Large-aircraft NPRM raises more questions than answers

by Matt Thurber

The Transportation Security Administration was scheduled to publish in the Federal Register late last month a proposed set of regulations that, if enacted, will ground every general aviation aircraft with a maximum certified takeoff weight of more than 12,500 pounds. There will be only one way that the nearly 10,000 aircraft operators affected by these rules can receive permission to fly: comply with the new Large Aircraft Security Program (LASP) regulations. Comments on the proposed regulations are due by next month. To view and comment on the proposal, see www.tsa.gov/assets/pdf/nprm_lasp.pdf.

An operator who flies a Cessna Citation CJ2+ with a maximum certified takeoff weight of 12,500 pounds would not need to comply with the proposed new security regulations. One who operates a Citation II with an mtow of 13,500 pounds would be ensured by a complex array of you’d-better-not-break’em regulations that will add yet more costs to the operation, complicate every single flight and quite possibly persuade the aircraft’s owner that flying on the airlines isn’t so bad after all.

“Many GA aircraft....could be used to commit a terrorist act. This portion of the aviation industry may be vulnerable to exploitation by terrorists.” —TSA LASP

Helicopters would not be exempt from this notice of proposed rulemaking (NPRM). The notice consistently uses the word “aircraft,” and the TSA doesn’t mention helicopters, so therefore the rules would apply to heavy rotorcraft such as the AgustaWestland AW139 or Sikorsky S-92, but not the 11,700-pound Sikorsky S-76C++. There is also an airport component to these regulations, requiring 315 airports to implement a security program. Here’s what you could not do if the rules became law:

• Fly your spouse or children in your single-pilot Citation S/II without first having them cleared against the TSA’s watch list.

• Fly your boss to a business meeting in the company Hawker 800 without having him or her cleared against the watch list.

• Fly yourself in your own Super King Air 300 without having your in-house security coordinator (it could be you) check the airplane for stowaways.

• Fly yourself in your own single-pilot Premier IA without getting yourself vetted with a fingerprint and criminal-history records check.

The NPRM is specific and clear about what owners and operators of general aviation aircraft weighing more than 12,500 pounds must do once the rules take effect. To fly any Part 91 flight in any aircraft with an mtow of more than 12,500 pounds, the...
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At its most basic level," said AOPA's Gemignani, "what we're essentially saying is that 'one size fits all. If we've got this standard for commercial aviation, we the TSA now think that it ought to apply to everybody just because of the size of the airplane, not because of how it's operated.' The FAA doesn't regulate that way and, up to this point, the TSA hasn't regulated that way either."

"They were pretty clear as far back as 2004, 2005 when they did a risk assessment on general aviation," said GAMA's Hennig, "the larger aircraft are the ones that they're more concerned about because of the ability to transport things and also from the basic perspective of mass and velocity and what you can do with an aircraft."

There is one positive aspect to this NPRM: the TSA published the proposed rule with a comment period instead of imposing it on the industry as it has done with previous rulemakings. Many of the alphabets agree that the 60-day comment period is too short and they are asking the TSA to extend it.

What we told the TSA, in unison with AOPA and Airport Watch. Whatever the FAA does, it will have a significant impact on our industry, and there will certainly be

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**TSA's Mandate**

**What is the TSA's mission?**

"The Transportation Security Administration protects the nation's transportation systems to ensure freedom of movement for people and commerce."

**What is the TSA's general aviation mission?**

"To reduce the security risks and vulnerabilities associated with general aviation operations through a threat-based, risk management approach."

**Does the TSA understand general aviation?**

"We work closely with the 17 associations that make up the General Aviation Coalition to ensure security mandates are based on threat analysis and risk management, balanced with common sense. We recognize that one-size-security does not fit all, and that different solutions are required for different environments and different classes of operators."

**Why is the TSA targeting general aviation?**

"The objective of the proposed rule is to strengthen the security of civil aviation."

