TRANSPORTATION SECURITY ADMINISTRATION

TSA SECURE FLIGHT PROGRAM

PUBLIC MEETING

Thursday, September 20, 2007

Grand Hyatt Washington Hotel
1000 H Street, N.W.
Washington, D.C.
PARTICIPANTS

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Steve Sadler
Kip Hawley
Donald Hubicki
Paul Leyh
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Peter Pietra
Kimberly Walton

INDUSTRY:
Edward Hasbrouck, The Identity Project
Justine Sproat, QANTAS
Dave Lotterer, RAA
Paul Ruden, ASTA
Bill Scannell, IDP
James Harrison, IDP
Barry Steinhel, ACLU
Ken Dunlap, IATA
PROCEEDINGS

(Time Noted 9:00 a.m.)

MR. SADLER: Good morning, everyone.
My name is Steve Sadler. I would like to
welcome you to the Secure Flight public
meeting. I will be the moderator today.

Just a few things about logistics. If
you intend on speaking, please sign up outside
the room at the registration desk which is on
the left as you go out. We are going to speak
by numbers, so it’s important that you register
before you come up to make comment.

The restrooms, if you didn't see, are
out the door to the left. We also have coffee
out the door to the right.

So, the first thing I would like to do
-- we’ll get right into this -- is just go over
the agenda, please. We’ve got the speaker
sign-up which I just mentioned. We’re going to
kick it off here in a minute or so with some
opening remarks from Kip, then Don Hubicki is
going to give a Secure Flight presentation.
The public comments will start at 10:00. We will break at 12:30 for lunch and resume at 1:15 for more public comments. We will take the afternoon break at 3:00 p.m., then at 3:15 we’ll start with the public comments again.

So the first thing I would like to do is introduce the panel members. Kip Hawley, obviously the TSA Administrator; Don Hubicki, the Director of the Secure Flight Program; Paul Leyh, Deputy Director, Secure Flight; Mai Dinh, Attorney Advisor from TSA Counsel; Peter Pietra, who is the Director of the Privacy and Policy and Compliance; and last is Kimberly Walton, our special counselor.

So I would like to introduce Kip for some opening comments.

MR. HAWLEY: Thank you, Steve. And, good morning, everybody. Thank you for joining us. We are here to discuss TSA’s published notice of proposed rulemaking for the Secure Flight program. We want to hear from the public and industry to get your feedback on the
changes TSA is proposing for aviation security.

A week ago our nation commemorated the sixth anniversary of 911. The events of that day are a stark reminder that we face an adaptive enemy that has a continued appetite for attacking the west. We are today in a heightened threat environment and this threat is real.

As time passes for 911 it does not mean the threat is fading. It means there is more time available for preparation, for the terrorists and for us. We have the responsibility to use every moment that we have to our best advantage. Since 911 we have taken substantial steps to improve security. But we still have more work to do. Particularly because the enemy is continuing to adapt and rebuilt itself. We must stay ahead of them by enhancing our ability to stop people known to us as posing serious terrorist risk.

TSA has begun to add another layer of security in advance of Secure Flight. The introduction of trained document verification,
TSOs at checkpoints. This will address a current vulnerability to effective use of watch lists. Secure Flight lets us identify in advance potentially dangerous people who we don’t want to let through an airport or allow on board an aircraft.

TSA’s Secure Flight program implements a key 911 Commission recommendation. TSA will perform uniform watch list matching and transmit the results back to aircraft operators. As it stands now airlines are responsible for checking domestic passenger names against a terrorist watch list provided by TSA. This leads to inconsistencies in how the list is checked and maintained by the airlines and it creates inefficiency and frustration for travelers.

Under the proposed rule TSA will receive limited passenger information from airlines as early as 72 hours in advance of a flight and we will continue to receive information until the flight leaves. We will
check this information against the watch list provided to us by the Terrorist Screening Center and transmit the results back to aircraft operators.

In the case of a watch list match we will now have the time to coordinate appropriate actions. For example, we can send a person through secondary screening, notify law enforcement to conduct an interview, or, if necessary, prevent a person from boarding the aircraft.

The practical security measure already exists of checking airline passenger information for matches against a terrorist watch list. We are streamlining and improving the process by taking on the responsibility at TSA rather than giving it to dozens of different air carries. The result is better security, more consistent passenger process and a reduction in potential misidentification.

In 2005 GAO and the Secure Flight Working Group issued reports saying that more
needed to be done in terms of privacy and
program integrity for Secure Flight. In
February 2006, I testified before Congress that
we were going to rebaseline Secure Flight and
rebuild it from the ground up to address the
concerns addressed in the reports. That work
has been completed and now the implementing
rule is ready for public scrutiny and
discussion.

I am confident we have the team in
place to make Secure Flight a success. The
program team has been exceptionally transparent
about what we are doing. We have conducted
extensive stakeholder outreach, we have met
with aviation industry associations, and
privacy advocacy groups, and we've used their
feedback to help design this program. Their
feedback has been crucial, especially from a
privacy perspective and I appreciate the
working relationship that we have and the
constructive engagement that’s gone on through
this process.
I would like to point out that Secure Flight is a very focused program. It does not use commercial data. It does not assign a score based on risk. In addition, TSA does not maintain the watch list. We receive the watch list from the terror screening center at the FBI.

While some say it’s a difficult balance, increasing security while protecting individual privacy rights, I want to make very clear that I believe that privacy and security are essential ingredients of each other. The program will not go forward without both privacy and security needs baked into the process.

The benefits of the program are many. It starts with enhanced security for air travelers. Secure Flight decreases the chance of watch list data being compromised because of the distribution of the list will be much more limited. It creates one consistent process for the passenger across all aircraft operators and
integrated redress process clears individuals who believe they have been improperly delayed or prohibited from boarding and aircraft because of previous misidentification. This is the DHS TRIP program. Secure Flight will result in better security and create a more consistent and uniform prescreening process for passengers while reducing misidentification. It is a win/win for all.

I look forward to hearing your input through this public meeting process. For those of you who would like to make comments or ask questions, we’ve elected to go with five-minute statements as opposed to three-minute or other numbered statements to give more time for people to express their view on this important program.

We are also providing a live audio web cast of this public hearing. It is available now on our public web site at www.TSA.gov. We have the Secure Flight senior program managers and associated executives here in person today.
We have a strong team up here and we would be very happy to listen to your comments and take them on board during this rulemaking process. So I thank you for your participation and look forward to the discussion.

MR. SADLER: Okay. Thank you. Next I’m going to introduce Don Hubicki, the Director of the Secure Flight Program. He’s going to give a presentation about Secure Flight as it’s outlined in the NPRM.

MR. HUBICKI: Thank you, Steve. Good morning, everyone. I would like to give a little bit of a background on the Secure Flight program before we walk into the comment part of our agenda today. There are some slides here that are being presented and I believe on the web cast as well those slide are available this morning.

Today the airlines are required to check all reservations against the watch list. With the Intelligence Reform Terrorism Prevention Act, the requirement was a
Department of Homeland Security assumed that function from the aircraft operators. Additionally the 911 Commission as well made those recommendations for that to take place. Hence, TSA has developed a Secure Flight program and we’ve begun the process by issuance of the notice of proposed rulemaking which we are here today to discuss.

(Slide shown.)

MR. HUBICKI: Under the Secure Flight program TSA would do three things, receive certain passenger and nontraveler information. By “nontraveler information” we’re referring to individuals who wish to enter the sterile area of an airport or beyond the checkpoint of the airport perhaps for escorting minors to a gate. Secure Flight program, the TSA would also conduct the watch list matching function for domestic and international flights. Then Secure Flight would transmit the board pass printing instructions back to the aircraft operators based on those results.
MR. HUBICKI: First and foremost the mission for Secure Flight is security. It’s a security program and hence the emphasis. The goals on Secure Flight are to identify known and suspected terrorists by doing the name matching against the watch list to prevent individuals on the “no-fly” list from boarding aircraft, to direct those individuals that are on the selectee list to go through the enhanced screening process at the airports. Secure Flight is also designed to facilitate passenger air travel and to help protect the individual’s privacy rights as Kip mentioned earlier.

MR. HUBICKI: The scope for the Secure Flight program covers several areas. It covers domestic travel, international travel, international which includes over-flights over continental United States. It also includes international point-to-point travel between two international points covered by U.S. aircraft.
operators. All passengers traveling on covered aircraft operator flights are going to be matched against the watch list prior to receiving the boarding gate pass. At full capacity our estimates based on projections are around 2.5 million passengers per day. TSA would conduct this watch list matching process also for the nontraveling individuals as I mentioned earlier, folks needing access to a sterile area at the airport.

(Slide shown.)

MR. HUBICKI: The benefits of Secure Flight as designed to raise the baseline standard in terms of the algorithms, technology and automation used in the watch list matching process. Today these lists are distributed to hundreds of airlines. One of the benefits of Secure Flight is to also decrease the chance for compromised watch list data by limiting that distribution in the future. With the 72-hour provision that’s in the notice of proposed rulemaking which we can discuss and talk about...
shortly, that will help expedite law enforcement notification by gaining earlier insight to potential matches. Through the consolidation of this function within TSA within Secure Flight the intent is to provide fair, equitable, and consistent watch list matching across all aircraft operators. And also in the redress process, through this consolidation, expediting, integrating the redress process for misidentified passengers.

