Securing Private Aviation:
TSA Proposes Security Programs for General Aviation Aircraft Operators and Airports

The Transportation Security Administration ("TSA") published a proposed rule in the Federal Register on October 30, 2008 that could significantly increase the number of aircraft and airport operators required to develop and maintain security programs under Title 49 of the Code of Federal Regulations Parts 1515, 1520, 1540, 1542, 1544, and 1550. The proposed rule is meant to enhance the security of general aviation and will cost the TSA and included aircraft and airport operators an estimated $1.4 billion over the course of 10 years.

Current TSA security requirements focus on air carriers and commercial operators that offer transportation for compensation or hire to the public, rather than general aviation aircraft operators. However, the TSA feels that as currently regulated operators become safer, general aviation aircraft may become more attractive targets to terrorists.

The TSA's proposed rule will require all aircraft with a maximum certificated takeoff weight ("MTOW") greater than 12,500 pounds ("large aircraft") to conform to a Large Aircraft Security Program ("LASP"), based upon air carrier security programs. This includes corporate and private operations that were not subject to such security measures under the previous regulations, and greatly increases the number of regulated operators from around 650 to almost 10,000. The operators of these large aircraft will be required to, among other things, subject their flight crews to Security Threat Assessments ("STAs"), which include criminal background checks and checking names against terrorist watch lists, prevent or deter the carriage of unauthorized persons and weapons, and designate Security Coordinators.

All large aircraft operators will also now have to participate in terrorist watch-list matching for all passengers. The government is working on creating a system for watch-list matching called the "Secure Flight Program." However, it will not be ready for the start of the new LASP. In the interim, the TSA is proposing to authorize private watch-list service providers who will, for a fee, provide watch-list matching services. Aircraft operators will need to provide them with full names of passengers, and will also be asked to request more information from passengers such as gender, birth date, redress number, and passport info. For operators with passengers who fly with them on a regular basis, the TSA proposes to allow a "master passenger list," though for domestic flights only.

The TSA also proposes additional requirements on all-cargo operations and aircraft with a MTOW greater than 45,500 kilograms. Those requirements will compel operators conducting all-cargo operations to comply with the current cargo requirements under the existing twelve-five all-cargo program. Further, operators of aircraft with a MTOW greater than 45,500 kilograms operated for compensation or hire must also screen passengers and their accessible property under the tougher standards of the existing rule.

In order to ensure compliance with the new measures, the TSA has proposed a biennial auditing system. Under this system, TSA-approved auditors would conduct audits of operator compliance with TSA regulations and the approved security programs. To be approved as an auditor by the TSA, auditors would have to meet a variety of requirements, like passing an STA and completing training programs. Aircraft operators will be required to pay for these audits.

Additionally, certain airport operators not currently regulated by the TSA will be included in the plan. Those operators that are identified as "reliever airports" and airports that regularly serve aircraft with scheduled or public charter service will be required to implement partial security programs. While not as onerous as the full security programs, such airports will need to, among other things, designate an Airport Security Coordinator, institute a training program for law enforcement, and create procedures for incident management and distribution and storage of sensitive information.

The TSA has requested comments on many important aspects of the rule including changing the weight threshold for "large aircraft," thus decreasing or increasing the number of operators regulated, altering the auditing system, and adding more airports to the partial security program. If you would like to submit comments to the TSA on this proposed rule, you must do so by December 29, 2008.

Given the large increase in the number of regulated aircraft and airport operators, as well as changes in the current regulations if the proposed rule becomes final, it is important for you to understand if you are affected by the rule and, if so, how to comply with the new requirements.

For more information about the matters discussed in this TWG Update, please contact the Wicks Group attorney with whom you work.