**How many operators currently must comply with TSA security programs?**

- Twelve-Five Standard Security Program: 6,749
- All-cargo Twelve-Five Standard Security Program: 46
- Private Charter Standard Security Program: 77

**What is the compliance schedule?**

- Phase 1, Mid-Atlantic region—one to four months after the effective date of the final rule.
- Phase 2, Northeast region—five to eight months.
- Phase 3, Southern region—nine to 12 months.
- Phase 4, Midwest region—13 to 16 months.
- Phase 5, Western region—17 to 20 months.
- Phase 6, Existing security program holders—21 to 24 months.

Source: TSA

**NPRM Treats U.S. and non-U.S. Pilots Differently**

This TSA NPRM could have a profound effect on the American pilots who fly aircraft with an mtow of more than 12,500 pounds. Here's what it includes: "GA aircraft operators would be required to...ensure that their flight crewmembers have undergone a fingerprint-based criminal history records check." Suddenly, American "large aircraft" pilots are in the TSA's sights. What's the purpose of the criminal-history records check? Is someone with a criminal history who has already been punished and paid his debt to society now considered a threat to national security? One question the NPRM does not answer is what type of criminal history the agency will regard as unacceptable for pilots, thereby ending their flying careers. Is bank robbery a no-no but corporate fraud OK? The proposed rule also doesn't mention non-U.S. pilots. Every day, foreign private aircraft fly into the U.S. for these aircraft—as for U.S.-registered aircraft, even on domestic flights—the TSA must receive details about all passengers before approving their flight. But there's no requirement for non-U.S. pilots to be fingerprinted or to provide criminal history data. It is unclear whether this omission was a bureaucratic oversight at the TSA or the agency's recognition that in certain parts of the world criminal records are "unavailable."

This is not to criticize non-U.S. pilots. But it is certainly critical of the mentality behind the TSA's NPRM. For example, what's the damage potential of an explosives-packed 18-wheeler driven into a high-value target versus a medium twin attempting a repeat of 9/11? And which is the easier enforcement target, with better public-relations spin for the TSA—the criminal histories of truck drivers, or those of fat-cater business jet pilots? —John Sheridan

"I've been seeing this coming over the horizon now for about 18 months," agreed Andy Cebula, executive vice president for government affairs at AOPA.

NBAA president Ed Bolen added, "We know it's been in the gestation process for two or three years." And for all that time, NBAA staff members have been assuming that the TSA was going to do something to tighten security on general aviation operations, as it has already done for operators of large charter aircraft and the airlines. After 9/11, the NBAA formed a security council that works on security issues.

"The FAA has made that decision and is pursuing it has been well known and well understood," said Bolen. "The real frustration is after all that time spent talking about it and us trying to explain business aviation and general aviation to them, after having worked with them on airport vulnerabilities, and all the dialog we had with the general aviation coalition, we now get a 260-page rule that doesn't seem to reflect how Part 91 operations really work, who they are and why they're so fundamentally different from a commercial operation."

"Business aviation takes a backseat to nobody in terms of commitment to security," Bolen emphasized. "We've participated in numerous voluntary programs and we tried to work with the TSA, whether on general aviation airport guidelines or suspicious financing or promotion with AOPA and Airport Watch. Whatever it is, we think we have clearly demonstrated our community's commitment to business aviation security."

"This is a 260-page document that appears not to appreciate that this is a private mode of transportation, not commercial carriage of the general public. As a general rule, it has a number of things that might be appropriate if you are carrying people you don't know but doesn't really make sense in terms of the way business aviation clearly operates."

"At its most basic level," said AOPA's Gemignani, "what we're essentially saying is that 'one size fits all. If we've got this standard for commercial aviation, we the TSA now think that it ought to apply to everybody just because of the size of the airplane, not because of how it's operated.' The FAA doesn't regulate that way and, up to this point, the TSA hasn't regulated that way either."
But, added Eric Byer, NATA’s vice president of government and industry affairs, “The biggest issue we still have is the selectee list (part of the terrorist screening program).” Even if the rule is imposed, the TSA doesn’t grant any new capabilities to general aviation operators, such as easier access to Reagan Washington National Airport or inside TFRs around sporting or security-sensitive events. NATA does have suggestions for improving the LASP, including possibly raising the weight threshold; concern about the requirement to pay for audits by third parties instead of free TSA audits; questions about the implementation schedule being too ambitious; and the need for clarity in owner/management relationships for managed aircraft. NATA opposes the TSA proposal in two areas. First, the association suggested deleting the FBI background check for owner-pilots and eliminating the use of the selectee list (part of the terrorist screening program)."

