March 16, 2009

Kevin F. Neyland
Acting Administrator, Office of Information
and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, 10102
725 17th Street, NW
Washington, DC 20503

IDENTICAL COPY TO: Office of Small Business Advocacy

Subject: Comment to OMB and SBA review of Federal Regulations (EO 12866)

I appreciate the opportunity to comment on the Executive Order 12866 regarding Regulatory planning and review. I trust that these comments will help achieve better Federal governance.

The Office of Small Business Advocacy, in the discharge of their responsibilities under E.O. 12866 and 13272 provides an invaluable service to the small business community. The effect of Federal rules is clearly felt by small businesses who do not have the financial means to lobby Congress or leverage to affect unduly burdensome legislation and federal rules. For example, SBA provided the opportunity to provide comments to TSA regarding Large Aircraft and other aircraft and airport operator security programs (see attached).

Providing public comments on pending regulations through a process conducted or administered by a federal agency does not always serve the public well. In example, tens of thousands of negative public comments were ignored in the during the rule making process in the recent issuance of Special Flight Rules for the area around Washington, DC during the last few months of the prior Administration,. This rule made permanent a set of temporary procedures used for an ADIZ – Air Defense Identification Zone, the only such zone inside the borders of the United States. Public comments contradicted the effectiveness of the ADIZ for airspace security and some agencies attempted to classify public comments on the ineffectiveness of these ADIZ procedures.

Agencies also ignored the economic impact on small businesses because of such actions. Impacts such as the National Business Aircraft Association's finding of $40 to $80 million per month impact to Regan National Airport's general aviation-related business were ignored. Agencies also implement narrow interpretation of impacts to small business entities.

⇨ Small businesses are pivotal in the economic recovery in this nation. To strengthen this role, SBA's responsibilities should progress beyond a simple advisory role such as embodied in E.O. 13272 to an approval role in the regulatory planning and

review process (E.O. 12866) and be provided appropriate resources for these added responsibilities.

- ⇨ SBA should determine key factors, based on small business concerns, to be considered by agencies in a specific rule.

- ⇨ SBA should determine alternatives to be considered by agencies for different groups of entities proposed for regulation by Federal agencies.

- ⇨ SBA should base its approval of a proposed rule on the agency(s) ability to consider appropriate alternatives and meeting these key factors determined by SBA.

In considering its approval of proposed Rules, SBA should consider the effectiveness of the proposed rule, its alternatives, and the sufficiency of state and local laws and regulations or private sector efforts to achieve similar results.

Executive Orders 12866 and 13272 and the Memorandum of Understanding between the office of Small Business Advocacy and OIRA, OMB should be revised to reflect these needed changes.

Respectfully yours,

Anthony Wu, PhD
AeroMarine, LLC
202-575-5700

February 27, 2009

The Honorable Janet Napolitano
Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

IDENTICAL COPY TO: The Honorable Steny Hoyer

Subject: Transportation Security Administration's Large Aircraft Security Program, and other Aircraft and Airport operator security programs - Proposed Rules Docket No. TSA-2008-0021

I appreciate the opportunity to comment on TSA's Large Aircraft Security Program, and other aircraft and airport operator security programs. I trust that these comments will help achieve better Federal governance.

First, ***TSA officials stated their goal at the Small Business Roundtable hosted by the Office of Small Business Advocacy was "to reduce the number of unregulated entities".*** Is this a stated federal policy goal? Is the TSA an enforcement agency or a regulatory agency by statute? If TSA is a enforcement agency by statute then, TSA officials should realize that their goal is to help provide secure transportation, and not to regulate.

Second, TSA state a requirement to approve security plans. ***TSA has no Federal statutory authority to require the private sector to submit their security plans to TSA nor to require TSA's approval of these plans***. TSA attempted to close the airspace over a private airfield because TSA wanted authority to review and approve the airfield's security plan. TSA far exceeded its statutory authority when its officials issued a NOTAM closing the airspace and the airfield. Subsequently it was determined by FAA that the TSA had no authority to close the airspace. TSA officials claimed that the airport owner had closed the airfield. The airport owner had not issued any notice closing the airspace or the airfield. There was no threat at the airfield and the airfield's security protocols (or "Potomac protocols") encompass airspace security with agencies in the National Capital Region. These Potomac protocols are more effective than TSA's governmental efforts. In fact, Potomac protocols are used by government agency and state law enforcement officials to accomplish their missions (one application is military missions involving civil aircraft in airspace interdiction operations) as they were unable to get government airspace clearances through TSA waiver process.

This airfield closure issue became a Congressional interest item. The airfield and airspace reopened when it was determined that TSA had no authority to compel the airfield to submit their private security plan to TSA nor for TSA to approve these plans. According to those involved in the creation of TSA, the organic act establishing TSA does not provide TSA with authority over general aviation. They did not view general

aviation as a threat. TSA's statutory authority has not been expanded to encompass general aviation. A legal review of TSA's proposed regulation should address the intent of Congress and the lack of explicit statutory authority over general aviation.

