

**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**

**T S A:**

Steve Sadler  
Kip Hawley  
Donald Hubicki  
Paul Leyh  
Mai Dinh  
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



1 The public comments will start at 10:00. We  
2 will break at 12:30 for lunch and resume at  
3 1:15 for more public comments. We will take  
4 the afternoon break at 3:00 p.m., then at 3:15  
5 we'll start with the public comments again.

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

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

17 MR. HAWLEY: Thank you, Steve. And,  
18 good morning, everybody. Thank you for joining  
19 us. We are here to discuss TSA's published  
20 notice of proposed rulemaking for the Secure  
21 Flight program. We want to hear from the  
22 public and industry to get your feedback on the

1 changes TSA is proposing for aviation security.

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

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

20 TSA has begun to add another layer of  
21 security in advance of Secure Flight. The  
22 introduction of trained document verification,

1 TSOs at checkpoints. This will address a  
2 current vulnerability to effective use of watch  
3 lists. Secure Flight lets us identify in  
4 advance potentially dangerous people who we  
5 don't want to let through an airport or allow  
6 on board an aircraft.

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

18 Under the proposed rule TSA will  
19 receive limited passenger information from  
20 airlines as early as 72 hours in advance of a  
21 flight and we will continue to receive  
22 information until the flight leaves. We will

1 check this information against the watch list  
2 provided to us by the Terrorist Screening  
3 Center and transmit the results back to  
4 aircraft operators.

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

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

21 In 2005 GAO and the Secure Flight  
22 Working Group issued reports saying that more

1 needed to be don in terms of privacy and  
2 program integrity for Secure Flight. In  
3 February 2006, I testified before Congress that  
4 we were going to rebaseline Secure Flight and  
5 rebuild it from the ground up to address the  
6 concerns addressed in the reports. That work  
7 has been completed and now the implementing  
8 rule is ready for public scrutiny and  
9 discussion.

10 I am confident we have the team in  
11 place to make Secure Flight a success. The  
12 program team has been exceptionally transparent  
13 about what we are doing. We have conducted  
14 extensive stakeholder outreach, we have met  
15 with aviation industry associations, and  
16 privacy advocacy groups, and we've used their  
17 feedback to help design this program. Their  
18 feedback has been crucial, especially from a  
19 privacy perspective and I appreciate the  
20 working relationship that we have and the  
21 constructive engagement that's gone on through  
22 this process.

1           I would like to point out that Secure  
2 Flight is a very focused program. It does not  
3 use commercial data. It does not assign a  
4 score based on risk. In addition, TSA does not  
5 maintain the watch list. We receive the watch  
6 list from the terror screening center at the  
7 FBI.

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

16           The benefits of the program are many.  
17 It starts with enhanced security for air  
18 travelers. Secure Flight decreases the chance  
19 of watch list data being compromised because of  
20 the distribution of the list will be much more  
21 limited. It creates one consistent process for  
22 the passenger across all aircraft operators and

1 integrated redress process clears individuals  
2 who believe they have been improperly delayed  
3 or prohibited from boarding and aircraft  
4 because of previous misidentification. This is  
5 the DHS TRIP program. Secure Flight will  
6 result in better security and create a more  
7 consistent and uniform prescreening process for  
8 passengers while reducing misidentification.  
9 It is a win/win for all.

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

18 We are also providing a live audio web  
19 cast of this public hearing. It is available  
20 now on our public web site at [www.TSA.gov](http://www.TSA.gov). We  
21 have the Secure Flight senior program managers  
22 and associated executives here in person today.

1 We have a strong team up here and we would be  
2 very happy to listen to your comments and take  
3 them on board during this rulemaking process.

4 So I thank you for your participation  
5 and look forward to the discussion.

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

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

19 Today the airlines are required to  
20 check all reservations against the watch list.  
21 With the Intelligence Reform Terrorism  
22 Prevention Act, the requirement was a

1 Department of Homeland Security assumed that  
2 function from the aircraft operators.  
3 Additionally the 911 Commission as well made  
4 those recommendations for that to take place.  
5 Hence, TSA has developed a Secure Flight  
6 program and we've begun the process by issuance  
7 of the notice of proposed rulemaking which we  
8 are here today to discuss.

9 (Slide shown.)

10 MR. HUBICKI: Under the Secure Flight  
11 program TSA would do three things, receive  
12 certain passenger and nontraveler information.  
13 By "nontraveler information" we're referring  
14 to individuals who wish to enter the sterile  
15 area of an airport or beyond the checkpoint of  
16 the airport perhaps for escorting minors to a  
17 gate. Secure Flight program, the TSA would  
18 also conduct the watch list matching function  
19 for domestic and international flights. Then  
20 Secure Flight would transmit the board pass  
21 printing instructions back to the aircraft  
22 operators based on those results.

1 (Slide shown.)

2 MR. HUBICKI: First and foremost the  
3 mission for Secure Flight is security. It's a  
4 security program and hence the emphasis. The  
5 goals on Secure Flight are to identify known  
6 and suspected terrorists by doing the name  
7 matching against the watch list to prevent  
8 individuals on the "no-fly" list from boarding  
9 aircraft, to direct those individuals that are  
10 on the selectee list to go through the enhanced  
11 screening process at the airports. Secure  
12 Flight is also designed to facilitate passenger  
13 air travel and to help protect the individual's  
14 privacy rights as Kip mentioned earlier.

15 (Slide shown.)

16 MR. HUBICKI: The scope for the Secure  
17 Flight program covers several areas. It covers  
18 domestic travel, international travel,  
19 international which includes over-flights over  
20 continental United States. It also includes  
21 international point-to-point travel between two  
22 international points covered by U.S. aircraft

1 operators. All passengers traveling on covered  
2 aircraft operator flights are going to be  
3 matched against the watch list prior to  
4 receiving the boarding gate pass. At full  
5 capacity our estimates based on projections are  
6 around 2.5 million passengers per day. TSA  
7 would conduct this watch list matching process  
8 also for the nontraveling individuals as I  
9 mentioned earlier, folks needing access to a  
10 sterile area at the airport.

11 (Slide shown.)

12 MR. HUBICKI: The benefits of Secure  
13 Flight as designed to raise the baseline  
14 standard in terms of the algorithms, technology  
15 and automation used in the watch list matching  
16 process. Today these lists are distributed to  
17 hundreds of airlines. One of the benefits of  
18 Secure Flight is to also decrease the chance  
19 for compromised watch list data by limiting  
20 that distribution in the future. With the 72-  
21 hour provision that's in the notice of proposed  
22 rulemaking which we can discuss and talk about

1     shortly, that will help expedite law  
2     enforcement notification by gaining earlier  
3     insight to potential matches. Through the  
4     consolidation of this function within TSA  
5     within Secure Flight the intent is to provide  
6     fair, equitable, and consistent watch list  
7     matching across all aircraft operators. And  
8     also in the redress process, through this  
9     consolidation, expediting, integrating the  
10    redress process for misidentified passengers.

11                   (Slide shown.)

12                   MR. HUBICKI: This slide gives a high-  
13    level overview for the business process for  
14    Secure Flight. There are four main areas, the  
15    passengers, the airlines, the DHS TRIP program  
16    in terms of redress and the DHS Secure Flight  
17    program. The intent here is for the passengers  
18    when they book reservations and provide  
19    information to the airlines the airlines would  
20    forward a limited set of passenger information  
21    to Secure Flight in order for Secure Flight to  
22    then perform the watch list matching function.

1       In doing so Secure Flight would look to the  
2       DHS TRIP program in order to identify anyone  
3       who has been cleared through the redress  
4       process and through a process from other  
5       cleared lists. Those results would go back to  
6       the airlines. The airlines would then, based  
7       on those results, an individual who would be  
8       cleared and they could issue a boarding pass,  
9       an individual may be identified as on the "no-  
10      fly" list and the boarding pass would be  
11      inhibited or they could be identified as a  
12      selectee to go through the enhanced screening  
13      at the airport.

14                In terms of the data items that a  
15      passenger would provide to the airline and  
16      hence the airline would provide to Secure  
17      Flight in the course of booking a reservation,  
18      the required data that would come to Secure  
19      Flight would be the passenger's full name and  
20      the itinerary information. That would be the  
21      minimal information in order to Secure Flight  
22      to do the name matching process against the

1 watch list.

