TSA Administrator Gale Rossides, formally requesting the implementation of a rulemaking committee to examine general aviation security concerns across the board and develop a collaborative and common-sense program to address legitimate outstanding security vulnerabilities and concerns in a manner consistent with the flexibility and private nature of general aviation operations. EAA and its members are eager to work with TSA to develop reasonable and meaningful security measures where they are actually appropriate for general aviation. EAA has a long and respected history of working collaboratively with government to arrive at mutually agreeable and effective solutions to challenges facing aviation. However, the LASP, as proposed, represents far too many unfeasible mandates, ill-conceived justification, and poorly-accounted-for costs, and as such is not the answer to either TSA's concerns or the operational necessities of general aviation. EAA continues to ask the agency for the opportunity to participate in a negotiated rulemaking effort that would result in a product that could provide an acceptable level of security using a reasonable, common-sense approach. We believe that by working collaboratively with the best minds in the general aviation community and the federal security interests of this nation we can arrive at a program that can meet our mutual needs and ultimately benefit all parties involved.

We thank you for opportunity to provide comments on behalf of our more than 160,000 members and look forward to working with the TSA on this and other future issues impacting general aviation security. Should TSA require additional input or clarification from EAA, please feel free to call on us; we will do everything in our power to be of assistance.

Respectfully,

Tom Poberezny
President

Appendix A
TSA Questions for Further Consideration

TSA Question	Page #	EAA Response
1. Comment on weight threshold of aircraft covered by this proposal.	64792	The aircraft maximum takeoff weight should be 100,319 pounds (45,500 kg). Aircraft below this weight do not pose a systemic threat to infrastructure, the economy, or society. TSA presents no direct threat or vulnerability data to justify a lower weight and the significantly flawed cost-benefit analysis is not sufficient to justify TSA's projected $197 million (EAA projects the actual cost at between $0.9 and $1.9 billion) of which only 10.2% will be covered by TSA and the remainder by the general aviation community. The 9/11 attackers carefully chose the heaviest aircraft with the heaviest fuel loads available for good reason; light aircraft cannot inflict the damage cited as justification for this rule. TSA needs to limit its security initiatives to heavy aircraft shown to have a pattern of use by terrorist organizations and in commercial use where the public unknown to the owners and flight crews have access to them.
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.	64795	It is highly unlikely that TSA, operators, and airports would be able to meet the proposed aggressive implementation plan. Airport operators would have to submit their security plans for approval 90 days before any aircraft operator begins operations under a security program. Since each of the six phases of implementation is only 120 days long it is very likely that there will be a significant backlog in application approvals. Given that there are no ready training available or "off-the-shelf" security programs to serve as templates, EAA does not believe that this program could be implemented in nearly the time allotted by the proposal. A minimum of eight months should be allotted for each implementation phase.
3. Comment on whether the Security Threat Assessment (STA) should be transferable so that the flight crewmember would need to undergo only one STA every 5 years, regardless of the number of employers the flight crewmembers may have within the 5-year period.	64796	STAs are based on the credentials of an individual and have nothing to do with their employer or what aircraft they operate. Should any portion of this proposal be implemented, STAs should be fully portable by the individual and transferrable between places of employment or other forms of operators in the same manner as any other Transportation Worker Identification Credential (TWIC). With regard to duration, once and STA is conducted, TSA has the database of personnel with which to continually review or otherwise cross-match individuals with threat and watch list databases. There should be no need for periodic update of the assessment or credential. If TSA determines that period update is necessary the interval should be no more frequent than ten years. Above all though, EAA does not believe there is a need for an STA beyond the cross checking of the FAA airman database that is already occurring.