Benefits of the Proposal

A fundamental question begs to be asked in this whole TSA LASP exercise: does the rulemaking itself make any sense? The TSA thinks so, and so does the 9/11 Commission, which asserted that “major vulnerabilities still exist” in general aviation.

But this leads to other questions that must be asked to satisfy those with the power to regulate aviation: is it a prudent use of scarce resources to regulate the security of non-commercially flown aircraft weighing more than 12,500 pounds? Should the pilot of a privately owned aircraft be fingerprinted and assessed as a threat by the government? Should corporate travelers be checked against a government watch list before they can fly on their own family aircraft? Should owner’s spouse and children be regarded as suspicious simply because their aircraft weighs more than 12,500 pounds?

Reading the LASP NPRM, it’s clear that the TSA has gone out of its way to solicit comment from the public about the proposed rules. After discussion of almost every aspect of the rulemaking, the agency invites comments on each specific element of the proposal.

However, the TSA never asks for comments about the fundamental question of whether the LASP is needed in the first place. The agency’s assumption here seems to be that the LASP is a good idea, that it is necessary and that, barring a legislative revolt of some kind, this rule is coming whether the industry likes it or not.

Many National Air Transportation Association members are already regulated under TSA security programs that cover charter operations. “In general the NPRM is not entirely untenable for the operator community,” NATA stated in a Regulatory Report issued October 16. “as it is based largely upon the TFSSP [Twelve-five Standard Security Program].” (See blue box on this page for how the TFSSP works in practice.) But, added Eric Byer, NATA’s vice president of government and industry affairs, “The biggest issue we still have is what is the benefit to the general aviation community?” Even if the rule is imposed, the TSA still does not understand general aviation’s revenue from their aircraft because they are part of the Twelve-five Standard Security Program. The agency noted that it couldn’t make “a conclusive determination of the rule’s impact on small entities in this operator category” because it “was unable to acquire annual revenue data for these operators.”

The TSA noted that it couldn’t make “a conclusive determination of the rule’s impact on small entities in this operator category” because it “was unable to acquire annual revenue data for these operators.” The agency does not seem to recognize that the affected aircraft operators earn no revenue from their aircraft because they are flying for their own business and personal reasons. This seems to support claims that the TSA still does not understand general aviation operations.

Cost of Compliance

Here’s an estimate of the cost of compliance with the TSA’s proposed Large Aircraft Security Program:

- Estimated 10-year cost to the TSA to implement the LASP: $133.5 to $139.8 million.
- Estimated cost to industry to comply over 10 years: $1.4 billion
- Per-flight estimated cost: $44
- Annual compliance cost for newly regulated operators: $12,259 to $28,356

Note: The TSA noted that it couldn’t make “a conclusive determination of the rule’s impact on small entities in this operator category” because it “was unable to acquire annual revenue data for these operators.”

Here is how one charter operator describes how the TSA checks passengers and boarding an aircraft.

How LASP Might Work

Here is how one charter operator describes complying with the Twelve-Five Standard Security Program, which shares many elements with the TSA’s proposed Large Aircraft Security Program. Note that under the proposed rule, operators will not have access to the no-fly list but will have to pay a third-party provider to check passenger names against the list.

- Once per day before every trip, I log on to the TSA Web site and download the no-fly list in an Excel spreadsheet. I open the file and then, using the “edit, find” feature, type in the name of each crewmember and passenger.
- If the name appears on the no-fly list (exactly) I further check that person’s name against its date of birth to confirm their identity. If I confirm the person is not on the no-fly list, that person is not allowed to board the aircraft and has to be reported to the TSA.
- If passengers are added to a leg or two of the trip, before those additional passengers board the aircraft their names have to be checked with the no-fly list.
- The PIC must check passengers’ government-issued IDs to verify their identity.
- Records have to be kept for one year for each trip. We write the TSA no-fly number on our daily trip log and another document with the passenger list and crew list.