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

16           The intent here is to help facilitate  
17 for those people who may have been potential  
18 matches against the list based on their name  
19 only. They now have an opportunity to add  
20 additional information, date of birth, gender,  
21 or redress number in order to minimize  
22 inconvenience at the airport.

1 (Slide shown.)

2 MR. HUBICKI: The redress inquiry  
3 program known as TRIP is the redress process  
4 that Secure Flight would use in order to  
5 provide redress to those individuals who  
6 believe they have been improperly or unfairly  
7 delayed or prohibited from boarding and  
8 aircraft.

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

16 (Slide shown.)

17 MR. HUBICKI: I would like to point out  
18 on the next couple of slides some of the areas  
19 in the Code of Federal Regulation that is being  
20 added or amended with this notice of proposed  
21 rulemaking. Specifically we are adding Part  
22 1560 which addresses the Secure Flight program.

1 1560.1 addresses the scope, purpose and  
2 implementation of Secure Flight. 1560.3  
3 addresses the terms that are used in this  
4 1560.101 covers the requirement that covered  
5 aircraft operators request passenger  
6 information and nontraveler information and  
7 transmit such to TSA. Specifically 1560.103  
8 covers the requirement for covered aircraft  
9 operators to provide on their web sites privacy  
10 notices that explain the use of this  
11 information.

12 (Slide shown.)

13 MR. HUBICKI: 1560.105 covers the  
14 process of denial of transport or sterile area  
15 access and designation for enhanced screening.  
16 1560.107 addresses the limits for the use of  
17 watch list matching results by covered aircraft  
18 operators. 1560.109 addresses procedures for  
19 submission approval and modification of the  
20 aircraft operator implementation plans with  
21 respect to Secure Flight. 1560.201, 203, 205,  
22 and 207 cover the redress procedures for

1 individuals.

2 (Slide shown.)

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

16 (Slide shown.)

17 MR. HUBICKI: And on the next slide  
18 there's also some amendments to part 1544  
19 aircraft operator security, air carriers and  
20 commercial operators. In this case we've added  
21 1544.103(c)(22) to make the aircraft operator  
22 implementation plan part of the security

1 programs in place today.

2 (Slide shown.)

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

1 process and drive the final results in the  
2 process.

3           Throughout that implementation, those  
4 phases and that approach there are many, many  
5 aspects and pieces of testing that will happen  
6 along the way. The benchmark testing where we  
7 want to do lots of work to test results of  
8 Secure Flight versus common practices today in  
9 the industry and benchmark the performance of  
10 the name matching engines, system testing, and  
11 connectivity testing, a lot of technical  
12 testing in terms of system performance,  
13 interfaces, all those kinds of things, lots of  
14 operational testing being planned for as well  
15 in terms of the interaction with the airline  
16 industry and how this is all going to work.  
17 And then verification testing as we get into  
18 the final phases and actually begin the cutover  
19 process and verifying that things are working  
20 as planned. Then throughout this entire  
21 process our intent is to continue to maintain  
22 transparency as Kip mentioned earlier with

1 stakeholders in the industry, in the public,  
2 through ongoing communications and a lot of  
3 attention to training as well and whatever we  
4 have to do to help and assist in the area of  
5 training on the operations under the future  
6 program.

7 (Slide shown.)

8 MR. HUBICKI: So the purpose of today,  
9 the purpose of the notice of proposed  
10 rulemaking is to seek comment. We are seeking  
11 comment in all areas in the notice of proposed  
12 rulemaking. We invite comment, suggestions and  
13 ideas from folks in all areas of what's been  
14 outlined. There's particular areas of interest  
15 that, you know, we've noted some things on here  
16 that we've heard from some people through the  
17 last several months in terms of the program  
18 that we invite further comment on, further  
19 suggestions, ideas, detailed information being  
20 forwarded to us. Whether that has to do with  
21 the over flights, the data elements, the 72-  
22 hour data transmission requirement, watch list

1 matching and boarding pass printing procedures,  
2 handling the international multi-leg boarding  
3 pass issuance process, data retention rules.  
4 There's a requirement in the notice of proposed  
5 rulemaking for the placement of a code such as  
6 a bar code on boarding passes to assist with  
7 document verification, proposed privacy notice  
8 requirements, compliance schedule, estimated  
9 compliance costs. The point of this list is  
10 not to be all-encompassing. Again, we are  
11 looking at soliciting feedback in all areas on  
12 the notice of proposed rulemaking.

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

19 MR. SADLER: Good, thanks, Don. As far  
20 as submitting your comments, you can submit  
21 them electronically to the document management  
22 system web site at DMS.DOT.gov and you can do

1 this until September 27th at 5 p.m. Then there  
2 is going to be a change in the web site. They  
3 are going to change it to [www.regulations.gov](http://www.regulations.gov)  
4 and that will become active on October 1st.

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

16 Now, until September 27th you can view  
17 the comments on the docket at the original web  
18 site the DMS.DOT.gov and then starting October  
19 1st you can view them on the new web site which  
20 is the [www.regulations.gov](http://www.regulations.gov).

21 Just a few notes about making your  
22 comments, your comments here at the table. If

1 you wish to make a comment, please make sure  
2 that you're registered at the front desk and  
3 you have a number because we're going to do it  
4 by number. And I'll call those numbers out  
5 after a person is done making their comments  
6 here at the meeting.

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

14 Also, when you make your comments,  
15 please make sure you state your name and your  
16 affiliation before you start the comments. And  
17 all your comments are going to be posted in the  
18 public docket for the Secure Flight NPRM. We  
19 would ask you to remember not to use any  
20 sensitive security information in your  
21 comments. We would also ask you to remember  
22 the five-minute time limit. It's important

1 that we be courteous to other people who want  
2 to speak. So please try to keep your comments  
3 to the five minutes. We will keep track of  
4 your time on the screen up here. So I believe  
5 that the time is going to flash every 15  
6 seconds in the last minute. There will be an  
7 audio reminder at one minute, when you have one  
8 minute left. There will be another audio  
9 reminder when you've used your time up.

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

19 So, with that, let me just go over the  
20 agenda once more. Obviously we are going to  
21 start the comment period now. We're going to  
22 take our lunch break at 12:30. We will resume

1 at 1:15. We will take another break at 3:00,  
2 and then we will resume at 3:15. So if  
3 everybody is ready.

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

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

22 MR. HASBROUCK: My name is Edward

1 Hasbrouck. I have more than 15 years of travel  
2 industry experience with airline reservations.  
3 I'm an author, consumer advocate and consultant  
4 to the Identity Project.

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

17           All federal agencies have been ordered  
18 by presidential directive to act in accordance  
19 with the ICCPR. The government of the U.S. in  
20 its reports on compliance with the ICCPR has  
21 certified that all such agencies do in fact  
22 consider the ICCPR in relevant rulemakings as

1 the TSA has entirely failed to do in this case.

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

10 The core of the proposed rule obscured  
11 by the euphemistic language of screening is a  
12 two-fold requirement for would-be air travelers  
13 to obtain permission from the government before  
14 they can travel. First they would have to  
15 obtain a government-issued travel document.  
16 Nothing in the proposed rules or any other  
17 federal regulation entitles anyone to such a  
18 document. Passports and driver's licenses, for  
19 example, can be withheld for many reasons that  
20 do not constitute grounds for denial of freedom  
21 of movement. But under the proposal, if no  
22 government agency chooses to issue you with

1 such a credential or if you don't qualify for  
2 one, you can't fly. If you don't already have  
3 such a document obtaining one can take a month  
4 or more during which time you can't fly.

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

12           These requirements would be enforced  
13 through a rule requiring would-be travelers on  
14 demand to display identity documents and  
15 provide information to private, unregulated,  
16 commercial third-parties, the airlines. The  
17 certainty that airlines will retain all of this  
18 information in perpetuity in order to maximize  
19 the marketing value of the government-coerced  
20 informational windfall renders meaningless any  
21 restrictions on which of this data is retained  
22 or for how long by the government itself.

1           In the absence of any restrictions on  
2 the use or retention of this data by airlines,  
3 the data involuntarily obtained from travelers  
4 will become the sole legal property of the  
5 airlines which they could keep forever, use,  
6 sell, or share with anyone, anywhere for any  
7 purpose.

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

20           Many travelers are self-employed  
21 freelancers and sole proprietors and the  
22 proposal would have a significant financial

1 impact on a substantial number of these  
2 individual small economic entities who have to  
3 delay air travel until they can obtain  
4 prerequisite documents or unable to travel  
5 because they don't qualify for any acceptable  
6 documents or don't receive clearance to board  
7 flights.

