Statement of

Robert P. Olislagers, Executive Director
Centennial Airport

Regarding

Notice of Proposed Rule Making ("NPRM"), Federal Register, TSA Docket 2008-0021, "Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Program", October 30, 2008; *Department of Homeland Security, Inspector General Report "TSA's Role in General Aviation Security, OIG-09069*, May 2009; and, *Security Directive TSA 1542-08G*

Before the

U.S. House of Representatives

Homeland Security Committee
Subcommittee on Transportation Security & Infrastructure Protection

The Honorable Sheila Jackson-Lee (D-TX), Chairwoman
The Honorable Charles W. Dent (R-PA), Ranking Member

Washington, D.C.

July 15, 2009

Good Afternoon, Madam Chair, Ranking Member and Members of the Committee, my name is Robert Olislagers and I am Executive Director of Centennial Airport, located in the Denver metropolitan area. I wish to thank you for the opportunity to appear before you today regarding General Aviation Security.

Before I begin my testimony, I would like to thank the committee and committee members for your continued interest in this issue. As many of you have pointed out over the past several months, the lack of collaboration with general aviation airports and the general aviation industry has brought us to this point. As was illustrated very clearly, effective security requires TSA and industry to work closely together toward common goals. The provisions you have constructed as part of H.R. 2200 to establish stakeholder working groups to address general aviation security and other important security issues could foster the kind of cooperative approach that was initially missing as TSA developed the NPRM. Your efforts to create a general aviation security grant program as part of H.R. 2200 is equally important and much appreciated.

I would also like to express my appreciation to TSA Assistant Administrator John Sammon for personally leading several stakeholder meetings following the conclusion of the NPRM public comment period. I participated in two of the three meetings and his open and pragmatic approach was particularly refreshing. The general aviation industry, including the airport community, look forward to seeing this pragmatism carried forward in the much-anticipated reissue of the NPRM.

By way of background, I served on the Working Group of the Aviation Security Advisory Committee ("ASAC") and assisted the TSA in drafting the "*Security Guidelines for General Aviation Airports*". I have managed General Aviation ("GA") airports for 25 years and at present, I manage one of the largest and busiest GA Reliever airports in the US. I also studied national and international security at the Air War College and Harvard University, and I am a published author on the subject of GA airport security. I served as the Principal Investigator for the only GA security research grant ever issued by the TSA and previously chaired two aviation security research projects on behalf of the National Academy of Sciences, Transportation Research Board. I currently chair the General Aviation Security Working Group for the American Association of Airport Executives (AAAE).

I believe that progress has been made with respect to general aviation airport security, including the recommendation that the TSA reconvene the ASAC Working Group and update the *Security Guidelines for General Aviation Airports* in lieu of the NPRM recommendations related to airports—a suggestion that appears to resonate with TSA. However, while the industry does not question that potential threats exist, I remain concerned with the over-emphasis on "the threat", and the threat posed by general aviation aircraft. I am also concerned about associated program costs, irrespective of the state of the current economy, as well as the erosion of civil liberties. Specifically;

1) **The NPRM stated *Reason For The Proposed Rule* (145) contradicts TSA's own intelligence evaluation and conclusions;**

i) Specifically, on page 181, the TSA states that the reason for the NPRM is that; the "TSA is aware that, as vulnerabilities within the air carrier and commercial aviation industry are reduced, GA operations become more attractive targets."[1] However, this is in direct contradiction with an assessment by the TSA Office of Intelligence ("OI"), which concluded that there is little evidence that terrorists have turned their attention to general aviation in the US.[2] The recent May 2009 report by the Department of Homeland Security, Inspector General makes the same finding.[3]
ii) General aviation is an asymmetric business and unlike commercial airlines with very predictable time schedules and routines, general aviation behavior is random and too unpredictable for terrorists to conduct training exercises that lead to well-planned attacks with a high degree of success.
iii) Unlike the commercial aviation sector, the vast majority of pilots and passengers flying on general aviation aircraft are known to aircraft and airport operators. Therefore, the focus should be on the small number of unknown travelers, including any unusual situations, transactions or behavior.

2) The NPRM proposes to make mandatory what is already in place without demonstrating the efficacy [or lack thereof] of the existing combination of mandatory and voluntary initiatives, including a cost benefit analysis;

i) Specifically, the NPRM suggests that the GA industry is mostly unregulated, and that this presents a risk (145). We know in fact that GA is highly regulated, including security. I will not repeat all the mandatory and voluntary security initiatives that have been implemented since 9/11; however, it appears that the TSA issued this NPRM without a comprehensive vulnerability assessment of the GA industry that takes into account the effectiveness of all mandatory and voluntary initiatives implemented to date.[4] We believe therefore that it is premature to conclude that this proposal is in fact, needed.
ii) Ancillary, the TSA did not provide a cost/benefit analysis in the NPRM that justifies the cost of implementing the NPRM against the efficacy of the existing mandatory and voluntary initiatives.[5]

3) The NPRM constitutes an Unfunded Mandate pursuant to the Unfunded Mandate Act of 1995 (182)

i) Specifically, the TSA estimates that it will cost affected GA airports $5.5 million over 10 years, while estimating its own costs to implement the program at $136.6 million.