(Slide shown.)

MR. HUBICKI: This slide gives a high-level overview for the business process for Secure Flight. There are four main areas, the passengers, the airlines, the DHS TRIP program in terms of redress and the DHS Secure Flight program. The intent here is for the passengers when they book reservations and provide information to the airlines the airlines would forward a limited set of passenger information to Secure Flight in order for Secure Flight to then perform the watch list matching function.
In doing so Secure Flight would look to the DHS TRIP program in order to identify anyone who has been cleared through the redress process and through a process from other cleared lists. Those results would go back to the airlines. The airlines would then, based on those results, an individual who would be cleared and they could issue a boarding pass, an individual may be identified as on the “no-fly” list and the boarding pass would be inhibited or they could be identified as a selectee to go through the enhanced screening at the airport.

In terms of the data items that a passenger would provide to the airline and hence the airline would provide to Secure Flight in the course of booking a reservation, the required data that would come to Secure Flight would be the passenger’s full name and the itinerary information. That would be the minimal information in order to Secure Flight to do the name matching process against the
watch list.

Additionally, under this notice of proposed rulemaking, we are seeking the industry to include the ability for individuals booking tickets to be able to put in some additional data items, date of birth, gender, and redress number. This would then provide the ability for travelers to forward that information along to Secure Flight in order to enhance the name matching process. It’s not a requirement for a traveler to input that information, but through this notice of proposed rulemaking, we are seeking to have that capability within the reservation industry to allow individuals to do so if they wish.

The intent here is to help facilitate for those people who may have been potential matches against the list based on their name only. They now have an opportunity to add additional information, date of birth, gender, or redress number in order to minimize inconvenience at the airport.
MR. HUBICKI: The redress inquiry program known as TRIP is the redress process that Secure Flight would use in order to provide redress to those individuals who believe they have been improperly or unfairly delayed or prohibited from boarding and aircraft.

The DHS TRIP process was developed to provide an essential gateway for these individuals to provide information to DHS. Secure Flight would receive back from the DHS TRIP process the cleared list which is what we would use to augment or supplement the secure flight name matching process.

MR. HUBICKI: I would like to point out on the next couple of slides some of the areas in the Code of Federal Regulation that is being added or amended with this notice of proposed rulemaking. Specifically we are adding Part 1560 which addresses the Secure Flight program.
1560.1 addresses the scope, purpose and implementation of Secure Flight. 1560.3 addresses the terms that are used in this. 1560.101 covers the requirement that covered aircraft operators request passenger information and nontraveler information and transmit such to TSA. Specifically 1560.103 covers the requirement for covered aircraft operators to provide on their web sites privacy notices that explain the use of this information.

(Slide shown.)

MR. HUBICKI: 1560.105 covers the process of denial of transport or sterile area access and designation for enhanced screening. 1560.107 addresses the limits for the use of watch list matching results by covered aircraft operators. 1560.109 addresses procedures for submission approval and modification of the aircraft operator implementation plans with respect to Secure Flight. 1560.201, 203, 205, and 207 cover the redress procedures for
individuals.

(Slide shown.)

MR. HUBICKI: In addition to part 1560 which addresses Secure Flight specifically there’s also amendment to part 1540 in the Civil Aviation Security General rules where we’ve added 1540.107(a) which concerns the screening process for passengers; 1540.107(b) which provides that individuals must provide his or her full name when making reservations for a covered flight; and 1540.107 prohibiting individuals from boarding who fail to present verifying identification for those who are directed to the ticket counters for attention in that manner.

(Slide shown.)

MR. HUBICKI: And on the next slide there’s also some amendments to part 1544 aircraft operator security, air carriers and commercial operators. In this case we’ve added 1544.103(c)(22) to make the aircraft operator implementation plan part of the security
programs in place today.

(Slide shown.)

MR. HUBICKI: Let me move on and take a minute to just explain the implementation approach for Secure Flight as well. We are going through the process now which is why we are all here in terms of the notice of proposed rulemaking and soliciting and taking an input and comment from folks in the industry and the public. And we’ll go through the process then to finalize the rule that addresses Secure Flight. We then move into a phase in terms of the airline implementation plans and working with the airlines to finalize the details of implementation. The intent is to go through a parallel operations phase for the program in order to fully complete any testing of -- not just the technology, but the operations aspect and all of the interactions with the airline industry. And then we move into the final phase of actual cutovers where the results from Secure Flight then drive the boarding pass
process and drive the final results in the process.

Throughout that implementation, those phases and that approach there are many, many aspects and pieces of testing that will happen along the way. The benchmark testing where we want to do lots of work to test results of Secure Flight versus common practices today in the industry and benchmark the performance of the name matching engines, system testing, and connectivity testing, a lot of technical testing in terms of system performance, interfaces, all those kinds of things, lots of operational testing being planned for as well in terms of the interaction with the airline industry and how this is all going to work. And then verification testing as we get into the final phases and actually begin the cutover process and verifying that things are working as planned. Then throughout this entire process our intent is to continue to maintain transparency as Kip mentioned earlier with
stakeholders in the industry, in the public, through ongoing communications and a lot of attention to training as well and whatever we have to do to help and assist in the area of training on the operations under the future program.

(Slide shown.)

MR. HUBICKI: So the purpose of today, the purpose of the notice of proposed rulemaking is to seek comment. We are seeking comment in all areas in the notice of proposed rulemaking. We invite comment, suggestions and ideas from folks in all areas of what’s been outlined. There’s particular areas of interest that, you know, we’ve noted some things on here that we’ve heard from some people through the last several months in terms of the program that we invite further comment on, further suggestions, ideas, detailed information being forwarded to us. Whether that has to do with the over flights, the data elements, the 72-hour data transmission requirement, watch list
matching and boarding pass printing procedures,
handling the international multi-leg boarding
pass issuance process, data retention rules.
There’s a requirement in the notice of proposed
rulemaking for the placement of a code such as
a bar code on boarding passes to assist with
document verification, proposed privacy notice
requirements, compliance schedule, estimated
compliance costs. The point of this list is
not to be all-encompassing. Again, we are
looking at soliciting feedback in all areas on
the notice of proposed rulemaking.

With that I am going to turn it back
over to Steve to walk through some of the
specifics with regards to how individuals can
submit comments and then how we will conduct
the rest of today in terms of verbal comments
here this morning.

MR. SADLER: Good, thanks, Don. As far
as submitting your comments, you can submit
them electronically to the document management
system web site at DMS.DOT.gov and you can do
this until September 27th at 5 p.m. Then there
is going to be a change in the web site. They
are going to change it to www.regulations.gov
and that will become active on October 1st.

By U.S. mail or in person or by courier
the address will remain the same, that is not
going to change, at U.S. DOT Docket Operations,
M as in Mike -30, West Building, Ground Floor,
Room W12-140, 1200 New Jersey Avenue, S.E.,
Washington, D.C. 20590. The fax number will
not change, that’s at 202-493-2251. Please
make sure that when you send your comments in
you send them to the appropriate docket which
is docket number TSA200728572 and the deadline
for submitting comments is October 22nd, 2007.

Now, until September 27th you can view
the comments on the docket at the original web
site the DMS.DOT.gov and then starting October
1st you can view them on the new web site which
is the www.regulations.gov.

Just a few notes about making your
comments, your comments here at the table. If
you wish to make a comment, please make sure that you’re registered at the front desk and you have a number because we’re going to do it by number. And I’ll call those numbers out after a person is done making their comments here at the meeting.

So obviously if you could come up and queue up over here where the chairs are as somebody is making their comment that will expedite the process. Because it’s important for us to hear your comments. We want to make sure everybody gets a chance to make their comments here today publicly.

Also, when you make your comments, please make sure you state your name and your affiliation before you start the comments. And all your comments are going to be posted in the public docket for the Secure Flight NPRM. We would ask you to remember not to use any sensitive security information in your comments. We would also ask you to remember the five-minute time limit. It’s important
that we be courteous to other people who want
to speak. So please try to keep your comments
to the five minutes. We will keep track of
your time on the screen up here. So I believe
that the time is going to flash every 15
seconds in the last minute. There will be an
audio reminder at one minute, when you have one
minute left. There will be another audio
reminder when you’ve used your time up.

If you have any questions during the
course of the day there’s TSA staff around the
room here, you can ask them. As far as the
panel goes, the panel is here to listen. They
are also going to ask you questions to clarify
your comments. So if you make a comment there
might be some back and forth. And they’re also
here to answer questions about the Secure
Flight NPRM.

So, with that, let me just go over the
agenda once more. Obviously we are going to
start the comment period now. We’re going to
take our lunch break at 12:30. We will resume
at 1:15. We will take another break at 3:00, and then we will resume at 3:15. So if everybody is ready.

MS. DINH: I just wanted to make one comment about the transition of the docket. When you go to the old docket after the transition there will be a message on that web page explaining how to file a comment in the new docket. Also, TSA is going to publish a notice in the Federal Register explaining the transition and how it would all work. So if you don’t get a chance to take all the notes that you need to take today, you can always go to the TSA web site as well as the Federal Register when the notice is published to get instructions on how to file the comments during the transition and afterwards. Thank you.

