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Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1507, 1540, 1544, and 1560
Secure Flight Plan; Proposed Rule
Privacy Act of 1974: System of Records; Secure Flight Plans; Notice
Privacy Act of 1974: Implementation of Exemptions; Secure Flight Records; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1540, 1544, and 1560

[Docket No. TSA–2007–28572]

RIN 1652–AA45

Secure Flight Program

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Intelligence Reform and Terrorism Prevention Act (IRTPA) requires the Department of Homeland Security (DHS) to assume from aircraft operators the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists for international and domestic flights. The Transportation Security Administration (TSA) is currently developing the Secure Flight program and issuing this rulemaking to implement this congressional mandate.

This rule proposes to allow TSA to begin implementation of the Secure Flight program, under which TSA would receive passenger and certain non-traveler information, conduct watch list matching against the No Fly and Selectee portions of the Federal Government's consolidated terrorist watch list, and transmit boarding pass printing instructions back to aircraft operators. TSA would do so in a consistent and accurate manner while minimizing false matches and protecting privacy information.

Also in this volume of the **Federal Register**, U.S. Customs and Border Protection (CBP) is publishing a final rule to implement pre-departure advance passenger and crew manifest requirements for international flights and voyages departing from or arriving into the United States, using CBP's Advance Passenger Information System (APIS). These rules are related. We propose that, when the Secure Flight rule becomes final, aircraft operators would submit passenger information to DHS through a single DHS portal for both the Secure Flight and APIS programs. This would allow DHS to integrate the watch list matching component of APIS into Secure Flight, resulting in one DHS system responsible for watch list matching for all aviation passengers.

DATES: Submit comments by October 22, 2007.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System at: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Kevin Knott, Policy Manager, Secure Flight, Office of Transportation Threat Assessment and Credentialing, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220, telephone (240) 568–5611.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites comments relating to the appropriateness, effectiveness, and any economic, environmental, energy, or federalism impacts resulting from the required provisions of this rulemaking. Interested persons may do this by submitting written comments, data, or views. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date your comments were received on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS) FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

in the West Building Ground Floor, Room W12–140, at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

APIS—Advance Passenger Information System
ATSA—Aviation and Transportation Security Act
AOIP—Aircraft Operator Implementation Plan
CBP—U.S. Customs and Border Protection
DHS—Department of Homeland Security
2005 DHS Appropriations Act—Department of Homeland Security Appropriations Act, 2005
2007 DHS Appropriations Act—Department of Homeland Security Appropriations Act, 2007
DHS TRIP—Department of Homeland Security Traveler Redress Inquiry Program
FBI—Federal Bureau of Investigation
FOIA—Freedom of Information Act
GAO—Government Accountability Office
HSPD—Homeland Security Presidential Directive
IATA—International Air Transport Association
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
PNR—Passenger Name Record
PRI—Passenger Resolution Information
PIA—Privacy Impact Assessment
SFPD—Secure Flight Passenger Data
SSI—Sensitive Security Information
SORN—System of Records Notice
TSA—Transportation Security Administration
TSC—Terrorist Screening Center
TSDB—Terrorist Screening Database

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I. Background

TSA performs passenger and baggage screening at the Nation's commercial airports.[2] Aircraft operators currently supplement this security screening by performing passenger watch list matching using the Federal No Fly and Selectee Lists, as required under security directives that TSA issued following the terrorist attacks of September 11, 2001. Aircraft operators also conduct this watch list matching process for non-traveling individuals authorized to enter the sterile area[3] of an airport in order to escort a passenger or for some other purpose approved by TSA.

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires TSA to assume from air carriers the comparison of passenger information to the automatic Selectee and No Fly Lists and to utilize all appropriate records in the consolidated and integrated watch list that the federal government maintains.[4] The final report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission Report) recommends that the watch list matching function ''should be performed by TSA and it should utilize the larger set of watch lists maintained by the Federal Government.'' See 9/11 Commission Report at 393.

Consequently, pursuant to § 4012(a) of the IRTPA, TSA is issuing this NPRM to propose implementation of the Secure Flight program. Under the program, TSA would receive passenger and certain non-traveler information from aircraft operators, conduct watch list matching, and transmit watch list matching results back to aircraft operators.

The purpose of the Secure Flight program is to assume the watch list matching function from aircraft operators and to more effectively and consistently prevent certain known or suspected terrorists from boarding aircraft where they may jeopardize the lives of passengers and others. The program is designed to better focus enhanced passenger screening efforts on individuals likely to pose a threat to civil aviation, and to facilitate the secure and efficient travel of the vast majority of the traveling public by distinguishing them from individuals on the watch list.