---

[1] Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Program, Federal Register TSA Docket 2008-0021. P. 145
[2] Civil Aviation Threat Assessment. Transportation Security Administration, Office of Intelligence. December 30, 2008 (U/FOUO), Appendix A, P. 2.
[3] TSA's Role in General Aviation Security. Department of Homeland Security, Office of the Inspector General. OIG-09-69, May 2009. P. 28, 29.
[4] For example, the TSA is just now in the process of reviewing data of vulnerability assessments at 100 GA airports through a pilot program.
[5] It should be noted that former DHS Secretary Chertoff often spoke about "measurable programs" and therefore this standard should apply to this DHS/TSA crafted NPRM.

ii) In spite of having access to data at all US reliever airports, TSA relied instead on very general data to conduct its fiscal impact analysis. The results are not only deeply flawed but even the TSA questions its own data in the NPRM (174, 175) Even more troubling is the fact that the TSA did not verify its data against even one airport. For this reason, AAAE conducted a survey of member airports and 45 (or 18%) of the 273 Reliever Airports responded. The resulting data confirmed that the TSA substantially underestimated NPRM implementation costs while overestimating airport revenues and, the TSA completely omitted Law Enforcement Officer ("LEO") costs.

■ 24% of Reliever Airports ("RA") that operate 24/7 have full time staff on hand, therefore,
■ 64% of RAs report having to add staff to meet ASC requirements,

Individual cost analyses are on file with AAAE for TSA's review but below are some of the findings of the survey:

■ 72% of airports reported ASC training costs to be no more than $5,000
■ 28% of airports reported ASC training costs to be more than $10,000 , with most of the larger airports reporting costs in excess of $20,000, including Centennial Airport.

But this is only part of the story:

iii) The TSA completely omitted from the NPRM cost analysis what every airport reported would be the largest cost center, which is Law Enforcement Officer (LEO) training and deployment. One-third of airports surveyed indicated having to enter into a reimbursement agreement with local law enforcement and another 24% are uncertain of whether they have to negotiate such agreements. Most Alaska airports and many of the larger Reliever Airports reported estimated annual LEO costs in excess of $200,000 and smaller Reliever Airports estimated costs between $50,000 and $100,000. Centennial Airport for example handles some 130,000 itinerant operations per year with aircraft weighing more than 12,500lbs. Assuming half are departures with 20% deadheading, the airport would have to accommodate an average of 142 aircraft per day, operating from four separate Fixed Base Operators ("FBO") The timely emplaning of GA passengers is the bane of existence for GA and with multiple departures from multiple locations, we would need multiple LEOs in order to satisfy customer throughput. We are just one example. All told,

■ 60% of airports estimated the annual NPRM cost at more than $40K, with the larger airports report costs over $200K. Centennial Airport estimates costs at more than $300,000 at a minimum and as high as $1.3 million per year depending on traffic volume.
■ 88% of airports told AAAE that they would pass the cost on to aircraft operators
■ 22% of RAs may have to consider giving up RA status or ban large aircraft…and,
■ 15% of RAs will either close or consider closing if they cannot meet the NPRM

iv) The TSA also grossly overestimated revenues earned by airports, with only the very largest of airports reaching or exceeding the estimate cited in the

NPRM. Most Reliever Airports, however, report less than $500,000 in annual revenues, a significant discrepancy from the $3.8 Million NPRM estimate.

v) Finally, for the record, unlike the commercial air carrier sector, TSA does not propose to reimburse <u>any</u> costs to GA airport operators to implement the NPRM, nor will TSA provide screeners or other logistics support.

4) **The NPRM ignores privacy laws and private property rights (181, 183);** this is one of the more complex aspects of the NPRM and touches both on conflicts with other laws and Federalism issues. I am not an attorney; however, extensive case law suggests that citizens enjoy extraordinary legal protections related to private property and privacy rights. For this reason, we recommend that privately owned aircraft be exempt and that the NPRM focus only on publicly operated aircraft for the most stringent initiatives:

   i) Specifically, the ***<u>Fourth Amendment</u>*** guarantees "the right of the people to be secure in their persons, houses, papers and effects", which includes vehicles and aircraft. Private aircraft do not operate with the benefit of a "Contract of Carriage" as is the case with commercial air carriers, and passengers on private aircraft therefore do not waive any rights as such. Warrantless searches are not automatic with respect to private aircraft; however, although there is no case law at this time that would deny or uphold the right of law enforcement to conduct warrantless searches involving private aircraft without probable cause, the issue nevertheless requires substantial justification.

   While the United States Constitution does not use the word "privacy," our courts have identified the interests of Americans in their individual privacy as flowing from a number of constitutional provisions. Most importantly, the Fourth Amendment protects Americans from "unreasonable search and seizure" by the government of their "persons, homes, and effects," including many types of personal information. To be sure, the Fourth Amendment does not prohibit entirely government collection and use of individuals' protected information. It does, however, require that any such intrusion be justified by a valid governmental interest in having and using the collected information, that such collection only be as intrusive as necessary to accomplish the government's legitimate interest, and that the information be handled, protected, used, and destroyed reasonably.