MR. SADLER: Okay. Thank you. So with that, commenter number one, please come up to the table. And please remember to state your name and affiliation.

MR. HASBROUCK: My name is Edward
Hasbrouck. I have more than 15 years of travel industry experience with airline reservations. I’m an author, consumer advocate and consultant to the Identity Project.

The starting point for this rulemaking should be the first amendment right of the people to assemble and Article 12 of the International Covenant on Civil and Political Rights which sets the standard for the right to freedom of movement. As a treaty to which the U.S. is a party the ICCPR takes precedence over federal statutes and has also been given effect through the Airline Deregulation Act of 1978 which requires the TSA to consider the public right of freedom of transit, a right defined by the ICCPR.

All federal agencies have been ordered by presidential directive to act in accordance with the ICCPR. The government of the U.S. in its reports on compliance with the ICCPR has certified that all such agencies do in fact consider the ICCPR in relevant rulemakings as
the TSA has entirely failed to do in this case.

The central defect of this proposal is the TSA’s failure to recognize that freedom of assembly and movement are rights. I and the Identity Project will address this in more detail in our written comments. But an analysis of the impact of the proposed rules on those rights must be conducted before any rules are finalized.

The core of the proposed rule obscured by the euphemistic language of screening is a two-fold requirement for would-be air travelers to obtain permission from the government before they can travel. First they would have to obtain a government-issued travel document. Nothing in the proposed rules or any other federal regulation entitles anyone to such a document. Passports and driver’s licenses, for example, can be withheld for many reasons that do not constitute grounds for denial of freedom of movement. But under the proposal, if no government agency chooses to issue you with
such a credential or if you don’t qualify for one, you can’t fly. If you don’t already have such a document obtaining one can take a month or more during which time you can’t fly.

Second, airlines, common carriers, required by law to transport all passengers would be forbidden to allow anyone to board a flight unless and until the airline requests and receives explicit per-flight, per-passenger permission in the form of a clearance or matching message.

These requirements would be enforced through a rule requiring would-be travelers on demand to display identity documents and provide information to private, unregulated, commercial third-parties, the airlines. The certainty that airlines will retain all of this information in perpetuity in order to maximize the marketing value of the government-coerced informational windfall renders meaningless any restrictions on which of this data is retained or for how long by the government itself.
In the absence of any restrictions on the use or retention of this data by airlines, the data involuntarily obtained from travelers will become the sole legal property of the airlines which they could keep forever, use, sell, or share with anyone, anywhere for any purpose.

The proposal would require would-be travelers to display their ID whenever the TSA orders. But since the orders will be given to the airlines in secret, members of the public will have no way to verify whether a demand for ID or refusal of transportation is actually based on government orders. And since the TSA refuses to say how travelers can verify the bona fides of people who demand ID in airports, the proposed rules would leave travelers at the mercy of any identity thief who claims to be an airline contractor.

Many travelers are self-employed freelancers and sole proprietors and the proposal would have a significant financial
impact on a substantial number of these individual small economic entities who have to delay air travel until they can obtain prerequisite documents or unable to travel because they don’t qualify for any acceptable documents or don’t receive clearance to board flights.

The costs of the proposal would also include the value of their lost liberties and the billions of dollars worth of informational property they would be forced to give to airlines. The proposed rules don’t say who would make the decisions of whether or not to issue travel documents or grant permission to board, what criteria or procedures they would use in making those decisions, or how those denied travel documents or denied permission to board a flight will be able to obtain judicial review of decisions to deny them their rights of assembly and movement. They fail to satisfy any of the criteria established by the ICCPR for administrative regulations burdening
freedom of movement.
The TSA should withdraw the proposed
rules entirely. Instead of making decisions by
secret, unreviewable, administrative fiat about
whether to allow us to exercise our rights, why
not give existing legal processes a try? If
you want to obtain information ask a judge for
a warrant or a subpoena. If you think you have
sufficient information to justify an order
restricting someone’s liberty submit it to a
judge with a motion for a restraining order or
an injunction.

Thank you.

MR. SADLER: Thank you, sir.

MR. HAWLEY: I have a question. I
think that was a very clear statement and I
thank you for that. I didn't get the point
about the small entities. So in about two-
thirds of the way through you were talking
about the small entities and I missed that
point.

MR. HASBROUCK: Yes, sir. The
Regulatory Flexibility Act requires an analysis of the impact of a proposed rule on small economic entities when it would have a significant impact on a substantial number of such entities. The NPRM claims falsely that this would not because it fails to consider among other things the fact that sole proprietors as the TSA itself has conceded in several previous rulemakings in response to our comments that sole proprietors are small economic entities. So if a sole proprietor or a freelancer has to delay their travel because they don’t have documents or is unable to travel and is economically impacted by that, that triggers the requirement of the Regulatory Flexibility Act not yet addressed in the proposed rules for an analysis of the impact on small economic entities. That needs to be published and a new comment period on it allowed before any rule could be finalized.

MR. HAWLEY: Thank you. I got it now.

MR. HASBROUCK: All right.
MR. HAWLEY: Thanks.

MR. SADLER: Any other questions?

(No response.)

MR. SADLER: All set. Well, thank you, sir, we appreciate it.

Speaker number two. Is there a speaker number two?

(No response.)

MR. SADLER: Speaker number three.

Again, please state your name and affiliation. Thank you.

MR. LOTTERER: Good morning. I’m Dave Lotterer with the Regional Airline Association. I have really quite a few questions, so I’m not sure if I can get them all in five minutes. I’ll start with the bigger ones. One, the proposed compliance period. We think that’s just too short, the 60 days. We think it should be at least a year. One of the reasons, we have several smaller airline members that really haven’t done EPAS. They don’t do international travel. So the computerized
system needed to support this activity
certainly isn’t in place. And we have a
current system now with the airlines, so the
period -- the one-year period is not at risk
because we have an equivalent system in place.

The other issues, the issue about the
one boarding pass, that one is really of real
concern to us. The air carries have, of
course, invested considerably in an Internet
system that allows passengers to print their
own boarding passes. And for us to tell them
now that they can only print one pass is going
to really severely impair our customer service
here. You can have issues where the computer
doesn’t work. How many times has that happened
to us? Issues where they leave it at home,
they have to redo it. There’s a lot of
confusion about the one boarding pass issue
that you have here.

And to me, the biggest issue is really
the 72-hour window before departure. The
process that you described in the preamble

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really to me is not sufficient. You describe it saying that reservations made within 72 hours of scheduled flight departure time operators are required to transmit data as soon as possible. The preamble states that the TSA will notify the operator that check-in and boarding pass issuance can proceed normally. And then nothing further describes how TSA will provide the results other than to describe the matching process as fully automated. Does this really mean that there are no human interventions in there? You go on to state that the operator will need to call TSA. In other words, if he’s in a bind trying to get this passenger on board. This to us is really quite impractical. We just don’t see how this can take place.

And I guess what I’m suggesting, and I haven’t really run this by all of our member carriers, but to provide for an option, you’re in effect putting the government into the business process of having passengers denied
boarding at the last minute. And I guess the airlines -- I would think all of the airlines would be very nervous about a government entity so intimately involved in their business process of getting customers on board their airlines. We would like to have some satisfaction.

Maybe in a public meeting you can’t go into details, but right now we feel very uneasy about how this process will take place. I can see I have two more minutes.

Some of the issues too, like what about if you have a snow cancellation that you have to reboard people? What is the process there? Do you have to resubmit those people simply because they’re getting on another flight? That wouldn’t make sense from a security risk standpoint.

I guess another issue that I would like you to consider is, I mean, if a terrorist if he -- and this is a public docket and the 72-hour window is publicly available to everybody,
so a terrorist, why would he ever try to make a reservation before the 72-hour window? To me the 72-hour window before departure is when all the action will take place with respect to potential terrorist activities going on. And you put too much emphasis on what you’re going to do 72-hours prior to the boarding. To me, the real action that you guys have is what’s going on 72 hours before flight. And I just don’t see that process as efficient.

MR. HUBICKI: Before you step away one question and then I would also add a couple of comments. In terms of the concern about the compliance period of 60 days and the feeling that it needs to be one year, could you elaborate a little bit in terms of what you might consider from your perspective the long haul and intent, if you will, in terms of what activities on the airline side perhaps might be the problem there?

MR. LOTTERER: Well, reservation for the regional carriers is largely done by the
large carriers, the co-chair process. But we do have a number of carriers that don’t -- aren’t involved in EPAs. That basically their computer system they’re going to have to really rework that system quite extensively at considerable cost in order to match it to your process. And I’m just very concerned. I don’t have numbers now and I’ll get back with the membership. But I threw out the one year. I think what’s available now is that you do have a current system in place that’s doing the equivalent of this. And while there is some criticism on it from a security standpoint, it is working. So to me your risk within a one-year window is not that great compared to a 60-day window where you’re going to impose additional costs in order to expedite something and not only the cost but also the problems of doing something too quickly. To me it just isn’t worth the effort to do it that quickly.

