

April 1, 2011

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Room W12-140  
West Building Ground Floor  
Washington, DC 20590

*Delivered electronically via [www.regulations.gov](http://www.regulations.gov)*

**RE: DOCKET NO. FAA-2011-0183**

**NOTICE OF PROPOSED MODIFICATION TO THE FAA/SUBSCRIBER MEMORANDUM OF AGREEMENT AND REQUEST FOR COMMENTS, ACCESS TO AIRCRAFT SITUATION DISPLAY (ASDI) AND NATIONAL AIRSPACE SYSTEM STATUS INFORMATION (NASSI)**

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate, and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

In the Federal Aviation Administration's (FAA) notice of proposed modification to the FAA/Subscriber Memorandum of Agreement (MOA), the agency announced its intention to alter its agreements with Direct Subscribers to Aircraft Situation Display (ASDI) and National Airspace System Status Information (NASSI) data to prohibit the blocking of aircraft flight information unless a "Certified Security Concern" exists.

NATA strongly objects to the proposed modifications to the MOA and submits the following comments in support of our position.

**Proposed MOA Modifications are in conflict with the intent of Congress**

Congress passed legislation that was signed into law by the President (P.L 106-181) specifically directing the FAA to provide a mechanism by which aircraft owners could select to have their data blocked. The intent of Congress in the legislation was to provide aircraft owners the ability to keep their movements private, with the FAA acting as the facilitator of blocking requests.

The law states that the FAA must require ASDI subscribers to be able to “selectively block” the data. The intent of including “selectivity” was so that *aircraft owners* could select to have *their* data blocked. The FAA now is attempting to assert that it is the arbiter of who is eligible for blocking — that the “selective” nature of the blocking is to be determined by the FAA alone. This was not the intent of Congress in establishing the right to block data. The FAA’s role has been and should continue to be one of facilitation between aircraft owners who wish to participate in blocking and the ASDI and NASSI subscribers.

### **Protection of Privacy Is Well-Established Policy**

It is a fundamental principal of our society to protect the privacy of individuals. The FAA states it has determined that only certain individuals who are able to demonstrate a security concern *to the FAA’s satisfaction* are entitled to their privacy.

The FAA has not asserted that it is under any legal obligation to institute this change in policy; rather, the administration states that this proposed change is based upon a determination that it is in the best interest of the government and the general public. One would assume that this decision would be derived from a careful and considerate weighing of the value of the benefits provided to the government and general public as compared to the loss of individual privacy suffered by aircraft owners and operators. However, the administration fails to offer any substance as to the considerations involved in making this determination, depriving the public of the ability to comment upon the logic and soundness of this decision.

Privacy is a core value in American society, and the federal government has on numerous occasions acted to protect personal information from public dissemination. One example, of many, is the Driver’s Privacy Protection Act of 1994. This law was passed to restrict the ability to obtain personally identifiable information (name, address, etc.) from motor vehicle registrations. The net effect of this law is that one cannot determine the name and residence of a person based upon their license plate number. Congress acted to protect personal privacy and the right to move within the country without being identified and tracked by the public at large. The correlations between that law, related to motor vehicle registrations, and this circumstance are undeniable.

Laws require registration of a vehicle in order to operate it on public roads. Likewise, the FAA requires aircraft registration and filing of flight plans to operate in certain portions of public

airspace. There is no discernable difference between disclosing personally identifiable information related to the operation of motor vehicles and aircraft.

The FAA asserts in the notice that “releasing registration numbers associated with visual display of flight would not reveal either the identity of the passengers or the purpose of the flight.” NATA could not disagree more. Because all aircraft owners are required to register their aircraft and that registration (including the owner’s name) is contained in an easily searchable electronic database that is available on the Internet, it would be quite easy for anyone to determine with some degree of accuracy exactly who is on a particular aircraft or why they may be going to a certain location.

In the case of private individuals who own aircraft, they may well be the pilot and only person who flies that aircraft. When the aircraft is owned and operated by a corporation, it is still possible to determine likely passengers and to discern private business plans based upon destination.