   Historically, constitutional justification for intrusive airport security measures, notwithstanding the Fourth Amendment's warrant requirement has rested in significant degree on the so-called "special needs" exception. Beginning in the 1970s, our courts recognized the need for warrantless searches and seizures at commercial airports in the wake of a wave of aircraft hijackings. *However*, courts were only willing to recognize such an exception – and permit new warrantless searches and seizures at airports – based on evidence of a *real and substantial threat* to human life, public safety, and U.S. national security and foreign relations. Even after September 11, 2001, our courts have consistently held that, for the "special needs" exception to apply, in addition to other conditions being met, there must be some showing of a distinct or definite threat, although, for air threats, specific intelligence concerning a threat to any particular flight is not necessary for generalized security measures.

Further, to pass constitutional muster under the "special needs" exception, a security program must intrude on Americans' privacy and civil liberties interests to the minimal extent necessary to protect against the threat and the program must be expected to be effective. In other words, the government's interest in preventing the potential harm, and the reasonable expectation of effectiveness of the proposed measures must be balanced against the intrusion on Americans' privacy and liberty likely to result.

In light of these requirements for "special needs"-justified searches and seizures, the lack of a valid threat assessment and seemingly little consideration of relevant privacy and civil liberties interest, balance, or effectiveness in the NPRM, is troubling.

5) The NPRM may inadvertently force some airports to violate federal law (181)

i) Specifically, the NPRM may force GA airports unable to comply with the NPRM to violate Federal Aviation Administration Grant Assurances and be in non-compliance with federal commerce law relating to Interstate access, possibly resulting in becoming ineligible for AIP funding or becoming subject to other punitive actions.

6) The NPRM proposes an aircraft weight threshold not supported by the facts

i) Specifically, the proposed weight threshold of 12,500 lbs is at least 50% below TSA's own classified throw weight analysis and well below industry recommended weight thresholds.[6] Industry has concluded that 100,000 lbs is more appropriate.

In Conclusion (regarding the NPRM)

Many individuals and entities have provided separate verbal and written responses that provide greater detail than was possible here today. That said, I believe that it has been demonstrated that this NPRM as written, is seriously flawed because of the numerous discrepancies noted in this response. It is flawed not only by virtue of the fact that the NPRM contained an overwhelming 44 unresolved questions posed by the TSA; its use of highly questionable data, faulty and incomplete financial analyses without the benefit of verification, is very disturbing. Most disturbing is the fact that the NPRM appears to contradict TSA's own intelligence assessment, which, coupled with the lack of sound threat assessment in view of existing security mandates and initiatives, makes this NPRM a leap of faith rather than a well-executed plan to improve security. We do not question that potential threats exist, but these must be weighed against mitigations already in place; the threat to national security; and, their likely probability.

[6] Although the TSA throw weight analysis remains classified, TSA nevertheless concluded that a threshold weight of 25,000 lbs was more appropriate, acknowledging that the lightest of aircraft do not have the kinetic energy to cause much damage. However, TSA also concluded that 10,000 gallons of fuel (approx. 1,500 lbs of fuel) had sufficient kinetic energy to cause significant damage. Applying both thresholds it would appear that a higher weight threshold is warranted. In a national security assessment I prepared for the TSA, I concluded that a throw weight threshold of 100,000 lbs was more appropriate.

If the TSA is indeed serious about taking a more pragmatic approach to managing *who flies the aircraft*; *who is on board the aircraft*; and, *what is on board the aircraft*, the industry sees no need for costly airport security measures that do not demonstrably improve security. However, the effectiveness of a "layered approach" to security compels general aviation airports to play a value added role in security. For this reason, we reiterate the recommendation that TSA reinstate the Aviation Security Advisory Committee Working Group and update the *Security Guidelines for General Aviation Airports* in lieu of the airport security requirements proposed in the NPRM.

Supplemental Comments Regarding Security Directive 08G

The general aviation industry continues to have concerns with the use of Security Directives ("SDs") for the purpose of issuing new rules. The recent release of SD 08G and the numerous questions it has raised within the general aviation community is a case in point. Specifically, the SD has raised a host of issues concerning the potential need for multiple badges, the treatment of pilots who fly into regulated airports for after hours fueling, and the like. While TSA is said to be addressing some of the concerns raised by the general aviation community, there remains a startling lack of communication and collaboration concerning the implementation of this SD.

Beyond the specifics of this particular SD, there is a broader policy question regarding the use of Security Directives as a means of implementing policy by TSA. Through the utilization of SDs, TSA can effectively bypass collaborative efforts and limit the ability of industry to comment on such changes. As our experience with the Large Aircraft Security Program NPRM has illustrated so vividly, effective policy and results are best achieved when TSA and industry work together toward common goals.

This concludes my prepared remarks.

Thank you for your time.