MR. HUBICKI: Okay. Thank you for that elaboration. I guess just to provide a little
bit more insight regarding the 72-hour window as well and we look for more detailed comments from you, you know, going forward in writing back to TSA. You know, clearly we want to make sure that in fact we have sufficient time so that we can complete whatever automated name matching process that needs to take place so that we can respond back well within or before the 24-hour period at which point in time people might want to print their boarding passes out at home. So part of the 72-hour time table is to make sure that we can accommodate that so that we don’t impact travelers in the industry in terms of people wanting to do that to facilitate efficient travel. So that’s important.

Also, because it’s a security program, the sooner that some of the data is provided does provide us that enhanced capability as well. So some of the reasons for the 72-hour period of time. In addition that there’s the 72-hour period for advance reservations.
Secure Flight also does provide for and accommodate for those people who will book reservations within 72 hours all the way up to folks who will book shuttle tickets last minute to board a flight. So there will be an interactive capability with Secure Flight as well to accommodate those kinds of situations. That is envisioned and covered in the program.

And your point understood in terms of there has to be an operations element to Secure Flight and to Secure Flight working perhaps with the air carriers in terms of those folks who last minute are potential matches against the watch list and therefore there does need to be a resolution for those individuals. So there does need to be an operations process. And part of our -- I mentioned earlier the parallel operations and how we tend to do lots of different aspects of testing through the life of the program implementation. And through parallel operations we hope to make sure we perfect those kinds of operations. So
I would just add those points as well.

But I think your comments, clearly we would look to see more details in your submission to us so we can, you know, better understand them and better respond to them or take appropriate action if we need to modify something.

MR. LOTTERER: If I can comment. I think what you might be able to do is to have the current system remain in place such that if the airline doesn’t hear from you that they can still review their system -- they can use their system to check this person out and still get that person on board. And one of the big issues that I didn't have time for is redress. I mean, if a person’s flight is cancelled, you have a redress process that looks into their legal rights. But in terms of the cost to basically put that person up for a hotel to get him on another flight that might be more expensive, all of those cost issues, I assume, are going to be borne by the airline in this
process. It’s going to be a security delay. So this is something possibly new. And we’re spending billions of dollars on operating efficiency issues for the future, but if we see an increase in security delays, there’s going to be a lot of issues that are going to come as a result of that.

Thank you.

MR. SADLER: Okay. Thank you very much.

Speaker number four, please?

MR. RUDEN: Good morning. My name is Paul Ruden. I represent the American Society of Travel Agents. I had not intended to speak this morning, but having scored number four, I can’t the opportunity to make a few remarks. We’ve been working for years with representatives of TSA on the Secure Flight program and have appreciated the interaction and the candor that has been shown in explaining and discussing these issues. And in general we are very supportive of the
underlying proposition of shifting responsibility for the matching program from the airlines to the government. We have, however, asked that the development of these rules abide by a fundamental principle which is to the maximum extent possible not to create a system of rules that conflicts with the way business is done today. Failure to abide by that principle is going to impose upon the retail sector of this industry huge additional unfunded costs that cannot be recovered from consumers or any other way. By and large, I think the proposal that’s on the table in the NPRM does comply with that criterion and we hope that that will be maintained.

It is, however, still unclear to us how the data the travel agents will end up collecting -- because they are the front-line sales force for most of the people who end up on airplanes -- how that data is going to be passed from the GDS systems, how it will be recorded in there, first, and then passed from
them to the airlines to the government. I don’t know the extent to which you have been in interaction with the GDSes, but my impression is that there’s a gap here that is not being addressed and it is fundamental to the way business is operated and to the industry’s ability to comply with these rules that we have clear, specific instructions to the retail distribution system and, of course, to consumers operating on their own as well as to where this data is going to go, what format it’s going to be in. We’ve argued for a single format, for example, for date of birth. The fact that that’s an optional piece of information does not relieve or remove the importance of having a single format for that information to be input.

There is some concern about the impact of the rules mentioned earlier on early check in, on-line check in which many, many consumers use today as a convenience. It’s unclear to me at the moment. I confess, I’ve not absorbed
every detail of the NPRM, but it’s unclear what
impact this is going to have on that process.
If it’s going to eliminate it or fundamentally
change it, it’s going to create a new set of
unrecovered costs.

I would say also that you have an issue
about the formatting of the gender item. It’s
easy enough to say produce that information,
but -- and I don't have any expertise in the
subject, but we need to have a clear and
specific and unvarying format for that
information to be input so that people don’t
just make up terminology of their own and end
up having customers go through unexpected
secondary and tertiary screening at the
airport, because the information you were
expecting to get really didn't get provided.

Most important of all perhaps, whatever
the rule ends up saying, and obviously there
are going to be many, many comments that will
have to be digested by all of us is the issue
that was raised a moment ago which is most
fundamental. How much time is the industry going to have to adapt its business processes to whatever rule you end up finalizing?

In the travel agency industry which I focus on a lot of the information about customers, especially on the corporate side is already in place in computerized profiles. The travel management companies that specialize in this business and do hundreds of billions of dollars of this business a year in air alone have invested huge sums in creating systems to keep that information on file so that it could be entered automatically in PNRs and make the booking process as efficient as possible. Those profiles are going to have to be changed. Maybe there will be new programming requirements to accommodate this new information because we don’t generally collect people’s date of birth today. And the issue of coordination between the GDS systems and travel agency back office systems where this information resides is also a huge cost
question. So, this cannot be accomplished in 60 days. This is a huge cost the industry is going to have to bear and it simply can’t be done in 60 days. And it’s going to make the cost even larger if you do not allow enough time for the industry to figure out how to do that is in the most efficient way possible.

Time is up. Thank you very much.

MR. SADLER: Does anybody have any questions or comments?

MR. HUBICKI: Not a question, but I guess I just would add one thing that I think your comments reminded me that I don’t think we mentioned earlier and talked about that I think is helpful to understand. We at TSA have done a lot of work with folks in CBP, Customs and Boarder Protection, as well as they have similar programs on the international side and have done a lot to try to consolidate the technical aspects or requirements or designs of Secure Flight with what they have as well and communicate that with the air carriers. The
intent being that we, by consolidating and harmonizing, if you will, some of the specific formats for date of birth and how we transmit the data. For example, we don’t intend to build a redundant network with air carriers. We intend to use the communications and infrastructure already in place today for transmission of data for other purposes to CBP.

So, you know, I think as we look for your comments further on this, you know, I would point out that in fact through some of that harmonization some of those details have been thought through in order to provide for some consistency in formats and to try to leverage some things that are in place.

The other point would be that hopefully that will minimize in terms of the amount of time required because we are trying not to reinvent the wheel in terms of some of the -- are leveraging some of the work that’s already being done.

MR. RUDEN: I appreciate those
thoughts. We certainly will file written comments. I do want to emphasize though, the airlines don’t own the GDS systems. They are completely independent businesses. And whatever the airlines may be saying about what they need and what they can accommodate to and how fast they can do it does not represent necessarily the GDS point of view. And today while the Internet is accounting for a larger and larger share of travel agency bookings that are made sort of outside the historical system, the reality is that GDSes are still the core of the system. They are going to remain the core of that system for a long, long time to come, probably forever, as long as retail distribution -- independent retail distribution exists. So the problem of what do you put in, what format is it in and how is all that going to work in context with corporate travel programs, profiles, and all the rest is still very much an open question and one we are gravely concerned about. Because the cost to
the industry will be huge if this requires a redo of all of those systems. And if it does require that or even a partial redo, that’s going to take a long time. You just can’t do it in 60 days. You may not even be able to do it in six months. It could take a year.

Thank you very much.

MR. SADLER: Thank you. Speaker number five, please.

MR. SCANNELL: Good morning. My name is Bill Scannell. I’m a Bostonian by birth and I’m Alaskan by choice. I’m communications director for the Identity project and I’ve spent the past four and a half years watching the Department of Homeland Security put forward iteration after iteration of some sort of air surveillance pasture program. First it was called CAPS II where a lot of data was illegally transferred -- secretly transferred. People’s Social Security numbers were put up on the Internet. We saw various iterations of Secure Flight and one by one they went down the
tubes. Why? Because it’s just not right.

It’s just simply not right.

Osama Bin Laden is not going to be sitting in row 15F eating a special meal flying under his own name. The very idea or the very concept that Dr. Evil is going to be using a real name with his real ID is the big flaw in your entire security plan.

The other big flaw is something called the Constitution. The very concept that we need to get government permission in order to travel in our own country is deeply offensive. And you all really quite rightly should be ashamed of yourselves that you sit up here and you continue to push these things because you don’t make us any safer, you don’t do anything for our security, and all you do is ratchet up the level of fear and make our country a lot less free.

The latest example of this, Mr. Hawley, would be the results of the Privacy Act requests that we did on the automated targeting
system. You may recall that this was a hitherto secret, yet another secret, Homeland Security Program monitoring the flights and travels of American citizens. You keep track of people’s race. You keep track of what people read. You keep track of the names and telephone numbers of friends and family. This is repulsive. And a lot of this information is coming straight out of the reservation systems, out of the GDSes. The same well will you be pulling information for Secure Flight.

MR. HUBICKI: This won’t count on your time, but just to correct that.

MR. SCANNELL: Sure.