8           The costs of the proposal would also  
9 include the value of their lost liberties and  
10 the billions of dollars worth of informational  
11 property they would be forced to give to  
12 airlines. The proposed rules don't say who  
13 would make the decisions of whether or not to  
14 issue travel documents or grant permission to  
15 board, what criteria or procedures they would  
16 use in making those decisions, or how those  
17 denied travel documents or denied permission to  
18 board a flight will be able to obtain judicial  
19 review of decisions to deny them their rights  
20 of assembly and movement. They fail to satisfy  
21 any of the criteria established by the ICCPR  
22 for administrative regulations burdening

1 freedom of movement.

2           The TSA should withdraw the proposed  
3 rules entirely. Instead of making decisions by  
4 secret, unreviewable, administrative fiat about  
5 whether to allow us to exercise our rights, why  
6 not give existing legal processes a try? If  
7 you want to obtain information ask a judge for  
8 a warrant or a subpoena. If you think you have  
9 sufficient information to justify an order  
10 restricting someone's liberty submit it to a  
11 judge with a motion for a restraining order or  
12 an injunction.

13           Thank you.

14           MR. SADLER: Thank you, sir.

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

22           MR. HASBROUCK: Yes, sir. The

1 Regulatory Flexibility Act requires an analysis  
2 of the impact of a proposed rule on small  
3 economic entities when it would have a  
4 significant impact on a substantial number of  
5 such entities. The NPRM claims falsely that  
6 this would not because it fails to consider  
7 among other things the fact that sole  
8 proprietors as the TSA itself has conceded in  
9 several previous rulemakings in response to our  
10 comments that sole proprietors are small  
11 economic entities. So if a sole proprietor or  
12 a freelancer has to delay their travel because  
13 they don't have documents or is unable to  
14 travel and is economically impacted by that,  
15 that triggers the requirement of the Regulatory  
16 Flexibility Act not yet addressed in the  
17 proposed rules for an analysis of the impact on  
18 small economic entities. That needs to be  
19 published and a new comment period on it  
20 allowed before any rule could be finalized.

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

22 MR. HASBROUCK: All right.

1 MR. HAWLEY: Thanks.

2 MR. SADLER: Any other questions?

3 (No response.)

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

6 Speaker number two. Is there a speaker  
7 number two?

8 (No response.)

9 MR. SADLER: Speaker number three.

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

12 MR. LOTTERER: Good morning. I'm Dave  
13 Lotterer with the Regional Airline Association.  
14 I have really quite a few questions, so I'm not  
15 sure if I can get them all in five minutes.  
16 I'll start with the bigger ones. One, the  
17 proposed compliance period. We think that's  
18 just too short, the 60 days. We think it  
19 should be at least a year. One of the reasons,  
20 we have several smaller airline members that  
21 really haven't done EPAS. They don't do  
22 international travel. So the computerized

1 system needed to support this activity  
2 certainly isn't in place. And we have a  
3 current system now with the airlines, so the  
4 period -- the one-year period is not at risk  
5 because we have an equivalent system in place.

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

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

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

18           And I guess what I'm suggesting, and I  
19 haven't really run this by all of our member  
20 carriers, but to provide for an option, you're  
21 in effect putting the government into the  
22 business process of having passengers denied

1 boarding at the last minute. And I guess the  
2 airlines -- I would think all of the airlines  
3 would be very nervous about a government entity  
4 so intimately involved in their business  
5 process of getting customers on board their  
6 airlines. We would like to have some  
7 satisfaction.

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

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

19           I guess another issue that I would like  
20 you to consider is, I mean, if a terrorist if  
21 he -- and this is a public docket and the 72-  
22 hour window is publicly available to everybody,

1 so a terrorist, why would he ever try to make a  
2 reservation before the 72-hour window? To me  
3 the 72-hour window before departure is when all  
4 the action will take place with respect to  
5 potential terrorist activities going on. And  
6 you put too much emphasis on what you're going  
7 to do 72-hours prior to the boarding. To me,  
8 the real action that you guys have is what's  
9 going on 72 hours before flight. And I just  
10 don't see that process as efficient.

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

21 MR. LOTTERER: Well, reservation for  
22 the regional carriers is largely done by the

1 large carriers, the co-chair process. But we  
2 do have a number of carriers that don't --  
3 aren't involved in EPAs. That basically their  
4 computer system they're going to have to really  
5 rework that system quite extensively at  
6 considerable cost in order to match it to your  
7 process. And I'm just very concerned. I don't  
8 have numbers now and I'll get back with the  
9 membership. But I threw out the one year. I  
10 think what's available now is that you do have  
11 a current system in place that's doing the  
12 equivalent of this. And while there is some  
13 criticism on it from a security standpoint, it  
14 is working. So to me your risk within a one-  
15 year window is not that great compared to a 60-  
16 day window where you're going to impose  
17 additional costs in order to expedite something  
18 and not only the cost but also the problems of  
19 doing something too quickly. To me it just  
20 isn't worth the effort to do it that quickly.

21 MR. HUBICKI: Okay. Thank you for that  
22 elaboration. I guess just to provide a little

1 bit more insight regarding the 72-hour window  
2 as well and we look for more detailed comments  
3 from you, you know, going forward in writing  
4 back to TSA. You know, clearly we want to make  
5 sure that in fact we have sufficient time so  
6 that we can complete whatever automated name  
7 matching process that needs to take place so  
8 that we can respond back well within or before  
9 the 24-hour period at which point in time  
10 people might want to print their boarding  
11 passes out at home. So part of the 72-hour  
12 time table is to make sure that we can  
13 accommodate that so that we don't impact  
14 travelers in the industry in terms of people  
15 wanting to do that to facilitate efficient  
16 travel. So that's important.

17 Also, because it's a security program,  
18 the sooner that some of the data is provided  
19 does provide us that enhanced capability as  
20 well. So some of the reasons for the 72-hour  
21 period of time. In addition that there's the  
22 72-hour period for advance reservations.

1 Secure Flight also does provide for and  
2 accommodate for those people who will book  
3 reservations within 72 hours all the way up to  
4 folks who will book shuttle tickets last minute  
5 to board a flight. So there will be an  
6 interactive capability with Secure Flight as  
7 well to accommodate those kinds of situations.

8 That is envisioned and covered in the program.

9 And your point understood in terms of  
10 there has to be an operations element to Secure  
11 Flight and to Secure Flight working perhaps  
12 with the air carriers in terms of those folks  
13 who last minute are potential matches against  
14 the watch list and therefore there does need to  
15 be a resolution for those individuals. So  
16 there does need to be an operations process.  
17 And part of our -- I mentioned earlier the  
18 parallel operations and how we tend to do lots  
19 of different aspects of testing through the  
20 life of the program implementation. And  
21 through parallel operations we hope to make  
22 sure we perfect those kinds of operations. So

1 I would just add those points as well.

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

8 MR. LOTTERER: If I can comment. I  
9 think what you might be able to do is to have  
10 the current system remain in place such that if  
11 the airline doesn't hear from you that they can  
12 still review their system -- they can use their  
13 system to check this person out and still get  
14 that person on board. And one of the big  
15 issues that I didn't have time for is redress.

16 I mean, if a person's flight is cancelled, you  
17 have a redress process that looks into their  
18 legal rights. But in terms of the cost to  
19 basically put that person up for a hotel to get  
20 him on another flight that might be more  
21 expensive, all of those cost issues, I assume,  
22 are going to be borne by the airline in this

1 process. It's going to be a security delay.  
2 So this is something possibly new. And we're  
3 spending billions of dollars on operating  
4 efficiency issues for the future, but if we see  
5 an increase in security delays, there's going  
6 to be a lot of issues that are going to come as  
7 a result of that.

8 Thank you.

9 MR. SADLER: Okay. Thank you very  
10 much.

11 Speaker number four, please?

12 MR. RUDEN: Good morning. My name is  
13 Paul Ruden. I represent the American Society  
14 of Travel Agents. I had not intended to speak  
15 this morning, but having scored number four, I  
16 can't the opportunity to make a few remarks.