4. Comment and recommended methods for positively identifying pilots and effectively linking them to the aircraft they are operating.	64796	Government issued photo IDs are sufficient for identifying pilots. EAA has been recommending that FAA issue photo ID pilot certificates for years and continues to do so. Implementing a system of linking pilot to particular aircraft is not relevant since most pilots fly multiple aircraft and would not be an effective use of limited resources. The degree that TSA continues to express concern over ownership of an aircraft EAA recommends that TSA coordinate with FAA to obtain more useful contact information through the aircraft ownership and registration processes so that PO boxes and leasing companies are not the sole information provided. Security contact information would be an acceptable data point for collection by the FAA.
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?	64797	EAA does not believe there should be a role for WLSPs in the first place and that TSA either needs to make the watch list available to operators it intends to regulate or conduct the watch list matching internally within government. We are extremely concerned about the cost and privacy implications of having commercial services conducting examinations of extremely private information. Whether Secure Flight is implemented or not, WLSPs would continue to have strict liability for the privacy of information gathered under the Computer Fraud and Abuse Act of 1984, the Electronic Communication Act of 1986, the Identity Theft Assumption and Deterrence Act of 1998 and many other applicable laws. Unlawful release of personal information, intentional or unintentional, would subject WLSPs serious consequences under criminal and civil law. For this reason we do not see flight planning and tracking services engaging in WLSP duties as projected by TSA.
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.	64798	EAA is very concerned that this could lead to identify theft and that watch list matching of private citizens in their own personal conveyances is a significant breach of civil liberties. Further entities having possession of personal information, including gender and date of birth, must bear full responsibility and strict liability for its protection under the laws stated in Question #5 above. WLSPs must not be afforded immunity or exclusion from this responsibility under any federal shields such as the SAFETY Act because personal information submitted to WLSPs does not constitute any form of "technology" but rather is personal identification/privacy information.
7. Comment on whether it 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.	64798	Response and conflict resolution time is critical to the impact any watch list screening program would have on general aviation operations, particularly those with medical or life-threatening implications. Response and resolution times need to be as short as possible. However, personal and business use aircraft operate in many areas of the country that have poor or non-existent telephone and data access; after all, this is the essence of the utility of general aviation. EAA does not see watch list matching as either relevant to general aviation operations or workable in many instances regardless of response times. Regardless, TSA must make every effort to accommodate the inherent flexibility of general aviation in real time regardless of data or phone access so as not to impact the utility of general aviation.

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.	34799	Any aircraft operator that already has an approved security program should be able to use whatever means is most economical and efficient available to them including Secure Flight. There is no sense in forcing operators to either duplicate efforts or engage in a process that is more expensive or burdensome than another.
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.	64799	This lies at the very heart of the problems with the LASP proposal as it relates to private aircraft owners and operators. Private individuals should not be held responsible for giving privacy notices to passengers in their personal aircraft nor should they be held liable for the maintenance of that privacy in the chain of custody. It is absurd to think of private individuals having to ask for, maintain, and be liable for breach of privacy for family, friends, and business associates carried on board personal aircraft. Private citizens should not be placed in the position of having to gather, transmit, retain, or otherwise be liable for the security of other private citizen's personal information.
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.	64799	No personal or privacy related information should be retained beyond the duration of the flight. There should be no record retention requirements for WLSPs or aircraft operators as this is a serious risk to privacy and exposes anyone flying on a large aircraft identity theft concerns.
11. TSA is considering requiring large aircraft operators and watch list service providers to retain passenger information for pax 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.	64799	The risk of maintaining personal information for a 3-year period is not justified by the stated benefits. Individuals and businesses having possession of personal information would be responsible and liable for its protection under a variety of federal statutes. In the case of a business there is a risk of violating the Equal Opportunity laws because a refusal of flight based upon TSA watch lists is neither an arrest nor conviction. An inability to fly based on a TSA direction would be viewed as a disability subject to section 503 of the Rehabilitation Act of 1973. Therefore, retention of this information constitutes a risk to the protection of human resources information that exceeds the ability of corporate flight departments and aircraft operators.
12. Comment 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.	64800	This seems redundant to EAA. If TSA plans to take the matching activity back in house at some point in the future such as through Secure Flight then passing the information both ways through the WLSPs just an added third party providing no additional value. Further, retaining a commercial third party just opens the door to privacy issues and potential for identity theft. If it is the intent of the TSA to ensure protection of the watch list data then this activity should remain within the TSA or elsewhere in the federal government.