MR. HUBICKI: We do not. That is not TSA. It’s very important that everybody understands the record. We can talk about this when your time expires and we have an exchange.

MR. SCANNELL: Pleasure.

MR. HAWLEY: But that is not a TSA function. None of that information comes to TSA; none. And none of that is anywhere near
Secure Flight. Totally separate project. I take your point, but just for clarification, factually, TSA has nothing, zero, to do with that program. And when you were saying, “you get this, you get that” I would like to have for the record that TSA does not -- it doesn’t undermine the validity of the point you’re making, just in terms of the factual record, that does not happen to involve TSA.

MR. SCANNELL: And, sir, with due respect, as I’m sure you can understand when we look at whether it be the idiocy of quart baggies to taking shoes off, to mothers drinking breast milk, to illegal data transfers and secret data transfer, you can understand that from my perspective, sir, after four and a half years of actively working to stop your department from doing this that when you tell me this your credibility is around zero and I hope that you respect that I would see it that way.

I hope that you can also understand
that when we look at the global reservation systems that that is one big well where all of this information is coming out of. That you may put your TSA Secure Flight bottling plant next to this well, that you may put your ATS or your APIS bottling plant on the well, but it’s the same water. You may be putting it in different bottles, but it’s the same water coming out of the same well, going into the same department. And this is wrong. Let’s talk about a sane security program, sir. What about I realize that this will cost you and your contractor friends a lot of money, but why not simply check people for weapons and explosives when they show up at the airport. If they don’t have them, let them board. When they check their bags, let’s make sure that there’s nothing in that bag that causes a danger to the flight. And if that’s okay, well, let’s let the bags on too. And what about cargo? If the cargo is safe, let’s let that on too.
I don’t understand what someone’s
identity or anything has to do with any of
this, sir. And, again, I’m embarrassed for all
of you. Thank you.

MR. HAWLEY: Before you go, thank you
for your statement, I do respect the point of
view that you expressed. You may not have been
here at the opening --

MR. SCANNELL: I was.

MR. HAWLEY: -- when I indicated that
we had a number of outside reports, Secure
Flight working group, General Accounting --
General Accountability Office, Government
Accountability Office, GAO --

MR. SCANNELL: I’ve read them all.

MR. HAWLEY: -- and we did in fact take
those to heart and in February when I spoke
with the Senate Commerce Committee we
rebaselined, rebuilt the program taking those
issues to heart. So I think there are a number
of large-scale issues that you raised and we’re
not going to resolve here and I respect those
opinions. If we just narrow it down to Secure Flight, what we tried to do with Secure Flight is say, yes, we understand there’s a lot of issues around a lot of these other things, but for Secure Flight which it seems that the minimum responsibility of the government ought to be that when you identify people who are in fact serious terror risks to flights —

MR. SCANNELL: You’d get a warrant and you arrest them.

MR. HAWLEY: -- that the government should not let those people onto planes. So that what Secure Flight does is simply watch list matching and nothing else.

So what we’ve tried to do since this rebaselining is to rebuild the system with a very narrow focus, very controlled access to whatever information it gets in all those rules. So what I hope that you, as you evaluate this, as you consider these other large scale issues, please do get into the detail of this Secure Flight rulemaking and
that we are in fact attempting to limit to the
necessary data and then protect that data and
then get rid of that data.

MR. SCANNELL: Well, sir, I hope you
appreciate I’ve been criticizing you publicly
for years. And I always dislike it when
someone criticizes me, but they’ll never do it
to my fact. So I thought it was important to
a, criticize you to your face. I mean, look, I
created KipHawleyisanidiot.com.

MR. HAWLEY: That’s you?

MR. SCANNELL: That’s me.

(Laughter.)

MR. SCANNELL: So, I mean --

MR. HAWLEY: I’m one of your
subscribers.

(Laughter.)

MR. SCANNELL: Not that we keep track,
but I did notice a lot of hits from within your
agency, sir. But to that point, this idea of
we don’t want these people flying, I don’t want
terrorists or bad guys anywhere. I don’t want
them on my street. But the fact is, the very
notion, sir, of turning our airports into some
sort of an air point Charlie is deeply
offensive to me.

I had a high-paying job as a VP with a
software company when CAPS II was announced. I
spent so much of my previous life first as an
intelligence officer serving in the United
States Army and later as a reporter in Eastern
Europe, I’ve seen these bad movies before. And
I was so upset by this very notion of getting
permission from you and your agency to travel
that I quit my job and that I devoted my life,
or right now a good chunk of it -- I have two
boys now and a wife, but a good chunk of it to
make sure that you don’t get away with this.
And I want you, please, when you leave here,
when you go to sleep, please sleep on this.
Because you’re really not making anyone safer,
sir, really. And I appreciate that and I will
think on what you’ve said.

MR. HAWLEY: Thank you, likewise.
MR. SCANNELL: Thank you.

MR. SADLER: Okay. Thank you very much. Speaker number six, please.

MR. HARRISON: Good morning, my name is Jim Harrison. I’m an attorney, I’m director of the Identity project that Ed Hasbrouck and Bill Scannell work with and I’m a private attorney. I also represent John Gilmore. You just said that TSA has nothing to do with that project and I think I should clarify what Bill Scannell was just talking about.

ATS put out their system of records notice and they’ve been collecting information and we’ve been able to make record requests into that systems of records. And what we’ve found is some pretty appalling stuff. And first just let me clarify, you said, “we have nothing to do with that program.” You just said that. That is the program that TSA intends to absorb in the future; is that correct? The international traveling aspect of that.
MR. HAWLEY: No, it is not correct.

But --

MR. HARRISON: All right. Well, what we’ve found is that the American government is collecting records on people’s international travel habits far beyond what they said they were doing. We have records that indicate that customs and boarder protection individuals were making notations as to what books people were carrying with them while traveling, asking them questions as to where they’ve been, what they’ve been doing, and what they do for a living and making notations as to that. And that frankly is repulsive that our government is collecting dossiers on its individuals.

And it’s not just the secondary inspections that are problematic, it’s also the passenger name records, the PNRs. Now, the PNRs contain a vast amount of information and a lot of it is redundant and extraneous and unnecessary. But contained within these records, these airline records is information
having to do with the person's communication with people abroad, where they're staying abroad, information that they give to the airlines as to how they can be contacted. This is data that goes to the U.S. government.

There are restrictions also as to what information can be contained in the international or our border crossing data. We found in there records pertaining to EU flights, nothing having to do with crossing our borders. That's very repugnant and in fact probably very violates data privacy protection laws of EU.

So my point here is that we are trying to see behind the curtain. We are concerned about the data that you guys are saying that you are going to collect. We can't tell from your NPRM what data you're going to want. The individuals that were speaking here earlier were saying, what data fields are you talking the NPRMs that you want -- I mean, the PNRs, or is it some other field? Would you like to
address that?

MR. HAWLEY: Sure. I understand your comments. They are not actually related to this rulemaking. Those are other issues outside of the Secure Flight rulemaking. So they’re interesting comments, but they’re not focused on Secure Flight.

The Secure Flight program is specifically designed to limit its activities to just the simple business of, is this person trying to travel on this flight a known terrorist, basically. And it doesn’t get into the other stuff that you’re talking about.

MR. HARRISON: Well, the details -- the devil is in the details here. Are you requesting the PNRs?

MR. HAWLEY: No.

MR. HARRISON: Okay. Then what are you going to request?

MR. HAWLEY: Sir, my friend Don Hubicki will address that.

MR. HARRISON: Sure.
MR. HUBICKI: In the proposed rulemaking document it talks about the Secure Flight passenger data and there are some tables in there that present the data elements. And specifically the only required data elements to come over to Secure Flight in order to do our function is an individual’s full name and the itinerary information so we can prioritize the sooner flights versus the later flights so we can make sure that we process those that are sooner faster.

MR. HARRISON: But what is the itinerary information? That is the general definition of PNRs.

MR. HUBICKI: PNR is a much broader definition that gets into -- a PNR could include an individual’s passport information and all sorts of other things. PNR is a very broad set of data elements. And we are specifically talking about an individual’s full name and then itinerary information. Itinerary again is your origin, destination, time of
flight, flight number, that sort of thing.

MR. HAWLEY: So you raise a very important point which is the terms of art that are in use. The idea that, hey, they’re taking the PNR and using it to do watch list matching. In our view that would be overbroad. That we do not in fact suggest that we’re going to take the PNR data. What we are saying is that we are going to take information that is included in the information about a person that is the things that Don identified very, very limited and that’s all, but it is not the whole PNR data. And we get a lot of confusion about, hey, they’re going to either get more information than they need or do something else with the information other than watch lists.

MR. HARRISON: That is the concern on our end as well. And we only have the tools at our disposal and that is Privacy Act records requests. And this is the records requests on five individuals including myself that contain so much extraneous stuff and so much
information that frankly is records of first
amendment activity. The Privacy Act forbids
the government’s collection of data having to
do with citizen’s first amendment activity and
we are very concerned that you are going to be
doing that as well.

MR. HAWLEY: We won’t. Okay.