17 We've been working for years with  
18 representatives of TSA on the Secure Flight  
19 program and have appreciated the interaction  
20 and the candor that has been shown in  
21 explaining and discussing these issues. And in  
22 general we are very supportive of the

1     underlying proposition of shifting  
2     responsibility for the matching program from  
3     the airlines to the government. We have,  
4     however, asked that the development of these  
5     rules abide by a fundamental principle which is  
6     to the maximum extent possible not to create a  
7     system of rules that conflicts with the way  
8     business is done today. Failure to abide by  
9     that principle is going to impose upon the  
10    retail sector of this industry huge additional  
11    unfunded costs that cannot be recovered from  
12    consumers or any other way. By and large, I  
13    think the proposal that's on the table in the  
14    NPRM does comply with that criterion and we  
15    hope that that will be maintained.

16           It is, however, still unclear to us how  
17    the data the travel agents will end up  
18    collecting -- because they are the front-line  
19    sales force for most of the people who end up  
20    on airplanes -- how that data is going to be  
21    passed from the GDS systems, how it will be  
22    recorded in there, first, and then passed from

1     them to the airlines to the government.  I  
2     don't know the extent to which you have been in  
3     interaction with the GDSes, but my impression  
4     is that there's a gap here that is not being  
5     addressed and it is fundamental to the way  
6     business is operated and to the industry's  
7     ability to comply with these rules that we have  
8     clear, specific instructions to the retail  
9     distribution system and, of course, to  
10    consumers operating on their own as well as to  
11    where this data is going to go, what format  
12    it's going to be in.  We've argued for a single  
13    format, for example, for date of birth.  The  
14    fact that that's an optional piece of  
15    information does not relieve or remove the  
16    importance of having a single format for that  
17    information to be input.

18                 There is some concern about the impact  
19    of the rules mentioned earlier on early check  
20    in, on-line check in which many, many consumers  
21    use today as a convenience.  It's unclear to me  
22    at the moment.  I confess, I've not absorbed

1 every detail of the NPRM, but it's unclear what  
2 impact this is going to have on that process.  
3 If it's going to eliminate it or fundamentally  
4 change it, it's going to create a new set of  
5 unrecovered costs.

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

18 Most important of all perhaps, whatever  
19 the rule ends up saying, and obviously there  
20 are going to be many, many comments that will  
21 have to be digested by all of us is the issue  
22 that was raised a moment ago which is most

1 fundamental. How much time is the industry  
2 going to have to adapt its business processes  
3 to whatever rule you end up finalizing?

4 In the travel agency industry which I  
5 focus on a lot of the information about  
6 customers, especially on the corporate side is  
7 already in place in computerized profiles. The  
8 travel management companies that specialize in  
9 this business and do hundreds of billions of  
10 dollars of this business a year in air alone  
11 have invested huge sums in creating systems to  
12 keep that information on file so that it could  
13 be entered automatically in PNRs and make the  
14 booking process as efficient as possible.  
15 Those profiles are going to have to be changed.  
16 Maybe there will be new programming  
17 requirements to accommodate this new  
18 information because we don't generally collect  
19 people's date of birth today. And the issue  
20 of coordination between the GDS systems and  
21 travel agency back office systems where this  
22 information resides is also a huge cost

1 question. So, this cannot be accomplished in  
2 60 days. This is a huge cost the industry is  
3 going to have to bear and it simply can't be  
4 done in 60 days. And it's going to make the  
5 cost even larger if you do not allow enough  
6 time for the industry to figure out how to do  
7 that is in the most efficient way possible.

8 Time is up. Thank you very much.

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

11 MR. HUBICKI: Not a question, but I  
12 guess I just would add one thing that I think  
13 your comments reminded me that I don't think we  
14 mentioned earlier and talked about that I think  
15 is helpful to understand. We at TSA have done  
16 a lot of work with folks in CBP, Customs and  
17 Boarder Protection, as well as they have  
18 similar programs on the international side and  
19 have done a lot to try to consolidate the  
20 technical aspects or requirements or designs of  
21 Secure Flight with what they have as well and  
22 communicate that with the air carriers. The

1 intent being that we, by consolidating and  
2 harmonizing, if you will, some of the specific  
3 formats for date of birth and how we transmit  
4 the data. For example, we don't intend to  
5 build a redundant network with air carriers.  
6 We intend to use the communications and  
7 infrastructure already in place today for  
8 transmission of data for other purposes to CBP.

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

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

22 MR. RUDEN: I appreciate those

1 thoughts. We certainly will file written  
2 comments. I do want to emphasize though, the  
3 airlines don't own the GDS systems. They are  
4 completely independent businesses. And  
5 whatever the airlines may be saying about what  
6 they need and what they can accommodate to and  
7 how fast they can do it does not represent  
8 necessarily the GDS point of view. And today  
9 while the Internet is accounting for a larger  
10 and larger share of travel agency bookings that  
11 are made sort of outside the historical system,  
12 the reality is that GDSes are still the core of  
13 the system. They are going to remain the core  
14 of that system for a long, long time to come,  
15 probably forever, as long as retail  
16 distribution -- independent retail distribution  
17 exists. So the problem of what do you put in,  
18 what format is it in and how is all that going  
19 to work in context with corporate travel  
20 programs, profiles, and all the rest is still  
21 very much an open question and one we are  
22 gravely concerned about. Because the cost to

1 the industry will be huge if this requires a  
2 redo of all of those systems. And if it does  
3 require that or even a partial redo, that's  
4 going to take a long time. You just can't do  
5 it in 60 days. You may not even be able to do  
6 it in six months. It could take a year.

7 Thank you very much.

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

10 MR. SCANNELL: Good morning. My name  
11 is Bill Scannell. I'm a Bostonian by birth and  
12 I'm Alaskan by choice. I'm communications  
13 director for the Identity project and I've  
14 spent the past four and a half years watching  
15 the Department of Homeland Security put forward  
16 iteration after iteration of some sort of air  
17 surveillance pasture program. First it was  
18 called CAPS II where a lot of data was  
19 illegally transferred -- secretly transferred.  
20 People's Social Security numbers were put up  
21 on the Internet. We saw various iterations of  
22 Secure Flight and one by one they went down the

1 tubes. Why? Because it's just not right.  
2 It's just simply not right.

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

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

20 The latest example of this, Mr. Hawley,  
21 would be the results of the Privacy Act  
22 requests that we did on the automated targeting

1 system. You may recall that this was a  
2 hitherto secret, yet another secret, Homeland  
3 Security Program monitoring the flights and  
4 travels of American citizens. You keep track  
5 of people's race. You keep track of what  
6 people read. You keep track of the names and  
7 telephone numbers of friends and family. This  
8 is repulsive. And a lot of this information is  
9 coming straight out of the reservation systems,  
10 out of the GDSes. The same well will you be  
11 pulling information for Secure Flight.

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

14 MR. SCANNELL: Sure.

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

19 MR. SCANNELL: Pleasure.

20 MR. HAWLEY: But that is not a TSA  
21 function. None of that information comes to  
22 TSA; none. And none of that is anywhere near

1 Secure Flight. Totally separate project. I  
2 take your point, but just for clarification,  
3 factually, TSA has nothing, zero, to do with  
4 that program. And when you were saying, "you  
5 get this, you get that" I would like to have  
6 for the record that TSA does not -- it doesn't  
7 undermine the validity of the point you're  
8 making, just in terms of the factual record,  
9 that does not happen to involve TSA.

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

22 I hope that you can also understand

1 that when we look at the global reservation  
2 systems that that is one big well where all of  
3 this information is coming out of. That you  
4 may put your TSA Secure Flight bottling plant  
5 next to this well, that you may put your ATS or  
6 your APIS bottling plant on the well, but it's  
7 the same water. You may be putting it in  
8 different bottles, but it's the same water  
9 coming out of the same well, going into the  
10 same department. And this is wrong. Let's  
11 talk about a sane security program, sir. What  
12 about I realize that this will cost you and  
13 your contractor friends a lot of money, but why  
14 not simply check people for weapons and  
15 explosives when they show up at the airport.  
16 If they don't have them, let them board. When  
17 they check their bags, let's make sure that  
18 there's nothing in that bag that causes a  
19 danger to the flight. And if that's okay,  
20 well, let's let the bags on too. And what  
21 about cargo? If the cargo is safe, let's let  
22 that on too.

1           I don't understand what someone's  
2   identity or anything has to do with any of  
3   this, sir. And, again, I'm embarrassed for all  
4   of you. Thank you.