13. Comment on whether maintaining the watch list matching service providers may reduce the costs associated with a transition to the Secure Flight Program.	64800	In theory the cost of watch list matching could be reduced if commercial providers were permitted to compete in the marketplace freely. However, it is our experience with government programs like this that there is usually a small number of approved providers who tend to drive costs in a monopolistic manner without the benefit of open market forces.
14. Comment on whether to include a system of assigning auditors in the final rule and on methods of doing so.	64800	Assigning auditors leaves the operator at the mercy and whim of the schedule and fee structure of TSA mandated service providers. There is no incentive for auditors to perform economically or in a timely manner if the auditor is assigned specific operators and the operator has no choice but to work the auditor regardless of their cost and quality. This has no place in any TSA proposal regardless of whether it involves private or commercial aviation.
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.	64800	EAA is puzzled that TSA would even ask this question. If an operator is already covered under the existing security programs for commercial operators we see no reason why they should have to be subjected to any additional or redundant requirements.
16. Comment on large aircraft operators that are not carrying persons or property for compensation or hire —should "weapons" be limited to guns and firearms.	64800	There should be no limitations concerning weapons or any other prohibited item on private aircraft. TSA has no place regulating what aircraft owners/operators or their invited passengers bring on board an aircraft. There are many tools, sporting and camping goods, as well as firearms that would be banned under the LASP proposal that are part of everyday flight on personal and business aircraft. What TSA perceives as a weapon is also survival gear. The determination of what is a weapon and what is survival gear must be left to the Pilot-in-command in accordance with 14 CFR Part 91.3(a).
16A. 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?	64801	Our view is that nothing in the LASP should apply to any aircraft under a maximum gross takeoff weight of 45,500 kg (100,319 pounds). Aircraft over this weight are capable of carrying firearms and other equipment in a separate cargo or baggage compartment unlike smaller aircraft, so these requirements are not a onerous or prohibitive for aircraft over 45,500 kg. However, EAA still maintains that owners of personal and business use aircraft know their passengers and that security of the items they bring aboard is not a serious consideration.
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.	64801	The idea of an aircraft operator security coordinator is nothing but a feel-good requirement in the instance of personal use aircraft. In these instances the pilot and owner are one in the same and having a security coordinator just adds to the bureaucracy and administrative burden for that owner/pilot. That individual is going to behave the same way regardless of what title is bestowed upon him or her. Education is the key to any enhancement of security in general aviation and the credibility of the security agency overseeing general aviation is critical to whether pilots and aircraft owners will pay any attention in real sense to enhanced security requirements. The TSA is losing its credibility and legitimacy with this community through the LASP proposal and thus real security will be hurt.

18. Comment on the use of a single individual for multiple security coordinator roles.	64801	Given that this proposal is going to impact personally owned and operated aircraft there would be no choice but to have a single person acting in multiple roles because there is only one person to do all of the proposed tasks under the LASP. This is the very basis of opposition to the administrative burden of the LASP as it relates to personal and business use aircraft. It is not enhancing security in any meaningful way but it is adding a massive and expensive administrative practice over what is already a secure operation and typically there is only one person to do it.
19. Comment on whether other types of airports should also be required to adopt a security program, such as the partial program.	64804	Security at selected airports should be based on the specific capabilities of the airport, the presence of commercial air carrier service holding out to public, the operation of genuinely "large" aircraft over 45,500 kg, and not simply the designation of the airport as a "reliever" facility by FAA. Nearly half of the airports already identified by TSA as "reliever" airports requiring a security program makes no operational sense in that they cannot handle truly large aircraft either because the runway is too short or not sufficiently reinforced to handle the weight of genuinely large aircraft or there is no Jet A fuel available on the airport to support operations there. With nearly half the existing list of affected airports not needing the proposed security programs in the first place, EAA sees no reason to expend even partial programs to additional airports.
20. How should TSA determine whether an airport "regularly serves" a large aircraft with MTWO of over 45,500 kg or a passenger seat configuration of 61 seats or more?	64804	An airport should have at least an average of one takeoff and landing per day of an aircraft over 45,500 kg or a passenger seat configuration (actually carrying passengers, not maintenance flights or manufacturing facilities) before it could be considered to be "regularly serving" large aircraft.
21. Comment on whether the content requirements of the partial program and the supporting program should be amended.	64804	This entire proposal for partial and supporting security programs demonstrates a substantial lack of understanding of general aviation airports and their operations by TSA. The "partial" airport security program constitutes a significant unfunded mandate on local communities with general aviation airports. These airport operators have no local law enforcement oversight capability and thus the requirement s of 49 CFR 1542.215(b) and 1542.217 are beyond the capability or scope responsibility of airports without scheduled commercial passenger service. EAA maintains that these programs have no place at general aviation airports but should TSA implement any form of partial or supplemental program, it should be the responsibility of TSA to coordinate and conduct approval activities directly with local law enforcement agencies and fund any training and administrative expenses incurred by local law enforcement agencies in complying with these mandates. If TSA continues to require Airports Security Coordinator and Aircraft Operator Security Coordinator programs in the face of unanimous public opposition, EAA maintains that the initial and periodic training must be provided and funded by TSA in each Federal Security Director region. This training must be made available on multiple dates each year so that the schedules of airport and aircraft operators can be accommodated.