MR. HARRISON: I have one last point
also in that it seems as though you don’t just
have a mission of aviation safety, it seems
that it’s now become, as my colleague said, a
dragnet for law enforcement. And, you know, by
matching watch lists there may be aviation
dangers, we don’t know what watch lists people
are. Now we have checkpoints throughout our
country to catch bad people and that’s
repugnant to Americans.

MR. HAWLEY: Thank you. I’ll just make
one clarification on that. That it’s very
important also for people to know that when
we’re talking about the watch list and I
mentioned risks, I specifically said, terrorist
risks. And there are very strict rules as to what kind of information, who would get on a no-fly list.

MR. HARRISON: How do we know that?

You say there are strict rules, but how do we know that?

MR. HAWLEY: I don't know how you know that. You--

MR. HARRISON: No, it’s a secret how you get on and off the list.

MR. SADLER: Let’s not talk over each other, sir. If we’re going to ask a question, let’s let them answer.

MR. HAWLEY: So the no-fly list is a very, very limited list for the purpose of not having people on aircraft who shouldn’t be. So that’s all that we’re talking about here. And I think the rest of the issues are well-known and well discussed. But it’s important for the purposes of this conversation and this rule that we limit it to the secure flight program and how we actually intend to implement it.
MR. HARRISON: I think if you’re going to prevent someone from being able to freely travel in this country you should get a warrant from a judge. Thank you.

MR. SADLER: Okay. Thank you, sir, for your comments. Speaker number seven, please.

MR. STEINHEL: Thank you. I am Barry Steinhel. I am the director of the technology and liberty project of the American Civil Liberties Union.

You know, I grew up a baseball fan in the suburbs of New York, so I’m going to begin by quoting a great hall of fame catcher and philosopher, Yogi Berra who noted about being too many games that it felt like déjà vu all over again. And that’s what it feels like today for me, it’s déjà vu all over again.

The ACLU began actually discussing this question of aviation security and making some recommendations like, for example, something you still have not accomplished which is to screen all cargo going into the aircraft.
We first began discussion back before what was then known as the Gore Commission. I will tell you that it's in a prior administrator, then Vice President Gore. I actually met with the FAA in October of 2001 to discuss what was then, I guess, known as the CAPS program. Since then we have been through CAPS, CAPS II, CAPS 2.1, CAPS 2.2, Secure Flight, Secure Flight 2, Secure Flight 3, and what now I suppose could be called Secure Flight 4.0.

In all of that time the remarkable thing -- a couple of remarkable things. One, of course, is the inability to actually build this system which does what you say you now want to do which is to be able to match the names of individuals who are boarding aircraft against a watch list. And a watch list which you say is a watch list of known or suspected terrorists. That is a laudable goal. The problem is you've been -- the government has been -- I don't mean this too personally, Mr.
Hawley, or anyone else on the rostrum today, the government has been totally incapable of doing that and there are significant questions about whether you are in fact capable of doing that, whether that is a function that can be done. But, you know, if you look at the system that you are now proposing, and I applaud you for recognizing that the kind of Rube Goldberg systems that have been discussed since 2001 are not going to work. That they were overbuilt, they had aspirations that were too great, they were not going to work. I applaud you for the point where you’ve reached now that you recognize that what you need to do is fairly simple. Although I will point out that even those of us who are not security professionals but civil libertarians have told you that since 1999. And I don’t say that to say that “we told you so” it’s just that this has been obvious from the very beginning now. But beyond that you’ve got a system which you still don’t have right and you don’t have right for
at least two fundamental reasons. One is that
the watch list that you are proposing to match
against is bloated, it’s inaccurate, it’s
impossible. The press reports are here that
there are between five and 700,000 people on
this watch list. Now, we are talking about not
only the no-fly list which means you cannot
fly, but also the secondary larger list that
subjects you to secondary scrutiny.

The truth is, if there were five to
700,000 terrorists in the United States, we
would all be dead. I mean, there aren’t five
to 700,000 terrorists in the United States,
thank God for that. You are looking for a
needle in the haystack and you keep pouring
more hay on the stack and somehow you think
that you are going to find the terrorists. So
that’s problem number one.

Problem number two is you have a system
of redress that is almost Soviet in its
approach. And I say that as someone who had
some experience in working in Eastern Europe
and advising some post-Soviet democracies. And I don't say that lightly. When I say "Soviet approach" it is opaque, no one knows how it works, it's done in secret, there is no real opportunity for appeal. As we've pointed out here there is a constitutional right to travel. You don't redress a wrong or grievance with the kind of system that you have.

So unless and until you can get those two things right, one you have a watch list that in fact does not -- is capable of actually matching and determining the names of individuals who are real terrorists and we could all go -- you know, we could spend some time here this morning talking about the Robert Johnson problem that I'm sure you're all familiar with from 60 Minutes that they have common names. And secondly that you have a redress grievance that meets constitutional and fundamental fairness grounds. You need to withdraw this proposal. You only get so many "do-overs" in life, you've exhausted your
opportunity to do over.

MR. HAWLEY: Thank you. That was a clear and thoughtful statement. I’ll just give a perspective on two aspects. One is -- or maybe more. On the terror watch list itself, and you correctly identified that the no-fly list is a subset of the larger watch list. And one of the things that we’ve done over the last year or so is in conjunction with the terrorist screening center is go through every name on the no-fly list and go back and refresh, contact case agents, and go to put a screen on to say, is this person today still worthy of being on the no-fly list. And as a result of that exercise, it essentially was cut in half. So I think the point you raise philosophically is important. I think the point you raise operationally is important. That we have an obligation, if we are going to have watch lists, to make sure that the people on them are the right people and stay current. So I know that’s not going to particularly satisfy you,
but at least it’s a data point that says that we do understand the point you’re making and have made some strides in it. And I think they are significant.

The other point which is really a personal observation on my part is that the issue of the Robert Johnson problem and then the larger philosophical question about who is on the watch list and how do we know and that stuff is the number one issue that people forget about baggies and shoes, that’s the number one issue that is a pain point that I hear about.

On the other side one of the things that happens when a no-fly is identified, there is a lot of activity -- a lot of activity. And the first thing we do is establish is this the person who is on the no-fly list. And the second thing is, is this person really should be on the no-fly list. And if the answer is no, we take them off immediately. Just take them off. And so in my experience on this job,
and this is just my personal experience, I am aware of only one case where somebody has come to -- you know, gotten to me in an appeals process to say, hey, I don’t belong on the no-fly list and then say, yeah, let’s get that person off. And my own personal observation is, and there’s no way to verify this, so I fully realize this won’t be believed by a lot of people. But the fact of the matter is that as one person -- and I’m not responsible for putting people on the no-fly list. I have no vested interest in who’s on or who’s off. That it actually is, for the people who are on the no-fly list, they really, I think, meet the standard that the public would have if they had visibility to the thing. So I think one of the things that Secure Flight is going to do is it will eliminate the Robert Johnson problem so that the number of people going around saying, hey, I’m on a watch list, they’re not on a watch list. You know, I’ve heard so many stories about this person, that person, first
amendment, I spoke out against this or that and
I’m on -- no, no way.

So I think that once Secure Flight is
up and running, that the credibility issue on
the validity of the watch list will -- the
proof will be in the pudding. I think it will
be a good result.

And on the “do over” point, I think
that what happened with Secure Flight is that
right after 911 the fundamental, societal
discussion about privacy, about security, about
potential tensions in that relationship and
Secure Flight was the point at which those came
together and were discussed. And one of the
problems and I think you identified it, and I
agree, is that the program zigged and zagged in
the middle of that debate and it has played out
in delaying the very simple basic, as you point
out, of let’s just do the watch list matching.
So we are to the point of let’s just do the
watch list matching and then we will get that
in place with the right protections. And I
think -- I mean, that’s what I hope when I leave this job, Secretary Chernoff leaves this job that we’ll have in place a privacy strong regime for no-fly matching. And should you wish to make further comment, please.

MR. STEINHEL: Thank you. I appreciate that. But you know half of grossly bloated is still bloated. And that’s the problem. I don’t know, perhaps you can tell me how many people are now on this list that tell the terrorist screening center. I’m not talking about the pure no-fly, can’t get on the plane. I’m talking about the secondary screening list as well. You’re going to -- I see by your body language -- tell me that you can’t tell me that.

MR. HAWLEY: Correct.

MR. STEINHEL: But that’s the problem. Half of grossly bloated is still bloated. You don’t have the list that does this. I don’t feel any more secure. I fly all the time. I was on the ground at the airport and really on
the runway at LaGuardia Airport on September 11th and that plane was turned back because buildings that were not a mile away were hit. I take that very seriously. I don’t want to be on a plane with terrorists. But on the other hand, you know, you’ve got to get down to the operational nitty-gritty here. If you don’t have a list, an accurate list and a slim list of terrorists that you can watch, then you are wasting all of our times and you are certainly wasting our liberties. And that remains true whether you go from grossly bloated to just bloated.