Third, ***TSA cannot require the private sector to provide detailed privacy information on individuals and their movements.*** Information like SSN and dates of birth are private. TSA is circumventing the privacy law in requiring private sector entities to provide detailed personal information to TSA. Just as with private (or public) automobiles and trucks, citizens that utilize private sector aircraft not compelled by statute to provide personal information without cause or due process. Changes were made to statutes after the Oklahoma bombings to allow federal law enforcement to obtain rental car records during an investigation. Changes also included definition of terrorism as a category that would allow federal law enforcement to obtain and protect privacy information. TSA proposed rules would compel the private sector to "collect and volunteer" personal information to TSA to circumvent privacy statutes, without functionally equivalent changes in statute and without a known threat. If a private sector entity "volunteers" information in their hands, then the federal agency can do with it what they will and are not required to protect that information. Serious privacy issues are prevalent in TSA's proposed rules.

Fourth, ***TSA is identifying federal needs and requiring the private sector to fund personnel and equipment to comply with TSA requirements.*** This includes paying for private auditors to review private sector security plans to comply with vague, ever changing security measures, cargo screening, or possible reimbursement for the use of federal resources such as federal air marshals, or other additional user fees. As a federal requirement, these needs should to be funded by the federal government. To have the private sector pay for federal requirements is an augmentation of appropriated funds, and these costs should be scored against the agency in balancing the budget. This cost becomes significant as according to AOPA estimates, the funding requirement to meet these TSA rules is about $1.2 billion per year, which far exceeds that TSA's estimates, particularly in light of the fragility of our economic system. The private sector fuels the economy and requiring them to fund federal requirements will cause further economic disruption at a very critical time.

TSA's use of potential impact is in practice very narrowly applied to only allow direct costs or marginal costs based on an existing commercial airline security infrastructure. The cost methodology as applied has limited itself to "lost" revenues", for example. This narrow interpretation would not consideration of consequences of rules such as business closures, the devaluation of affected assets, or the rendering of business assets such that they cannot be financed or insured.

Should TSA "rules" be followed, then TSA should indemnify the operator against losses in acts of terrorism or war. TSA should be held liable and accountable for security measures that they require and want the private sector to fund. This indemnification should enable "compliant" private sector operations to finance and insure their assets.

Fifth, ***TSA has not developed reasonable approaches to risk management to provide for transportation security in general aviation.*** Instead, TSA is using an approach to curtail all possible forms of threats by using mandated measures adopted for commercial airlines. While threats are only limited by an agency's imagination, risk management differs in that it involves judgment in addressing the likelihood of the threat. Private security is more appropriate than mandated public airline security such as the airfield involved in the second item above. Use of airline security processes without judgment or risk management are highlighted when TSA security officials seize nail clippers from federal air marshals carrying semi-automatic pistols or seize medications from the elderly resulting in their death aboard commercial flights.

Private operators that use more appropriate and tailored security for their operations would be prevented by TSA proposed rules from securing their own aircraft in the event of an incident. As an example, law abiding citizens who are already authorized by state and local law enforcement agencies to carry weapons (such as Alaska) would lose the ability to carry these weapons on their own aircraft as they would be "prohibited items". These citizens as well as licensed pilots, have already been crosschecked against FBI criminal records. They would be at risk, disarmed, and would have to rely on TSA officials to respond or request Federal air marshals who are not available for general aviation.

Not one U.S. general aviation aircraft has been used in a terrorist incident since September 11, 2001. Further, these successful security programs have been conducted without federal mandates and more often than not, do not follow Federal requirements for commercial airlines, and for very few federal dollars, if any. The airfield using Potomac protocols has no security fences, no biometric devices, and no posted guards. Yet it functions with very few physical security investments or sustaining operational costs, in the very heart of the most sensitive airspace in the country, the National Capital Region.

Thank you for this opportunity to comment and please let me know if I can provide further information.

Respectfully yours,

Anthony Wu, PhD
AeroMarine, LLC
202-575-5700

February 27, 2009

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
401 Post Office Road, Ste. 202
Waldorf, MD 20602
Phone - (301) 843-1577
Fax - (301) 843-1331

IDENTICAL COPY TO: The Honorable Janet Napolitano

Subject: Transportation Security Administration's Large Aircraft Security Program, and other Aircraft and Airport operator security programs - Proposed Rules Docket No. TSA-2008-0021

I appreciate the opportunity to comment on TSA's Large Aircraft Security Program, and other aircraft and airport operator security programs. I trust that these comments will help achieve better Federal governance.

First, ***TSA officials stated their goal at the Small Business Roundtable hosted by the Office of Small Business Advocacy was "to reduce the number of unregulated entities".*** Is this a stated federal policy goal? Is the TSA an enforcement agency or a regulatory agency by statute? If TSA is a enforcement agency by statute then, TSA officials should realize that their goal is to help provide secure transportation, and not to regulate.