22. Comment 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.	64806	Auditors would be mandated by the federal government in this instance and as such should follow the Equal Employment Opportunity Act in the same manner as any other federally mandated position. This is the purview of the U.S. Department of Labor and not the TSA.
23. Comment on auditor qualifications as well as other requirements that TSA should consider for auditors of LASP.	64808	Anyone auditing aviation security programs should above all be an expert in general aviation operations and also possess a credible level of knowledge in the area of security. Minimum qualifications should include a commercial pilot certificate and five years of federal, state or local law enforcement experience and the auditors should themselves be certified as an Airport or Aircraft Operator Security Coordinator by TSA or a credible source. For any security program to have credibility with the regulated community, the auditors need to have a background that gives them the knowledge to fully understand the imperatives of general aviation personal and corporate flight operations.
24. Comment on whether it should require certain individuals with the aircraft owner company to undergo a STA.	64810	EAA disagrees that general aviation operations require any form of Security Threat Assessment but if TSA moves forward with any such requirement we believe that requiring an assessment on anyone other than the immediate flight crew is a gross invasion of privacy that is unjustified by any security benefit and potentially unconstitutional.
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.	64811	The only person who holds the responsibility for the safe conduct of a flight is the pilot-in-command of that flight. EAA does not agree with TSA that personal and business aviation operations require any of the security requirements outlined in the LASP, however, in the instance that TSA continues to implement security regulation of general aviation, we do not believe that they should impact anyone beyond the PIC.
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.	64813	TSA should not limit the number of businesses that support TSA functions. Doing so would compromise any positive economic impact of the free-market and competition. It should also be noted that any restrictions that were placed on the number of service providers would likely be a breach of the Federal Acquisition Regulations, which TSA is required to follow along with all other federal agencies. EAA does not believe that TSA will need to limit the number because we do not anticipate that there will be many companies lining up to provide watch list matching services at a price that the market will bear.
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	64813	As previously stated, watch list service provider personnel should be hired based on the current requirements of the Equal Opportunity Employment Act as enforced by the U.S. Department of Labor for federally mandated positions.
28. Comment on which standards and controls in the NIST Special Publication 800-53 should apply to watch list service providers systems.	64814	EAA is not qualified to comment on the efficacy of personal information technologies and protection. It is, however, a fundamental requirement that any and all personal and privacy related information be kept in the strictest confidence and all parties protected from privacy invasion or identity theft.