MR. HAWLEY: So I’m going to agree with you but not -- but I want to explain how I’m agreeing with you so it doesn’t become a headline and adopt everything you’ve said today. But the point about the operational is absolutely valid. That it is incumbent on all of us, on the government side, and it’s a shared responsibility among the intelligence and law enforcement as well as us as the
executive agent on the no-fly and selectee
process to have it be clean and current and
fresh and accurate. And as Don mentioned, I
think it came up in some of the previous
discussions about how are we going to resolve
last-minute people who want to take a last-
minute, are we operationally going to be able
to react the way the current process works?
Those are all operational issues. And I think
as we talk today about the Secure Flight, here
are the rules of the road. Here are the
authorities, here is what we are asking for.
There is a second and just as important
discussion around operationally how are we
doing all the things that you mentioned. So I
definitely respect the points that you’ve given
and look forward to your written commentary as
well. Thank you.

MR. STEINHEL: Thank you. Yes, sir.

MR. SADLER: Okay. Thank you very
much. Speaker number eight, please.

MR. DUNLAP: Good morning, Mr. Hawley.
My name is Ken Dunlap and I’m from IOTA, the International Air Transport Association. First I would like to thank you for personally being engaged in this debate, it’s very important. We would also like to say we very much support DHS and their desire to have a single window for data collection to work towards transmission of airline data once and one time only and to just end the needless duplication of information that’s provided to regulators.

We also support you in your goal to keep air travel safe and secure. We would like to thank you and the men and women of the TSA for their jobs as the guardians of the borders here. In reviewing Secure Flight there are several matters that warrant some attention that we would like to talk about today. One of them deals with the definition of covered flights. And I would like to limit most of my comments here to international flights and most specifically those flights which we in the
industry call “interline flights”. And for those of you not familiar with interline flights, aviation is a global business and as we know here in the United States and also abroad it’s very difficult sometimes to get a direct flight. In many cases what passengers need to do is fly two different airlines to their ultimate destination. We do this here in the United States and that also is a common travel practice abroad.

And one of the issues that comes up is depending on how you read the Secure Flight NPRM, it doesn’t affect all airlines equally. And most specifically I would like to speak to flights that are not covered under 1546, but are actually flights that feed into the 1546 flights. Those flights would be the ones in which the passenger’s ultimate destination is the United States. And it does seem that based on the squishy wording of covered flights that Secure Flight is trying to regulate flights that never land in the United States, where
operators never operate within the United States nor have any intention of operating, and it's asking that they change their business practices relating to boarding pass issuance, access to the sterile areas, and also the ID requirements of the passengers.

Now, in every case the host nation regulator will have rules for boarding pass issuance, for access to the sterile areas, and also for customer identification. So we do believe that unless the language on what is a covered flight is tightened up that there is going to be a conflict between Secure Flight and the intent of Secure Flight and the host nation security regulations.

In terms of data privacy, Secure Flight covers over flights. And we don't believe that the current existing bilateral agreements that cover passenger data specifically address the issues of over flights. So we would suggest that further research be done on that. Also in terms of capturing data on over flights, we are
very encouraged by what has become some significantly tight wording on what is defined as an “over flight” which are flights that fly over the lower 48. But we would say that based on our review of international air traffic, you will be capturing a lot of flights whose only crossing into U.S. airspace is over the fields and forests of Maine. So we’ve heard many times people say, well, we have an interest in capturing those flights that fly over New York and Chicago and Los Angeles, but the fact of the matter is, those airplanes are probably already going to be landing in the United States and that the airplanes that don’t fly over those cities will be flying air routes that fly over the northern portion of the United States. So if there is a way of segregating that traffic from the traffic that actually does fly over key cities and key critical infrastructure, we think that that would be important.

Next, as we look at the wording of
Secure Flight, we also believe that some of the next generation passenger convenience items such as being able to print your boarding passes at home, bring your PDAs into the airport with a boarding pass already printed on it could be affected by this. And that relates to the triggering mechanisms that say a boarding pass cannot be issued unless the Secure Flight flag has been met within that passenger’s reservation system.

So we would ask that we come back and take a look at ways of allowing greater passenger throughput in some of these next generation technologies to be integrated into that so the two processes are complimentary.

And, finally, in terms of technical issues as was noted before there are going to be changes that are being requested to the UN edifact message. We don’t believe that those changes can be done in the 60-day period of Secure Flight. So we would like to ask that you go back and review your time
implementations in light of the WCO process for making changes to the UN edifact APIS messages. And, finally, with regards to the issues of developing a new bar coded boarding pass, we would like to reiterate that there already is a standard in place for bar coded boarding passes, that there are international standards that are used and with the next generation two-dimensional boarding code we’ll be able to achieve those security objectives without TSA having to go and reinvent the bar code for the boarding passes.

So, I see my time is up and thank you very much.

MR. SADLER: Any questions or comments?

MR. HUBICKI: First of all, thank you for the comments. It seems as though you’ve taken a lot of time to read many of the details and they’re meaningful comments as well to us and as always look for more elaboration and details in your written comments. I think that will be very helpful to us.
One thing I would also ask for in your comments back in the area is like in interline flights, we understand the complexity of that issue and have spent lots of time discussing that. And I think what would be very helpful is to for comments and feedback to pose alternative suggestions on how we can best make that operation work to minimize impact for air travel yet maintain the level of security that we’re trying to achieve with Secure Flight. So we very much look forward to the comments that say this is problematic and here are some alternative ways that we can consider to deal with that matter.

I think on many of the other comments, again, we look for the details, the issues of changes to the UN edifact and the 60-day time period. Again, what would be helpful for us is to understand -- you know, I had asked earlier the long haul and the ten and it sounds like you’ve pointed out specifically that’s an area where you’re concerned.
One of the things that I mentioned previously was that we have put together a lot of the details of what those changes may be early on and have been looking to make that available sooner with our work in conjunction with CBP. So the intent there was to not -- was to give a further lead time by making some of that available so carriers can address perhaps those changes now in 2007 rather than later. So I think there are some -- maybe when you address your comments if you could let us know if there are certain things within the context of those details that still you feel aren’t covered or addressed that then mean there are subsequent changes later to be made that will be helpful for us as well. I’ll leave it at that.

Paul, do you want to add anything?

MR. LEYH: Yeah, thanks. Ken, just one quick point. On that boarding pass issue itself, and I want to make a point of clarification on this, is that our intent is to
send a message to the carrier that says you can issue a boarding pass. So we want to make sure that the carriers can take full advantage of any process that they are looking at for the future whether PDAs and so on. We don’t want to encumber the process. Rather we want them to go forward and use whatever means they have for developing that boarding pass process. So ours is just a message to them that allows them then to use whatever means they have for that.

MR. DUNLAP: And we understand that.

Again, the sensitivity is on those flights that feed into the long haul flights, I mean, those could be very large airlines. They are certainly by no means small airplane operators. It’s just that they might be inter-European, intra-Asian, and that they are currently not regulated entities under any U.S. security program. And, again, if there was tightening of the language we could better understand what you mean by a covered flight and we would be sensitive to that.
The other issue, if I could just go back to what was said about the UN edifact message. The point in bringing that up is there are standards organizations and world cooperative organizations that have a repeating process and standards bodies that get those messages built and agreed to as an international standard. And that’s a longer than a 60-day process. So if you could work with those organizations to find out how much time they need, that would be a very good way of accomplishing your data collection goal. And I would point out that if you don’t do that, there are dozens of countries right now that rely on that APHIS message standard and receded that information. And some countries might not need 15 fields, they might need only two. But what they are doing is expecting a certain message in a certain order. And if that order is changed unilaterally then that breaks a foreign government’s APHIS collection system. So it would be, you know, no good deed
goes unpunished. What happens here might negatively affect someone else's security. So we would just ask you to be sensitive with that and we will work with you to make sure that you understand the processes that are needed to change you and that effect.

MR. HUBICKI: And we will. Thank you very much for that.

MR. SADLER: Okay. Anything else?

(No response.).

MR. SADLER: Okay. Thank you.

Speaker number nine.

(No response.).

MR. SADLER: That's it? Yeah, is number two -- someone is registered to speak as number two. Okay. Great. Speaker number two, please.

MS. SPROAT: I'm Justine Sproat from Qantas. So I just want to add to my colleague from IATA that we support the comments that they made. I just -- we will be putting in written comments so I will just probably cover
the high level, some of the issues we have. One of them is, of course, the 72-hour time frame. The 72-hour requirement, I guess, then requires carriers to build a system in both their reservation and their date years and doesn’t quite align with the APHIS predeparture requirements that while there’s a suggestion that you can send as early as 72 hours, it’s not mandatory. And therefore, I think, probably a more workable solution would be to say to carriers, this is the time frame in which we require the request for a watch list match to be sent, between 72 hours and the securing of the flight doors, but within that time it’s up to you when you send it. Then it’s, I suppose, for the carrier to deal with if a watch list match result doesn’t come back in a timely manner then that’s their issue to deal with. But at least it gives the carrier the opportunity to determining their business process as to when they actually want to send that information.
The other one I guess on that too is seeking some clarification on the differences between TSA and SDP requirements because initially the watch list match for international flights will be carried out by SDP and that will be based on carriers sending their IQQ or sending information through IQQ. And if carriers have built an IQQ system or interactive system to meet the APHIS predeparture requirements which also meets the watch list requirements, then once TSA takes over that role carriers wouldn’t want to see an entire change in the process again. And there are differences between the two in terms of the data requirements and the timing.