The fact that an individual is required by certain regulations to file a flight plan should in no way be construed by the FAA as a relinquishment of the individual’s right to privacy with regard to their movements. This has previously been the policy of the FAA with regard to blocking of aircraft data when requested by an owner. It is inconsistent with current federal policy for the FAA to act unilaterally to strip away privacy protections. Furthermore, it is inappropriate for the FAA to attempt to do so without providing a detailed explanation for its actions and soliciting public feedback on that rationale.

#### **Proposed Standards For Blocking Eligibility Are Unreasonable**

Under the FAA’s proposal, only persons who own an aircraft and who establish that they have “Valid Security Concern” would be eligible to have their aircraft data blocked from public ASDI and NASSI data-feeds.

The Valid Security Concern could be established by two methods:

1. An annual written Certified Security Concern is filed and approved by the FAA, or
2. The owner satisfies the bona fide business-oriented security concern criteria established by U.S. Department of Treasury regulations.

The FAA states that the aircraft owner/operator would need to demonstrate a “verifiable” threat and that a “generalized concern about safety” is insufficient to qualify. The FAA provides no further detail on how it would determine between a verifiable and generalized security threat. The FAA has no means even to begin to verify the significant number of filings that may occur, nor does it have appropriately trained and qualified staff who can decide which threats are sufficient to warrant blocking. It is of great concern to NATA that the FAA intends to establish itself as an authority on whether threats against an individual are serious. The FAA staff likely has little or no experience in security or law enforcement and the evaluation of threats against individuals. The consequence that someone whom the agency deemed did not have a “valid security concern” later being the victim of a crime does not seem to have been considered by the FAA.

Regarding U.S. Department of Treasury regulations, the bona fide business-oriented security concern rules relate to whether the costs for providing security measures (including transportation via a company aircraft) for certain employees may be excluded from the income of those employees. There is nothing that ties this standard to the existence of a valid or verifiable security concern.

The standards for blocking eligibility that the FAA is establishing are far too restrictive and subjective for effective and fair implementation.

#### **FAA Fails To Address On-demand Air Charter Issues**

In addition to the unsupported conclusion that there is a public benefit to releasing private data, the FAA has failed to consider the impact of the proposed MOA changes for air carriers operating under Part 135.

The FAA states in the proposed Section 9 of the MOA, “While commercial operators conduct business according to a published listing of service and schedule, general aviation operators do not.” Based upon this statement, either the FAA is unaware of the thousands of on-demand “commercial operators” that *do not* operate on a schedule or it is including Part 135 on-demand operators as part of “general aviation.” In either case, the FAA has clearly overlooked the impact on Part 135 air carriers in the notice.

Part 135 largely consists of ad-hoc charter operations. It is frequently used by those who seek a level of privacy and security that cannot be achieved by traveling on the scheduled airlines. To

prevent unwanted tracking of the clientele they serve, including current and former heads of state, Members of Congress and government appointees, as well as celebrities and other high-profile individuals, some Part 135 operators currently participate in the blocking program.

Under the proposed modifications, it is difficult to conceive that there are any circumstances where an aircraft operated by a Part 135 air carrier could meet the "Certified Security Concern" standard because these security-sensitive persons do not own the aircraft in question. The FAA intends to allow the blocking only for an aircraft owned by an individual who meets the proposed standard. The ability to block aircraft movement data would not follow that individual if he or she would have a need to charter an aircraft.

NATA believes it is inappropriate for the FAA to implement changes that will effectively prohibit blocking eligibility for every Part 135 operator without providing the industry with due consideration and a justification for exclusion from the blocking program.

### **Conclusion**

NATA appreciates the opportunity to submit comments on this issue. We urge the FAA to withdraw the notice proposing modifications to the MOU between the agency and ASDI subscribers immediately.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jacqueline E. Rosser".

Jacqueline E. Rosser  
Director, Regulatory Affairs