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	64821	EAA does not believe that TSA will have the capacity to adequately evaluate information submitted from the general aviation community as layer upon layer of outside vendors, service providers, and auditors are added. We do not see that TSA will make any practical use of the information.
30. Comments to enhance the quality, utility and clarity of the information to be collected	64821	The quality of the information is a direct function of the quality of the collecting agencies themselves. The clarity of the information has everything to do with how it is input and categorized again by the collecting agencies. Neither of these is dependent on the information itself. However, the utility of the information is highly suspect because that depends on TSA's ability to interpret and take action upon the information. Under the LASP proposal TSA is expanding its reach or span of control over a whole new industry that it obviously does not have the resources to oversee itself. So the addition of service providers and auditors becomes crucial to TSA's ability to regulate this community at all. It would appear that there is insufficient manpower within TSA to regulate the general aviation community, which to us means that it is not a high enough priority to warrant TSA budget and personnel. To us that means the utility of the information is not sufficient to warrant TSA attention and oversight regardless of enhancements to the information itself.
31. 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	64821	Collection burden is going to relate to the volume of information TSA demands and the availability of the means by which to transmit and receive information and responses. The issue of information volume can be dramatically reduced by limiting the interaction and information to the pilot-in-command, who is responsible for the safety of the flight. Information flow should be as narrow as possible. However, the means of communicating that limited information must be a broad and readily available as possible because many airports are remote and unstaffed and do not have voice communications and data transmission ability. TSA needs to be sure that whatever is required can be universally accomplished by a pilot anywhere in the country without restriction of the impact on general aviation is unacceptable.
32. Comments on whether the proposed rule would have a significant economic impact on a substantial number of newly regulated aircraft operators	64835	The ability to assess the economic impact of the LASP proposal is hampered to the point of being virtually impossible because TSA has not published, and does not intend to publish, the LASP template that is mentioned in the NPRM until the final rule is published. It is this referenced template that TSA uses as the basis for its Aircraft Operator Security Coordinator tasks and manpower impact. Without this document it is impossible for industry to dispute or validate any of the economic data presented in the NPRM. Based on costs associated with existing full security programs EAA is quite certain that TSA has vastly understated the economic impact but without the underlying assumptions it is impossible to respond to even a rough order of magnitude to the actual costs of the program. The lack of underlying assumptions used by TSA to justify and LASP greatly minimizes the point behind public review and comment.

33. Comments on whether a self-assessment tool should be mandatory but has not set it forth as a requirement under the proposed rule.	64835	EAA believes that self-assessment would be a waste of operator and airport time and money because everything in the LASP indicates that TSA would not rely on the results of any self-assessment. It appears from what TSA has proposed to date that there would be a requirement for yet another independent assessment or audit, making the self-assessment redundant. If TSA would actually honor self-assessments then it would be a fair approach but we see nothing to indicate that TSA is prepared to undertake voluntary efforts by industry; if that were the case there would be no LASP proposal.
34. Comment on preliminary conclusion that airport rules would not impose a significant economic impact.	64837	The ability to comment on the economic impact is almost impossible given the fact that TSA has not made the Airport Operator Security Program template available for public review. Without this we can neither validate nor refute TSAs cost assumptions. However, it is very clear that TSA has not considered the cost to airports or law enforcement training and involvement or the staff necessary to maintain 24/7 oversight of the proposed airport security programs. Regardless of the actual content of the programs, it is clear that it will present a significant unfunded mandate on general aviation airports and the communities that support them. As noted in the body of our comments, it will cause some airports to close, others to change their "reliever" status, and still others to place limitations on the types of operations they permit. This is entirely unacceptable given the minimal impact these actions will have on national security as a whole.
35. 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.	64837	We repeat our comments to question #41 above with the additional caveat that the smaller the airport and the community it serves the more severe the economic and manpower impact is and the more likely it is that the community will withdraw support for the airport which in many instances is precarious in the first place.
36. Comments on use of TSA inspectors to conduct audits	64837	From our perspective, TSA wants to retain only the regulatory and approval role in general aviation operations and airport security while remaining entirely removed from the operational challenges and issues posed by the rules on the affected community by farming out (at industry expense) the oversight and operational compliance to third-party commercial vendors. Obviously, this is because Congress has neither authorized TSA to regulate general aviation nor provided the budgetary and manpower resources to do the job. The total lack of first-hand experience and empathy for those airports and operators who would be regulated under the LASP proposal would lead (and already has lead) to the distrust of the agency and thus undermine the legitimacy of the regulator in the eyes of the regulated. There is no question that TSA staff should be involved directly in any general aviation security processes including audits otherwise there is no accountability in the system from the perspective of the regulated parties. If general aviation security is truly a significantly high enough national priority then TSA should seek the funding and staffing from Congress necessary to fully administer the program in-house.