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

9           MR. SCANNELL: I was.

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

15          MR. SCANNELL: I've read them all.

16          MR. HAWLEY: -- and we did in fact take  
17   those to heart and in February when I spoke  
18   with the Senate Commerce Committee we  
19   rebaselined, rebuilt the program taking those  
20   issues to heart. So I think there are a number  
21   of large-scale issues that you raised and we're  
22   not going to resolve here and I respect those

1 opinions. If we just narrow it down to Secure  
2 Flight, what we tried to do with Secure Flight  
3 is say, yes, we understand there's a lot of  
4 issues around a lot of these other things, but  
5 for Secure Flight which it seems that the  
6 minimum responsibility of the government ought  
7 to be that when you identify people who are in  
8 fact serious terror risks to flights --

9 MR. SCANNELL: You'd get a warrant and  
10 you arrest them.

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

15 So what we've tried to do since this  
16 rebaselining is to rebuild the system with a  
17 very narrow focus, very controlled access to  
18 whatever information it gets in all those  
19 rules. So what I hope that you, as you  
20 evaluate this, as you consider these other  
21 large scale issues, please do get into the  
22 detail of this Secure Flight rulemaking and

1 that we are in fact attempting to limit to the  
2 necessary data and then protect that data and  
3 then get rid of that data.

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

11 MR. HAWLEY: That's you?

12 MR. SCANNELL: That's me.

13 (Laughter.)

14 MR. SCANNELL: So, I mean --

15 MR. HAWLEY: I'm one of your  
16 subscribers.

17 (Laughter.)

18 MR. SCANNELL: Not that we keep track,  
19 but I did notice a lot of hits from within your  
20 agency, sir. But to that point, this idea of  
21 we don't want these people flying, I don't want  
22 terrorists or bad guys anywhere. I don't want

1       them on my street. But the fact is, the very  
2       notion, sir, of turning our airports into some  
3       sort of an air point Charlie is deeply  
4       offensive to me.

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

22              MR. HAWLEY: Thank you, likewise.

1 MR. SCANNELL: Thank you.

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

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

12 ATS put out their system of records  
13 notice and they've been collecting information  
14 and we've been able to make record requests  
15 into that systems of records. And what we've  
16 found is some pretty appalling stuff. And  
17 first just let me clarify, you said, "we have  
18 nothing to do with that program." You just  
19 said that. That is the program that TSA  
20 intends to absorb in the future; is that  
21 correct? The international traveling aspect of  
22 that.

1                   MR. HAWLEY: No, it is not correct.

2           But --

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

16                   And it's not just the secondary  
17          inspections that are problematic, it's also the  
18          passenger name records, the PNRs. Now, the  
19          PNRs contain a vast amount of information and a  
20          lot of it is redundant and extraneous and  
21          unnecessary. But contained within these  
22          records, these airline records is information

1 having to do with the person's communication  
2 with people abroad, where they're staying  
3 abroad, information that they give to the  
4 airlines as to how they can be contacted. This  
5 is data that goes to the U.S. government.

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

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

1 address that?

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

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

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

17 MR. HAWLEY: No.

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

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

22 MR. HARRISON: Sure.

1           MR. HUBICKI: In the proposed  
2 rulemaking document it talks about the Secure  
3 Flight passenger data and there are some tables  
4 in there that present the data elements. And  
5 specifically the only required data elements to  
6 come over to Secure Flight in order to do our  
7 function is an individual's full name and the  
8 itinerary information so we can prioritize the  
9 sooner flights versus the later flights so we  
10 can make sure that we process those that are  
11 sooner faster.

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

15           MR. HUBICKI: PNR is a much broader  
16 definition that gets into -- a PNR could  
17 include an individual's passport information  
18 and all sorts of other things. PNR is a very  
19 broad set of data elements. And we are  
20 specifically talking about an individual's full  
21 name and then itinerary information. Itinerary  
22 again is your origin, destination, time of

1 flight, flight number, that sort of thing.

2 MR. HAWLEY: So you raise a very  
3 important point which is the terms of art that  
4 are in use. The idea that, hey, they're taking  
5 the PNR and using it to do watch list matching.

6 In our view that would be overbroad. That we  
7 do not in fact suggest that we're going to take  
8 the PNR data. What we are saying is that we  
9 are going to take information that is included  
10 in the information about a person that is the  
11 things that Don identified very, very limited  
12 and that's all, but it is not the whole PNR  
13 data. And we get a lot of confusion about,  
14 hey, they're going to either get more  
15 information than they need or do something else  
16 with the information other than watch lists.

17 MR. HARRISON: That is the concern on  
18 our end as well. And we only have the tools at  
19 our disposal and that is Privacy Act records  
20 requests. And this is the records requests on  
21 five individuals including myself that contain  
22 so much extraneous stuff and so much

1 information that frankly is records of first  
2 amendment activity. The Privacy Act forbids  
3 the government's collection of data having to  
4 do with citizen's first amendment activity and  
5 we are very concerned that you are going to be  
6 doing that as well.

7 MR. HAWLEY: We won't. Okay.

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

18 MR. HAWLEY: Thank you. I'll just make  
19 one clarification on that. That it's very  
20 important also for people to know that when  
21 we're talking about the watch list and I  
22 mentioned risks, I specifically said, terrorist

1 risks. And there are very strict rules as to  
2 what kind of information, who would get on a  
3 no-fly list.

4 MR. HARRISON: How do we know that?  
5 You say there are strict rules, but how do we  
6 know that?

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

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

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

14 MR. HAWLEY: So the no-fly list is a  
15 very, very limited list for the purpose of not  
16 having people on aircraft who shouldn't be. So  
17 that's all that we're talking about here. And  
18 I think the rest of the issues are well-known  
19 and well discussed. But it's important for the  
20 purposes of this conversation and this rule  
21 that we limit it to the secure flight program  
22 and how we actually intend to implement it.

1           MR. HARRISON: I think if you're going  
2 to prevent someone from being able to freely  
3 travel in this country you should get a warrant  
4 from a judge. Thank you.

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

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

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

18           The ACLU began actually discussing this  
19 question of aviation security and making some  
20 recommendations like, for example, something  
21 you still have not accomplished which is to  
22 screen all cargo going into the aircraft.

1           We first began discussion back before  
2 what was then known as the Gore Commission. I  
3 will tell you that it's in a prior  
4 administrator, then Vice President Gore. I  
5 actually met with the FAA in October of 2001 to  
6 discuss what was then, I guess, known as the  
7 CAPS program. Since then we have been through  
8 CAPS, CAPS II, CAPS 2.1, CAPS 2.2, Secure  
9 Flight, Secure Flight 2, Secure Flight 3, and  
10 what now I suppose could be called Secure  
11 Flight 4.0.

12           In all of that time the remarkable  
13 thing -- a couple of remarkable things. One,  
14 of course, is the inability to actually build  
15 this system which does what you say you now  
16 want to do which is to be able to match the  
17 names of individuals who are boarding aircraft  
18 against a watch list. And a watch list which  
19 you say is a watch list of known or suspected  
20 terrorists. That is a laudable goal. The  
21 problem is you've been -- the government has  
22 been -- I don't mean this too personally, Mr.

1 Hawley, or anyone else on the rostrum today,  
2 the government has been totally incapable of  
3 doing that and there are significant questions  
4 about whether you are in fact capable of doing  
5 that, whether that is a function that can be  
6 done. But, you know, if you look at the system  
7 that you are now proposing, and I applaud you  
8 for recognizing that the kind of Rube Goldberg  
9 systems that have been discussed since 2001 are  
10 not going to work. That they were overbuilt,  
11 they had aspirations that were too great, they  
12 were not going to work. I applaud you for the  
13 point where you've reached now that you  
14 recognize that what you need to do is fairly  
15 simple. Although I will point out that even  
16 those of us who are not security professionals  
17 but civil libertarians have told you that since  
18 1999. And I don't say that to say that "we  
19 told you so" it's just that this has been  
20 obvious from the very beginning now. But  
21 beyond that you've got a system which you still  
22 don't have right and you don't have right for

1 at least two fundamental reasons. One is that  
2 the watch list that you are proposing to match  
3 against is bloated, it's inaccurate, it's  
4 impossible. The press reports are here that  
5 there are between five and 700,000 people on  
6 this watch list. Now, we are talking about not  
7 only the no-fly list which means you cannot  
8 fly, but also the secondary larger list that  
9 subjects you to secondary scrutiny.

10 The truth is, if there were five to  
11 700,000 terrorists in the United States, we  
12 would all be dead. I mean, there aren't five  
13 to 700,000 terrorists in the United States,  
14 thank God for that. You are looking for a  
15 needle in the haystack and you keep pouring  
16 more hay on the stack and somehow you think  
17 that you are going to find the terrorists. So  
18 that's problem number one.