Second, TSA state a requirement to approve security plans. ***TSA has no Federal statutory authority to require the private sector to submit their security plans to TSA nor to require TSA's approval of these plans***. TSA attempted to close the airspace over a private airfield because TSA wanted authority to review and approve the airfield's security plan. TSA far exceeded its statutory authority when its officials issued a NOTAM closing the airspace and the airfield. Subsequently it was determined by FAA that the TSA had no authority to close the airspace. TSA officials claimed that the airport owner had closed the airfield. The airport owner had not issued any notice closing the airspace or the airfield. There was no threat at the airfield and the airfield's security protocols (or "Potomac protocols") encompass airspace security with agencies in the National Capital Region. These Potomac protocols are more effective than TSA's governmental efforts. In fact, Potomac protocols are used by government agency and state law enforcement officials to accomplish their missions (one application is military missions involving civil aircraft in airspace interdiction operations) as they were unable to get government airspace clearances through TSA waiver process.

This airfield closure issue became a Congressional interest item. The airfield and airspace reopened when it was determined that TSA had no authority to compel the

airfield to submit their private security plan to TSA nor for TSA to approve these plans. According to those involved in the creation of TSA, the organic act establishing TSA does not provide TSA with authority over general aviation. They did not view general aviation as a threat. TSA's statutory authority has not been expanded to encompass general aviation. A legal review of TSA's proposed regulation should address the intent of Congress and the lack of explicit statutory authority over general aviation.

Third, ***TSA cannot require the private sector to provide detailed privacy information on individuals and their movements.*** Information like SSN and dates of birth are private. TSA is circumventing the privacy law in requiring private sector entities to provide detailed personal information to TSA. Just as with private (or public) automobiles and trucks, citizens that utilize private sector aircraft not compelled by statute to provide personal information without cause or due process. Changes were made to statutes after the Oklahoma bombings to allow federal law enforcement to obtain rental car records during an investigation. Changes also included definition of terrorism as a category that would allow federal law enforcement to obtain and protect privacy information. TSA proposed rules would compel the private sector to "collect and volunteer" personal information to TSA to circumvent privacy statutes, without functionally equivalent changes in statute and without a known threat. If a private sector entity "volunteers" information in their hands, then the federal agency can do with it what they will and are not required to protect that information. Serious privacy issues are prevalent in TSA's proposed rules.

Fourth, ***TSA is identifying federal needs and requiring the private sector to fund personnel and equipment to comply with TSA requirements.*** This includes paying for private auditors to review private sector security plans to comply with vague, ever changing security measures, cargo screening, or possible reimbursement for the use of federal resources such as federal air marshals, or other additional user fees. As a federal requirement, these needs should to be funded by the federal government. To have the private sector pay for federal requirements is an augmentation of appropriated funds, and these costs should be scored against the agency in balancing the budget. This cost becomes significant as according to AOPA estimates, the funding requirement to meet these TSA rules is about $1.2 billion per year, which far exceeds that TSA's estimates, particularly in light of the fragility of our economic system. The private sector fuels the economy and requiring them to fund federal requirements will cause further economic disruption at a very critical time.

TSA's use of potential impact is in practice very narrowly applied to only allow direct costs or marginal costs based on an existing commercial airline security infrastructure. The cost methodology as applied has limited itself to "lost" revenues", for example. This narrow interpretation would not consideration of consequences of rules such as business closures, the devaluation of affected assets, or the rendering of business assets such that they cannot be financed or insured.

Should TSA "rules" be followed, then TSA should indemnify the operator against losses in acts of terrorism or war. TSA should be held liable and accountable for security

measures that they require and want the private sector to fund. This indemnification should enable "compliant" private sector operations to finance and insure their assets.

Fifth, ***TSA has not developed reasonable approaches to risk management to provide for transportation security in general aviation.*** Instead, TSA is using an approach to curtail all possible forms of threats by using mandated measures adopted for commercial airlines. While threats are only limited by an agency's imagination, risk management differs in that it involves judgment in addressing the likelihood of the threat. Private security is more appropriate than mandated public airline security such as the airfield involved in the second item above. Use of airline security processes without judgment or risk management are highlighted when TSA security officials seize nail clippers from federal air marshals carrying semi-automatic pistols or seize medications from the elderly resulting in their death aboard commercial flights.

Private operators that use more appropriate and tailored security for their operations would be prevented by TSA proposed rules from securing their own aircraft in the event of an incident. As an example, law abiding citizens who are already authorized by state and local law enforcement agencies to carry weapons (such as Alaska) would lose the ability to carry these weapons on their own aircraft as they would be "prohibited items". These citizens as well as licensed pilots, have already been crosschecked against FBI criminal records. They would be at risk, disarmed, and would have to rely on TSA officials to respond or request Federal air marshals who are not available for general aviation.

Not one U.S. general aviation aircraft has been used in a terrorist incident since September 11, 2001. Further, these successful security programs have been conducted without federal mandates and more often than not, do not follow Federal requirements for commercial airlines, and for very few federal dollars, if any. The airfield using Potomac protocols has no security fences, no biometric devices, and no posted guards. Yet it functions with very few physical security investments or sustaining operational costs, in the very heart of the most sensitive airspace in the country, the National Capital Region.

Thank you for this opportunity to comment and please let me know if I can provide further information.

Respectfully yours,

Anthony Wu, PhD
AeroMarine, LLC
202-575-5700