And on the issue of -- I’ve spoken already to timing saying PATS sets the limits but optional within. But on the issue of data elements, I think that they need to align with APHIS predeparture data elements or be a subset of those data elements but not different. And there are -- I think it comes up in the
itinerary information -- things like the record locator number -- sorry, record locator, I think, the redress number, the nontraveler number, the record sequence, passenger update number, those sorts of things are different.

The other issue is a boarding pass on interline or three check flights. Again, this differs from the APHIS predeparture where there is that ability to issue that boarding pass. And I think really the objective here is really to stop the person board as opposed to issuing a boarding pass. So I think allow the boarding pass to be issued and then following SOP to carriers it is the responsibility of the carrier to ensure that that person doesn’t actually board the aircraft and have procedures in place to assure that doesn’t happen. But not sort of create havoc on the current airline industry and operations in terms of three check passengers.

The other one as well is the issue of it being the carriers’ responsibility to ensure
that travel agents one, collect a name in the reservation and two, put a privacy notice on third-party web sites. It’s very difficult for carriers to compel third parties to do anything. And it shouldn’t be the carriers’ responsibility to do that. If there is something that the government wants then they should mandate directly against the travel agents, but not ask the carriers to ensure third parties comply.

There was as well in the notice of proposed rulemaking that says that during operational testing TSA will continue to evaluate the value of data elements required. Certainly we would not want to get as far down the track as operational testing only to find that there was going to be a change in data elements. This is something that would need to be determined by the final rule.

As well with the timing, there’s mention that the final consolidated use guide won’t come out until the final rule. It’s
published and therefore that makes meeting a
time frame of 60 days incredibly difficult.
Not just in terms of the different business
processes, but equipment lay time and system
changes, 60 days is just not enough. And
likewise 30 days to provide the implementation
plan when you haven’t really had an opportunity
to digest the final rule and a final
consolidated user guide. So we would ask that
those timings be reviewed.

I think my time is just about up and I
do have other things that I would like to
write. As I said, I can do that in written
comments.

MR. HUBICKI: One question that I have
and whether you want to answer now or maybe in
your comments back, when you talked about the
printing of the boarding pass and an
alternative to that would be through some SOPs
somehow addressing that if somebody has already
printed their boarding pass and then later we
identify there’s somebody who shouldn’t have a
boarding pass through some SOPs to deal with that. Have you thought through or perhaps could you --

MS. SPROAT: Well, currently --

MR. HUBICKI: -- how you would handle that.

MS. SPROAT: Sorry. Currently -- I’m not sure you’re familiar with the Australian system, the advanced passenger processing which essentially when passengers check in their information is sent to the Australian Immigration Department and the Australian Immigration Department makes a decision about whether that passenger is okay or not okay to board and sends back a response to the carrier saying if the passenger is okay or not okay to board. If for any reason that check-in that has not been carried out, then in Qantas’ case, for example, we inhibit the gate boarding. So when the passenger turns up at a gate and puts their boarding pass through the gate reader it’s rejected and the passenger is prevented
from boarding until they’re not okay to board
is resolved or if the passenger hasn’t had
their data collected and transmitted, then it’s
done. Likewise with say three-check passengers
that are coming from a carrier that doesn’t
operate inter-Australia, for example, so
they’ve issued the boarding pass for say
Johannesburg-Sydney leg and then the passenger
is continuing on Sydney -- sorry, they’re going
say through Singapore and haven’t had their IPP
done, but they’re going to Singapore on Sydney
so they require it done but they have both
boarding cards. Likewise they would be picked
up at the gate that they either haven’t had the
IPP processed, or they haven’t had their eye
response.

So, you know, there’s a system that’s
already working today in Australia that allows
that to happen and therefore you don’t need to
inhibit the printing of the boarding card.

MR. HAWLEY: I’d like to rephrase what
I think I heard to see whether I got your
point. And what I think I heard was don’t inhibit us or don’t fight it out at the boarding pass when you have the ability to stop it at the gate. And then I think I heard you say that you have scanning at the gate that if you had in the system inhibit boarding for this particular boarding pass it would have the same net result and that would work better for the existing business.

MS. SPROAT: Yes, there’s that and as well before they get to the gate. Airlines, for example, are aware that they have X number of passengers that are joining their flight that are coming from other flights. So we also have a system ability where prior to anyone even turning up at the gate, we can actually pull a list which we call a dot and IPP list that advises us of all passengers that are coming connecting through onto our flight that haven’t had their IPP carried out or they haven’t had a cleared response. And so you can actually call those passengers up either when
they check in at the transfer desk or in the
gate lounge. You don’t need to wait for them
to actually physically board.

MR. HAWLEY: Am I allowed to ask for
further comment on -- so in other words, take
some aspect of this and say, hey, tell us some
ideas on it?

Okay. So if one of the solutions that
you’re contemplating is that it would be
preferable for the business process to resolve
it at the gate rather than at the issuance of
the boarding pass -- and this, I guess, would
be for the general commentary particularly Ken
Dunlap and from his previous point -- that if
there were suggestions brought to us to say,
here’s a business process that works with the
way we do business, but gives you U.S.
government confidence that in fact we’re not
going to be letting people on the flight. And
if there’s a really tight loop to that system
that works operationally better I think we’ll
be extremely interested. And one of the
concerns we would have is to leave up to a gate agent boarding flights have that be the deciding whether we’re going to have a no-fly on the flight or not does cause us concern which I think is part of the rationale on the thinking about the boarding pass. So if there’s a business process way that works better that would change what’s in the proposed rule we would be very interested to hear thoughts on that.

MS. SPROAT: Because I’m not saying, you know, you need to apply that in terms of -- I mean, a great deal of passengers will check in and that’s the flight they’re taking and you can collect that information at check in or even if you’ve sent it prior to that. It’s really the passengers that are through-check passengers that are coming in on another flight they’re remaining airside, they’re not having to check in at that port for that flight. And you want to have been able to facilitate their flight by giving them their two boarding --
essentially checking them in for both flights and checking their luggage onto the flight. So you want to be able to at least issue the boarding card and then if need be you pick them up when they arrive for that flight. Yeah, we’ll get back to you on that with written comments, it’s probably easier.

MR. HUBICKI: Just two other points I would make that I would mention that I don’t think we talked about earlier just to clarify something as well. Excuse me.

In terms of operational testing and one of the questions you had raised or comments was the concern that we might change things like data elements later through operational testing. The intent is not to do that just to be clear. The intent is through the rulemaking process to finalize what the data elements would be and then move on into the operational testing, operational or Para operations mode at the program. So we recognize your concerns there and the intent is to try to avoid that
situation.
And also in terms of the user guide and the concern that it’s not final yet. Part of that also relates to the fact that the rule is not final yet. And until we get all of the comments back, hear all of the comments today and then take all of that into consideration, we then need to finalize the rule. And once it’s finalized we then can finalize what the guide would be. So --
MS. SPROAT: Yeah, and I think the point, just saying right there was that it’s understandable that the rule wouldn’t be finalized until the NPRM becomes final. But carriers are unlikely to carry out system changes until they actually see the final requirements and otherwise, you know, you’re going to end up having to tweak systems or do extra changes when the actual final consolidated user guide comes out. So given that a lot of carriers won’t start those changes until it’s published, you can see the
60-day time frame for implementation becomes quite unachievable.

MR. HUBICKI: Understood. And in your comments, if there’s a way to point out perhaps if there are out of the many areas that you’re concerned about if there are one or two or three that give you more concern in terms of that time frame if you can point those out that will be helpful as well.

MS. SPROAT: Yes.

MR. SADLER: Okay. Anything else?

(No response.)

MR. SADLER: Okay. Thank you very much.

What we would like to do right now is just take a break about 15 minutes or so. So we’ll start back up right around 10 after 11.

Thank you.

(Brief recess taken at 10:51 a.m.)

MR. SADLER: Okay. Thank you everyone.

Is there anyone who has registered and hasn’t spoken yet at this time?
MR. SADLER: We got up to eight
speakers. Anyone who hasn’t registered yet and
hasn’t spoken?

(Mr. Hawley: Thank you, Steve. And I
really thank you everybody for coming this
morning. I found it very valuable and some
insights that I learned today and that will be
definitely included in the record and part of
the consideration as this rule moves forward.
And I think it is once again emphasized in this
hearing the importance of the rule in many
contexts and the many difficult issues that
come together in the Secure Flight process that
we have to get right. And the way that we’ll
get it right is with the full involvement of
the folks around the world who are impacted by it which is really anybody who travels. The suggestions offered today I find valuable as well as we’re looking forward to for the follow-up. And I don’t believe I have anything more than that. Don.

MR. HUBICKI: I would just remind everyone again in terms of the process for submitting comments. You know, they are extremely valuable to us and we would like to see not just comments in terms of point out areas of concern, but also point out suggestions, alternatives, and ideas on how we can make things even better in terms of what’s intended. That would be helpful for us. So we look forward to those comments.

I believe October 22nd is the time frame for submission of comments and we’ve gone through what the process if for submitting those. So we very much look forward to that in moving forward.

MR. SADLER: Okay. Well, thank you
very much for your comments and for your time.
It’s greatly appreciated. Thank you.
(Whereupon, at 11:20 a.m., the meeting was adjourned.)