19 Problem number two is you have a system  
20 of redress that is almost Soviet in its  
21 approach. And I say that as someone who had  
22 some experience in working in Eastern Europe

1 and advising some post-Soviet democracies. And  
2 I don't say that lightly. When I say "Soviet  
3 approach" it is opaque, no one knows how it  
4 works, it's done in secret, there is no real  
5 opportunity for appeal. As we've pointed out  
6 here there is a constitutional right to travel.

7 You don't redress a wrong or grievance with  
8 the kind of system that you have.

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

1 opportunity to do over.

2 MR. HAWLEY: Thank you. That was a  
3 clear and thoughtful statement. I'll just give  
4 a perspective on two aspects. One is -- or  
5 maybe more. On the terror watch list itself,  
6 and you correctly identified that the no-fly  
7 list is a subset of the larger watch list. And  
8 one of the things that we've done over the last  
9 year or so is in conjunction with the terrorist  
10 screening center is go through every name on  
11 the no-fly list and go back and refresh,  
12 contact case agents, and go to put a screen on  
13 to say, is this person today still worthy of  
14 being on the no-fly list. And as a result of  
15 that exercise, it essentially was cut in half.

16 So I think the point you raise philosophically  
17 is important. I think the point you raise  
18 operationally is important. That we have an  
19 obligation, if we are going to have watch  
20 lists, to make sure that the people on them are  
21 the right people and stay current. So I know  
22 that's not going to particularly satisfy you,

1 but at least it's a data point that says that  
2 we do understand the point you're making and  
3 have made some strides in it. And I think they  
4 are significant.

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

14           On the other side one of the things  
15 that happens when a no-fly is identified, there  
16 is a lot of activity -- a lot of activity. And  
17 the first thing we do is establish is this the  
18 person who is on the no-fly list. And the  
19 second thing is, is this person really should  
20 be on the no-fly list. And if the answer is  
21 no, we take them off immediately. Just take  
22 them off. And so in my experience on this job,

1 and this is just my personal experience, I am  
2 aware of only one case where somebody has come  
3 to -- you know, gotten to me in an appeals  
4 process to say, hey, I don't belong on the no-  
5 fly list and then say, yeah, let's get that  
6 person off. And my own personal observation  
7 is, and there's no way to verify this, so I  
8 fully realize this won't be believed by a lot  
9 of people. But the fact of the matter is that  
10 as one person -- and I'm not responsible for  
11 putting people on the no-fly list. I have no  
12 vested interest in who's on or who's off. That  
13 it actually is, for the people who are on the  
14 no-fly list, they really, I think, meet the  
15 standard that the public would have if they had  
16 visibility to the thing. So I think one of the  
17 things that Secure Flight is going to do is it  
18 will eliminate the Robert Johnson problem so  
19 that the number of people going around saying,  
20 hey, I'm on a watch list, they're not on a  
21 watch list. You know, I've heard so many  
22 stories about this person, that person, first

1 amendment, I spoke out against this or that and  
2 I'm on -- no, no way.

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

8           And on the "do over" point, I think  
9 that what happened with Secure Flight is that  
10 right after 911 the fundamental, societal  
11 discussion about privacy, about security, about  
12 potential tensions in that relationship and  
13 Secure Flight was the point at which those came  
14 together and were discussed. And one of the  
15 problems and I think you identified it, and I  
16 agree, is that the program zigged and zagged in  
17 the middle of that debate and it has played out  
18 in delaying the very simple basic, as you point  
19 out, of let's just do the watch list matching.  
20 So we are to the point of let's just do the  
21 watch list matching and then we will get that  
22 in place with the right protections. And I

1 think -- I mean, that's what I hope when I  
2 leave this job, Secretary Chernoff leaves this  
3 job that we'll have in place a privacy strong  
4 regime for no-fly matching. And should you  
5 wish to make further comment, please.

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

17 MR. HAWLEY: Correct.

18 MR. STEINHEL: But that's the problem.  
19 Half of grossly bloated is still bloated. You  
20 don't have the list that does this. I don't  
21 feel any more secure. I fly all the time. I  
22 was on the ground at the airport and really on

1 the runway at LaGuardia Airport on September  
2 11th and that plane was turned back because  
3 buildings that were not a mile away were hit.  
4 I take that very seriously. I don't want to be  
5 on a plane with terrorists. But on the other  
6 hand, you know, you've got to get down to the  
7 operational nitty-gritty here. If you don't  
8 have a list, an accurate list and a slim list  
9 of terrorists that you can watch, then you are  
10 wasting all of our times and you are certainly  
11 wasting our liberties. And that remains true  
12 whether you go from grossly bloated to just  
13 bloated.

14 MR. HAWLEY: So I'm going to agree with  
15 you but not -- but I want to explain how I'm  
16 agreeing with you so it doesn't become a  
17 headline and adopt everything you've said  
18 today. But the point about the operational is  
19 absolutely valid. That it is incumbent on all  
20 of us, on the government side, and it's a  
21 shared responsibility among the intelligence  
22 and law enforcement as well as us as the

1 executive agent on the no-fly and selectee  
2 process to have it be clean and current and  
3 fresh and accurate. And as Don mentioned, I  
4 think it came up in some of the previous  
5 discussions about how are we going to resolve  
6 last-minute people who want to take a last-  
7 minute, are we operationally going to be able  
8 to react the way the current process works?  
9 Those are all operational issues. And I think  
10 as we talk today about the Secure Flight, here  
11 are the rules of the road. Here are the  
12 authorities, here is what we are asking for.  
13 There is a second and just as important  
14 discussion around operationally how are we  
15 doing all the things that you mentioned. So I  
16 definitely respect the points that you've given  
17 and look forward to your written commentary as  
18 well. Thank you.

19 MR. STEINHEL: Thank you. Yes, sir.

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

22 MR. DUNLAP: Good morning, Mr. Hawley.

1 My name is Ken Dunlap and I'm from IOTA, the  
2 International Air Transport Association.

3 First I would like to thank you for  
4 personally being engaged in this debate, it's  
5 very important. We would also like to say we  
6 very much support DHS and their desire to have  
7 a single window for data collection to work  
8 towards transmission of airline data once and  
9 one time only and to just end the needless  
10 duplication of information that's provided to  
11 regulators.

12 We also support you in your goal to  
13 keep air travel safe and secure. We would like  
14 to thank you and the men and women of the TSA  
15 for their jobs as the guardians of the borders  
16 here. In reviewing Secure Flight there are  
17 several matters that warrant some attention  
18 that we would like to talk about today. One of  
19 them deals with the definition of covered  
20 flights. And I would like to limit most of my  
21 comments here to international flights and most  
22 specifically those flights which we in the

1 industry call "interline flights". And for  
2 those of you not familiar with interline  
3 flights, aviation is a global business and as  
4 we know here in the United States and also  
5 abroad it's very difficult sometimes to get a  
6 direct flight. In many cases what passengers  
7 need to do is fly two different airlines to  
8 their ultimate destination. We do this here in  
9 the United States and that also is a common  
10 travel practice abroad.

11 And one of the issues that comes up is  
12 depending on how you read the Secure Flight  
13 NPRM, it doesn't affect all airlines equally.  
14 And most specifically I would like to speak to  
15 flights that are not covered under 1546, but  
16 are actually flights that feed into the 1546  
17 flights. Those flights would be the ones in  
18 which the passenger's ultimate destination is  
19 the United States. And it does seem that based  
20 on the squishy wording of covered flights that  
21 Secure Flight is trying to regulate flights  
22 that never land in the United States, where

1 operators never operate within the United  
2 States nor have any intention of operating, and  
3 it's asking that they change their business  
4 practices relating to boarding pass issuance,  
5 access to the sterile areas, and also the ID  
6 requirements of the passengers.

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

16 In terms of data privacy, Secure Flight  
17 covers over flights. And we don't believe that  
18 the current existing bilateral agreements that  
19 cover passenger data specifically address the  
20 issues of over flights. So we would suggest  
21 that further research be done on that. Also in  
22 terms of capturing data on over flights, we are

1 very encouraged by what has become some  
2 significantly tight wording on what is defined  
3 as an "over flight" which are flights that fly  
4 over the lower 48. But we would say that based  
5 on our review of international air traffic, you  
6 will be capturing a lot of flights whose only  
7 crossing into U.S. airspace is over the fields  
8 and forests of Maine. So we've heard many  
9 times people say, well, we have an interest in  
10 capturing those flights that fly over New York  
11 and Chicago and Los Angeles, but the fact of  
12 the matter is, those airplanes are probably  
13 already going to be landing in the United  
14 States and that the airplanes that don't fly  
15 over those cities will be flying air routes  
16 that fly over the northern portion of the  
17 United States. So if there is a way of  
18 segregating that traffic from the traffic that  
19 actually does fly over key cities and key  
20 critical infrastructure, we think that that  
21 would be important.