37. Comments on TSA's no determination of significant economic impact on small entities	64839	EAA maintains that the LAPS rule will have significant impact on aircraft operators and airport sponsors and operators and that the rule constitutes a significant unfunded mandate. We would like to refer TSA to the body of our comments above and particularly to the regulatory flexibility analysis and comments to the docket by Congressman Sam Graves whose staff has vast experience with regulatory flexibility matters. TSA has vastly understated the costs to individuals, airports, and businesses both direct and indirect and overstated the benefits of the rule by orders of magnitude.

Appendix B
ALASKA STATE SENATE RESOLUTION NO. 6
February 23, 2009

Opposing a rule proposed by the Transportation Security Administration that would require certain security measures under a Large Aircraft Security Program for general aviation and commercial aircraft with a gross take-off weight of 12,500 pounds or more.

BE IT RESOLVED BY THE SENATE:

WHEREAS the federal Transportation Security Administration has proposed a new rule that would establish a Large Aircraft Security Program for general aviation and commercial aircraft larger than 12,500 pounds gross take-off weight, requiring aircraft owners to implement the same security measures used on commercial passenger and air cargo aircraft operating in the United States; and

WHEREAS the rule would require pilots and mechanics to undergo criminal background checks; and

WHEREAS the rule would require pilots to check the passengers on a flight against the federal "no fly" list before departure; and

WHEREAS, under the rule, some flights would, at the discretion of the Transportation Security Administration, require a federal air marshal to fly with them; and

WHEREAS the rule would require flights using aircraft covered by the rule to be approved by the Transportation Security Administration before departure; and

WHEREAS the rule assigns the same level of threat potential to business and personal airplanes that are in the transport category as to airliners, although even small airliners, such as the Boeing 737, weigh more than 100,000 pounds; and

WHEREAS the arbitrary threshold of 12,500 pounds would include a Beech King Air 350 turboprop, which has a gross take-off weight of 15,000 pounds, but not the King Air 200, which has a maximum weight of 12,500 pounds, causing many aircraft owners and operators to fear that the Transportation Security Administration would soon extend the rule to even smaller aircraft; and

WHEREAS the proposed rule would impose a financial hardship on private and commercial aircraft owners and pilots, as well as on airports that serve aircraft covered by the rule; and

WHEREAS the cost of conforming to the rule would be exorbitant and would likely cause many small air carriers and private aircraft owners to stop flying; and

WHEREAS the Department of Transportation and Public Facilities estimates it would cost up to $400,000 to upgrade each affected airport, including Aniak, Dutch Harbor, Galena, Merrill Field and Lake Hood in Anchorage, Palmer, Kenai, and Unalakleet, among others; and

WHEREAS aircraft operators would not be able to use airports that require upgrading until the changes are made, requiring them to move airplanes and operations to other airports to continue operating; and

WHEREAS Alaskans are more reliant on air travel than any other state's population, and the proposed rule would have an immediate negative effect on air travel; and

WHEREAS the Transportation Security Administration's own estimate is that the new rule would cost $1,900,000,000 to secure 10,000 aircraft nationwide, more than 80 percent of the cost of which would be borne directly by the aircraft owners; and

WHEREAS more than 100 aircraft in Alaska, operated by 25 separate owners, would be immediately affected by the rule; and

WHEREAS the proposed rule is in direct conflict with AS 02.35.110, which requires pilots in Alaska to fly with certain emergency and survival equipment on board that would be prohibited by the Transportation Security Administration; and

WHEREAS the Transportation Security Administration is accepting public comments on the proposed rule until February 27, 2009;

BE IT RESOLVED that the Senate requests the Transportation Security Administration to cease consideration of the proposed rule to require security measures under a Large Aircraft Security Program for general aviation and commercial aircraft having a gross take-off weight of at least 12,500 pounds.

COPIES of this resolution shall be sent to the Honorable Barack Obama, President of the United States; the Honorable Janet A. Napolitano, United States Secretary of Homeland Security; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.