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would be just the beginning of the TSA’s plans to impose security regulations on all general aviation aircraft.

What’s different about the LASP, said AOPA’s Cebula, is that it presents no indication of any active threat of terrorists either wanting to use or having used a general aviation aircraft. The TSA, he said, “wants to decrease the vulnerability that they could be used. That’s a pretty significant difference. The [rental] truck has been used in two events, and yet there’s not an extensive set of requirements around renting a truck.”

The way that groups such as AOPA need to look at the LASP, he explained, is to try to figure out what kind of alternative methods are available, “to get the TSA what they’re looking for. Those are the things we as an organization and aviation community are going to be looking at over the next two months. That’s typically the best way to do it.”

Of course, he added, “There can be a point where you just say, we’re not going to go there. Right now we’re trying to understand the proposal. We haven’t come up with what the alternative would be.”

NBAA’s Bolen echoed that sentiment. “The reality,” he said, “is that we’re dealing with a proposed rule. We’re going to have to respond to this and respond in a way that requests that we are informed on what it is, how it will work, what the proposal says. To the extent we feel there are better ways to promote security of business aviation, we’ll talk about those. That’s where we are in this process, and we’re going to have to respond.”

A More Productive Target?

Security expert Bruce Schneier questions the TSA’s methodology in targeting general aviation aircraft for security regulations. Schneier is chief security technology officer of British Telecommunications and author of *Beyond Fear: Thinking Sensibly About Security in an Uncertain World*. With its approach to large aircraft security, he said, the TSA mistakenly focuses on tactics. “And by definition terrorists take the tactic you haven’t defended against. You take away guns and bombs, and they use box cutters. You take away box cutters, and they use explosives in their shoes. You check shoes, they use liquids; you take away liquids, they’re gonna do something else. There are thousands, millions of tactics, and we’re spending money to defend this one. Why is this tactic getting attention and others aren’t? It’s a stupid game; stop playing it.”

The business aviation industry faces a tough fight against the TSA LASP proposal because, he said, “The TSA has to defend airplanes. It’s going to want all the money and make all the rules it can make. It’s not because the agency is evil. The TSA is airplane security, so it wants all the money for airplane security.”

The point is often made that one of the worst terrorist attacks in the U.S. was accomplished by a U.S. citizen using a rented...
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truck full of explosive fertilizer. (Timothy McVeigh’s April 1995 attack on the Alfred P. Murrah federal building in Oklahoma City, Okla., which killed 168 people.) And the first terrorist attack on the World Trade Center in February 1993, which killed six people, also involved a rented truck.

So should the agency focus resources on rental truck security? “That makes no sense,” said Schneier. “Why is a rental truck more dangerous than a leased truck or a purchased truck or a stolen truck? You’re trying to guess the plot correctly. It was a rental truck. Was it a yellow rental truck? We should tighten regulations on yellow rental trucks because it was yellow. Why is a truck worse than a van or a bus? This is what you get when you overly focus on the tactic.”

The proper way to tackle security without focusing on tactics, such as the possibility of a terrorist hijacking a business jet, is to employ investigation and intelligence tools. Focusing on tactics works only “if we guessed the plot correctly and the bad guys don’t change the plot after we guessed. That seems pretty unlikely. You don’t want to spend a lot of money on measures that require you to guess the plot correctly because you’re probably going to guess wrong,” says Schneier.

A spectacular example of how investigation and intelligence works was the foiling of the liquid bombers’ plot in the UK before they were able to blow up any airliners in flight. “They were caught through investigation and intelligence,” Schneier said. “Airport security is the last line of defense and not a very good one. By the time the plot gets to the airport, it’s basically too late. You want to deal with it before it gets to the airport.”