22 Next, as we look at the wording of

1 Secure Flight, we also believe that some of the  
2 next generation passenger convenience items  
3 such as being able to print your boarding  
4 passes at home, bring your PDAs into the  
5 airport with a boarding pass already printed on  
6 it could be affected by this. And that relates  
7 to the triggering mechanisms that say a  
8 boarding pass cannot be issued unless the  
9 Secure Flight flag has been met within that  
10 passenger's reservation system.

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

16 And, finally, in terms of technical  
17 issues as was noted before there are going to  
18 be changes that are being requested to the UN  
19 edifact message. We don't believe that those  
20 changes can be done in the 60-day period of  
21 Secure Flight. So we would like to ask that  
22 you go back and review your time

1 implementations in light of the WCO process for  
2 making changes to the UN edifact APIS messages.

3           And, finally, with regards to the  
4 issues of developing a new bar coded boarding  
5 pass, we would like to reiterate that there  
6 already is a standard in place for bar coded  
7 boarding passes, that there are international  
8 standards that are used and with the next  
9 generation two-dimensional boarding code we'll  
10 be able to achieve those security objectives  
11 without TSA having to go and reinvent the bar  
12 code for the boarding passes.

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

15           MR. SADLER: Any questions or comments?

16           MR. HUBICKI: First of all, thank you  
17 for the comments. It seems as though you've  
18 taken a lot of time to read many of the details  
19 and they're meaningful comments as well to us  
20 and as always look for more elaboration and  
21 details in your written comments. I think that  
22 will be very helpful to us.

1           One thing I would also ask for in your  
2    comments back in the area is like in interline  
3    flights, we understand the complexity of that  
4    issue and have spent lots of time discussing  
5    that. And I think what would be very helpful  
6    is to for comments and feedback to pose  
7    alternative suggestions on how we can best make  
8    that operation work to minimize impact for air  
9    travel yet maintain the level of security that  
10   we're trying to achieve with Secure Flight. So  
11   we very much look forward to the comments that  
12   say this is problematic and here are some  
13   alternative ways that we can consider to deal  
14   with that matter.

15           I think on many of the other comments,  
16   again, we look for the details, the issues of  
17   changes to the UN edifact and the 60-day time  
18   period. Again, what would be helpful for us is  
19   to understand -- you know, I had asked earlier  
20   the long haul and the ten and it sounds like  
21   you've pointed out specifically that's an area  
22   where you're concerned.

1           One of the things that I mentioned  
2 previously was that we have put together a lot  
3 of the details of what those changes may be  
4 early on and have been looking to make that  
5 available sooner with our work in conjunction  
6 with CBP. So the intent there was to not --  
7 was to give a further lead time by making some  
8 of that available so carriers can address  
9 perhaps those changes now in 2007 rather than  
10 later. So I think there are some -- maybe when  
11 you address your comments if you could let us  
12 know if there are certain things within the  
13 context of those details that still you feel  
14 aren't covered or addressed that then mean  
15 there are subsequent changes later to be made  
16 that will be helpful for us as well. I'll  
17 leave it at that.

18           Paul, do you want to add anything?

19           MR. LEYH: Yeah, thanks. Ken, just one  
20 quick point. On that boarding pass issue  
21 itself, and I want to make a point of  
22 clarification on this, is that our intent is to

1 send a message to the carrier that says you can  
2 issue a boarding pass. So we want to make sure  
3 that the carriers can take full advantage of  
4 any process that they are looking at for the  
5 future whether PDAs and so on. We don't want  
6 to encumber the process. Rather we want them  
7 to go forward and use whatever means they have  
8 for developing that boarding pass process. So  
9 ours is just a message to them that allows them  
10 then to use whatever means they have for that.

11 MR. DUNLAP: And we understand that.  
12 Again, the sensitivity is on those flights that  
13 feed into the long haul flights, I mean, those  
14 could be very large airlines. They are  
15 certainly by no means small airplane operators.  
16 It's just that they might be inter-European,  
17 intra-Asian, and that they are currently not  
18 regulated entities under any U.S. security  
19 program. And, again, if there was tightening  
20 of the language we could better understand what  
21 you mean by a covered flight and we would be  
22 sensitive to that.

1           The other issue, if I could just go  
2 back to what was said about the UN edifact  
3 message. The point in bringing that up is  
4 there are standards organizations and world  
5 cooperative organizations that have a repeating  
6 process and standards bodies that get those  
7 messages built and agreed to as an  
8 international standard. And that's a longer  
9 than a 60-day process. So if you could work  
10 with those organizations to find out how much  
11 time they need, that would be a very good way  
12 of accomplishing your data collection goal.  
13 And I would point out that if you don't do  
14 that, there are dozens of countries right now  
15 that rely on that APHIS message standard and  
16 receded that information. And some countries  
17 might not need 15 fields, they might need only  
18 two. But what they are doing is expecting a  
19 certain message in a certain order. And if  
20 that order is changed unilaterally then that  
21 breaks a foreign government's APHIS collection  
22 system. So it would be, you know, no good deed

1 goes unpunished. What happens here might  
2 negatively affect someone else's security. So  
3 we would just ask you to be sensitive with that  
4 and we will work with you to make sure that you  
5 understand the processes that are needed to  
6 change you and that effect.

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

9 MR. SADLER: Okay. Anything else?  
10 (No response.).

11 MR. SADLER: Okay. Thank you.  
12 Speaker number nine.

13 (No response.).

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

18 MS. SPROAT: I'm Justine Sproat from  
19 Qantas. So I just want to add to my colleague  
20 from IATA that we support the comments that  
21 they made. I just -- we will be putting in  
22 written comments so I will just probably cover

1 the high level, some of the issues we have.  
2 One of them is, of course, the 72-hour time  
3 frame. The 72-hour requirement, I guess, then  
4 requires carriers to build a system in both  
5 their reservation and their date years and  
6 doesn't quite align with the APHIS predeparture  
7 requirements that while there's a suggestion  
8 that you can send as early as 72 hours, it's  
9 not mandatory. And therefore, I think,  
10 probably a more workable solution would be to  
11 say to carriers, this is the time frame in  
12 which we require the request for a watch list  
13 match to be sent, between 72 hours and the  
14 securing of the flight doors, but within that  
15 time it's up to you when you send it. Then  
16 it's, I suppose, for the carrier to deal with  
17 if a watch list match result doesn't come back  
18 in a timely manner then that's their issue to  
19 deal with. But at least it gives the carrier  
20 the opportunity to determining their business  
21 process as to when they actually want to send  
22 that information.

1           The other one I guess on that too is  
2 seeking some clarification on the differences  
3 between TSA and SDP requirements because  
4 initially the watch list match for  
5 international flights will be carried out by  
6 SDP and that will be based on carriers sending  
7 their IQQ or sending information through IQQ.  
8 And if carriers have built an IQQ system or  
9 interactive system to meet the APHIS  
10 predeparture requirements which also meets the  
11 watch list requirements, then once TSA takes  
12 over that role carriers wouldn't want to see an  
13 entire change in the process again. And there  
14 are differences between the two in terms of the  
15 data requirements and the timing.

16           And on the issue of -- I've spoken  
17 already to timing saying PATS sets the limits  
18 but optional within. But on the issue of data  
19 elements, I think that they need to align with  
20 APHIS predeparture data elements or be a subset  
21 of those data elements but not different. And  
22 there are -- I think it comes up in the

1 itinerary information -- things like the record  
2 locator number -- sorry, record locator, I  
3 think, the redress number, the nontraveler  
4 number, the record sequence, passenger update  
5 number, those sorts of things are different.

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

21           The other one as well is the issue of  
22 it being the carriers' responsibility to ensure

1 that travel agents one, collect a name in the  
2 reservation and two, put a privacy notice on  
3 third-party web sites. It's very difficult for  
4 carriers to compel third parties to do  
5 anything. And it shouldn't be the carriers'  
6 responsibility to do that. If there is  
7 something that the government wants then they  
8 should mandate directly against the travel  
9 agents, but not ask the carriers to ensure  
10 third parties comply.

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

20 As well with the timing, there's  
21 mention that the final consolidated use guide  
22 won't come out until the final rule. It's

1 published and therefore that makes meeting a  
2 time frame of 60 days incredibly difficult.  
3 Not just in terms of the different business  
4 processes, but equipment lay time and system  
5 changes, 60 days is just not enough. And  
6 likewise 30 days to provide the implementation  
7 plan when you haven't really had an opportunity  
8 to digest the final rule and a final  
9 consolidated user guide. So we would ask that  
10 those timings be reviewed.

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

15 MR. HUBICKI: One question that I have  
16 and whether you want to answer now or maybe in  
17 your comments back, when you talked about the  
18 printing of the boarding pass and an  
19 alternative to that would be through some SOPs  
20 somehow addressing that if somebody has already  
21 printed their boarding pass and then later we  
22 identify there's somebody who shouldn't have a

1 boarding pass through some SOPs to deal with  
2 that. Have you thought through or perhaps  
3 could you --

4 MS. SPROAT: Well, currently --

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

7 MS. SPROAT: Sorry. Currently -- I'm  
8 not sure you're familiar with the Australian  
9 system, the advanced passenger processing which  
10 essentially when passengers check in their  
11 information is sent to the Australian  
12 Immigration Department and the Australian  
13 Immigration Department makes a decision about  
14 whether that passenger is okay or not okay to  
15 board and sends back a response to the carrier  
16 saying if the passenger is okay or not okay to  
17 board. If for any reason that check-in that  
18 has not been carried out, then in Qantas' case,  
19 for example, we inhibit the gate boarding. So  
20 when the passenger turns up at a gate and puts  
21 their boarding pass through the gate reader  
22 it's rejected and the passenger is prevented

1 from boarding until they're not okay to board  
2 is resolved or if the passenger hasn't had  
3 their data collected and transmitted, then it's  
4 done. Likewise with say three-check passengers  
5 that are coming from a carrier that doesn't  
6 operate inter-Australia, for example, so  
7 they've issued the boarding pass for say  
8 Johannesburg-Sydney leg and then the passenger  
9 is continuing on Sydney -- sorry, they're going  
10 say through Singapore and haven't had their IPP  
11 done, but they're going to Singapore on Sydney  
12 so they require it done but they have both  
13 boarding cards. Likewise they would be picked  
14 up at the gate that they either haven't had the  
15 IPP processed, or they haven't had their eye  
16 response.

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

21 MR. HAWLEY: I'd like to rephrase what  
22 I think I heard to see whether I got your

1 point. And what I think I heard was don't  
2 inhibit us or don't fight it out at the  
3 boarding pass when you have the ability to stop  
4 it at the gate. And then I think I heard you  
5 say that you have scanning at the gate that if  
6 you had in the system inhibit boarding for this  
7 particular boarding pass it would have the same  
8 net result and that would work better for the  
9 existing business.

10 MS. SPROAT: Yes, there's that and as  
11 well before they get to the gate. Airlines,  
12 for example, are aware that they have X number  
13 of passengers that are joining their flight  
14 that are coming from other flights. So we also  
15 have a system ability where prior to anyone  
16 even turning up at the gate, we can actually  
17 pull a list which we call a dot and IPP list  
18 that advises us of all passengers that are  
19 coming connecting through onto our flight that  
20 haven't had their IPP carried out or they  
21 haven't had a cleared response. And so you can  
22 actually call those passengers up either when

1 they check in at the transfer desk or in the  
2 gate lounge. You don't need to wait for them  
3 to actually physically board.

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

8 Okay. So if one of the solutions that  
9 you're contemplating is that it would be  
10 preferable for the business process to resolve  
11 it at the gate rather than at the issuance of  
12 the boarding pass -- and this, I guess, would  
13 be for the general commentary particularly Ken  
14 Dunlap and from his previous point -- that if  
15 there were suggestions brought to us to say,  
16 here's a business process that works with the  
17 way we do business, but gives you U.S.  
18 government confidence that in fact we're not  
19 going to be letting people on the flight. And  
20 if there's a really tight loop to that system  
21 that works operationally better I think we'll  
22 be extremely interested. And one of the

1 concerns we would have is to leave up to a gate  
2 agent boarding flights have that be the  
3 deciding whether we're going to have a no-fly  
4 on the flight or not does cause us concern  
5 which I think is part of the rationale on the  
6 thinking about the boarding pass. So if  
7 there's a business process way that works  
8 better that would change what's in the proposed  
9 rule we would be very interested to hear  
10 thoughts on that.

11 MS. SPROAT: Because I'm not saying,  
12 you know, you need to apply that in terms of --  
13 I mean, a great deal of passengers will check  
14 in and that's the flight they're taking and you  
15 can collect that information at check in or  
16 even if you've sent it prior to that. It's  
17 really the passengers that are through-check  
18 passengers that are coming in on another flight  
19 they're remaining airside, they're not having  
20 to check in at that port for that flight. And  
21 you want to have been able to facilitate their  
22 flight by giving them their two boarding --

1 essentially checking them in for both flights  
2 and checking their luggage onto the flight. So  
3 you want to be able to at least issue the  
4 boarding card and then if need be you pick them  
5 up when they arrive for that flight. Yeah,  
6 we'll get back to you on that with written  
7 comments, it's probably easier.

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

12 In terms of operational testing and one  
13 of the questions you had raised or comments was  
14 the concern that we might change things like  
15 data elements later through operational  
16 testing. The intent is not to do that just to  
17 be clear. The intent is through the rulemaking  
18 process to finalize what the data elements  
19 would be and then move on into the operational  
20 testing, operational or Para operations mode at  
21 the program. So we recognize your concerns  
22 there and the intent is to try to avoid that

1 situation.

2           And also in terms of the user guide and  
3 the concern that it's not final yet. Part of  
4 that also relates to the fact that the rule is  
5 not final yet. And until we get all of the  
6 comments back, hear all of the comments today  
7 and then take all of that into consideration,  
8 we then need to finalize the rule. And once  
9 it's finalized we then can finalize what the  
10 guide would be. So --

11           MS. SPROAT: Yeah, and I think the  
12 point, just saying right there was that it's  
13 understandable that the rule wouldn't be  
14 finalized until the NPRM becomes final. But  
15 carriers are unlikely to carry out system  
16 changes until they actually see the final  
17 requirements and otherwise, you know, you're  
18 going to end up having to tweak systems or do  
19 extra changes when the actual final  
20 consolidated user guide comes out. So given  
21 that a lot of carriers won't start those  
22 changes until it's published, you can see the

1 60-day time frame for implementation becomes  
2 quite unachievable.

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

10 MS. SPROAT: Yes.

11 MR. SADLER: Okay. Anything else?

12 (No response.)

13 MR. SADLER: Okay. Thank you very  
14 much.

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

18 Thank you.

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

20 MR. SADLER: Okay. Thank you everyone.  
21 Is there anyone who has registered and hasn't  
22 spoken yet at this time?

1 (No response.)

2 MR. SADLER: We got up to eight  
3 speakers. Anyone who hasn't registered yet and  
4 hasn't spoken?

5 (No response.)

6 MR. SADLER: Okay. With that then what  
7 we would like to do is we are probably going to  
8 close it up for today. But we would like to  
9 offer Kip the opportunity to make some closing  
10 remarks before we do that.

11 MR. HAWLEY: Thank you, Steve. And I  
12 really thank you everybody for coming this  
13 morning. I found it very valuable and some  
14 insights that I learned today and that will be  
15 definitely included in the record and part of  
16 the consideration as this rule moves forward.  
17 And I think it is once again emphasized in this  
18 hearing the importance of the rule in many  
19 contexts and the many difficult issues that  
20 come together in the Secure Flight process that  
21 we have to get right. And the way that we'll  
22 get it right is with the full involvement of

1 the folks around the world who are impacted by  
2 it which is really anybody who travels. The  
3 suggestions offered today I find valuable as  
4 well as we're looking forward to for the  
5 follow-up. And I don't believe I have anything  
6 more than that. Don.

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

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

22 MR. SADLER: Okay. Well, thank you

1 very much for your comments and for your time.

2 It's greatly appreciated. Thank you.

3 (Whereupon, at 11:20 a.m., the meeting  
4 was adjourned.)