Dr. Richard Bloom, professor of political and clinical psychology and director of terrorism, intelligence and security studies at Embry-Riddle Aeronautical University’s Prescott, Ariz. campus, agrees with Schneier that the tactical approach that the TSA is taking with business jets is a waste of resources and will not be effective. “Since 9/11 and the establishment of the Aviation and Transportation Security Act of 2001,” Bloom said, “there’s been a recurring push to try to treat general aviation and business aviation as much as possible like the aviation that goes on at a large commercial airport, and that’s probably very wrong-headed.”

If the TSA is basing the LASP proposal on its threat assessment conducted four or more years ago, he said, “that doesn’t make any sense. Risk assessment is an ongoing enterprise because the threat continually changes.”

The weight threshold of 12,500 pounds is also questionable. “The whole idea that the...
TSA large-aircraft proposal raises hackles in the industry

by Curt Epstein

Since the Transportation Security Administration released its plans for a Large Aircraft Security Program (LASP), business aviation providers and pilots have reacted swiftly and vociferously. Reaction to the proposed regulation runs the gamut from strident opposition to resigned acceptance for what operators view as unwarranted governmental meddling in the functioning of the industry.

“TSA NPRM raises numerous questions

The folks who are interested in supporting and nurturing general aviation are perfectly within their right to question the reliability and validity of what the TSA is trying to do,” Bloom concluded. “Any time you have a bureaucratic solution to a security problem, chances are it’s going to cost a lot, it’s not going to be implemented very well and it’s going to have little significant surplus value for security. It all goes back to the intelligence.”

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bigger something is or the more it weighs, the more of a threat it might be, that’s wrongheaded from a terrorism point of view. Terrorism is all about psychology, it’s about symbolism, it’s about communication, it’s about getting people terrified, and that could be done with a big physical threat or a small one. And that’s what you really need to be looking at before you begin spending security dollars and allocating security resources and creating new security programs.”

No one, especially Bloom, is suggesting that security isn’t important for general aviation. “And the way you do that,” he said, “is you need to have a few people with access to threat-related information, and based on that, they will make changes in the security posture as it affects general aviation. And that should change with time. And it should change for two reasons: one because the threat changes, and the other, because the more you’re perceived as unpredictable by terrorist organizations, the more difficult it is to attack.

“TSA NPRM raises hackles in the industry

Many who shared their opinions believe that the security measures currently in effect industry-wide are sufficient, and that governmental oversight is unnecessary given that the pilots fly the same passengers with great frequency, while some suggest that the industry is being singled out for scrutiny while other more ubiquitous means of transport such as private yachts, cargo containers or large trucks remain relatively untouched.

Many of the commenters criticize the repetitive clearance requirements demanded of crew and passengers, and raise questions about who is going to pay for these checks as well as the massive infrastructure that will be required to process all the information and enforce it. Many have expressed the opinion that rather than place the burden on operators, the agency should more closely regulate airports. The trampling of civil liberties is another theme throughout the comments, as some argue that the new regulations would defeat one of the very purposes of private aviation, the closest one can get to flying anonymously. Some question the timing of the announcement, made amid the distractions of financial upheaval and the elections this month.

While a few people advocate reactions bordering on civil disobedience in their opposition to the proposed security measures, others are taking the more circumspect view that in the current economic climate the private aviation industry would have few public sympathizers, and that any arguments against the restrictive measures should be handled through proper channels—aviation industry alphabet groups such as NBAA, AOPA, GAMA and NATO.

That certainly does not seem to be done on a continuous basis by the TSA, yet it’s issuing these kinds of programs, and that’s unfortunate because it ends up incurring more cost to general aviation operators without the requisite benefit in security.

The more you put a security program in place, especially ones that do not seem linked to additional surplus value and security, you’re hurting the economic viability. And in effect, the terrorists at that point are winning without even having to launch an attack.

The folks who are interested in supporting and nurturing general aviation are perfectly within their right to question the reliability and validity of what the TSA is trying to do,” Bloom concluded. “Any time you have a bureaucratic solution to a security problem, chances are it’s going to cost a lot, it’s not going to be implemented very well and it’s going to have little significant surplus value for security. It all goes back to the intelligence.”