In general, the Secure Flight program would compare passenger information only to the No Fly and Selectee List components of the Terrorist Screening Database (TSDB), which contains the Federal Government's consolidated terrorist watch list, maintained by the Terrorist Screening Center (TSC).[5] However, as recommended by the 9/11

[2] See the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71, 115 Stat. 597, Nov. 19, 2001).

[3] ''Non-traveling individual'' would be defined in this Notice of Proposed Rulemaking as an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. It would not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA regulation or security directive. Proposed 49 CFR 1560.3.

''Sterile area'' is defined as a portion of airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator under part 1544 of this chapter or a foreign air carrier under part 1546 of this chapter, through the screening of persons and property. 49 CFR 1540.5.

[4] Pub. L. 108–458, 118 Stat. 3638, Dec. 17, 2004.

[5] The TSC was established by the Attorney General in coordination with the Secretary of State, the Secretary of Homeland Security, the Director of the Central Intelligence Agency, the Secretary of the Treasury, and the Secretary of Defense. The Attorney General, acting through the Director of the Federal Bureau of Investigation (FBI), established the TSC in support of Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, which required the Attorney General to establish an organization to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Commission, TSA may use ''the larger set of watch lists maintained by the Federal Government,'' when warranted by security considerations. For example, TSA may learn that flights on a particular route may be subject to increased security risk. If this happens, TSA may decide to compare passenger information on some or all of the flights on that route against the full TSDB or other government databases, such as intelligence or law enforcement databases.

This proposed rule would affect covered flights operated by U.S. aircraft operators that are required to have a full program under 49 CFR 1544.101(a), and covered flights operated by foreign air carriers that are required to have a security program under 49 CFR 1546.101(a) or (b). These aircraft operators generally are the passenger airlines that offer scheduled and public charter flights from commercial airports. This proposed rule refers to them as ''covered U.S. aircraft operators'' and ''covered foreign air carriers'' respectively, and ''covered aircraft operators'' collectively.

The proposed rule would cover all flights conducted by covered U.S. aircraft operators, as well as all flights conducted by a covered foreign air carrier arriving in or departing from the United States or overflying the continental United States (referred to as ''covered international flights''). TSA is proposing to conduct watch list matching for overflights in order to protect the United States from terrorist activity that could occur in its airspace. The proposed rule collectively refers to the flights conducted by U.S. carriers and covered international flights that would be regulated under this proposed rule as ''covered flights.''

IRTPA also requires DHS to assume from air carriers the task of comparing passenger information for international flights to or from the United States against the Federal Government's consolidated and integrated terrorist watch list before departure of such flights. Initially, CBP will implement this requirement and conduct pre-departure watch list matching for international flights, through its Advance Passenger Information System (APIS). APIS is a widely-utilized electronic data interchange system that international commercial air and vessel carriers use to electronically transmit to CBP certain data on passengers and crew members. The former U.S. Customs Service, in cooperation with the former Immigration and Naturalization Service (INS) and the airline industry, developed APIS in 1988. On July 14, 2006, CBP published a notice of proposed rulemaking to require air and vessel carriers to submit to CBP passenger manifest information before departure of an international flight to or from the United States and for voyages from the United States to enable CBP to conduct watch list matching on passengers before they board an international flight or depart on certain voyages.[6]

In response to a substantial number of comments from the aviation industry, DHS is proposing a unified approach to watch list matching for international and domestic passenger flights, to avoid unnecessary duplication of watch list matching efforts and resources and reduce the burden on aircraft operators. CBP's APIS Pre-Departure Final Rule published elsewhere in this issue of the **Federal Register** and this notice of proposed rulemaking (NPRM) are being published jointly to explain DHS's proposed unified approach. Beginning on the effective date of the APIS Pre-Departure final rule, CBP will perform the watch list matching function for international flights to or from the United States as part of its overall screening of travelers. However, DHS proposes to ultimately transfer the watch list matching function to the Secure Flight program. If this approach is adopted, TSA would assume the aviation passenger watch list matching function for domestic and international passengers covered by this proposed rule, and CBP would continue to conduct border enforcement functions under the APIS program. DHS is establishing one portal through which aircraft operators will send their passenger information for both programs, with the goal of streamlining the transmission of passenger information, if the unified approach is adopted.

A. Current Watch List Matching

1. Watch List Matching for Domestic Flights

Under security directives issued by TSA, covered U.S. aircraft operators currently conduct pre-flight watch list matching for passengers on domestic flights using the Federal No Fly and Selectee Lists. Aircraft operators also apply this process to non-traveling individuals authorized to enter the sterile area beyond the screening checkpoint in order to escort a minor or a passenger with disabilities, or for another purpose authorized by TSA.

Under the current watch list matching process, when an aircraft operator has a reservation from a passenger with a name that is the same as, or similar to, a name on the No Fly List, TSA requires the aircraft operator to notify law enforcement personnel and TSA in order to determine whether that passenger is in fact the individual whose name is on the No Fly List. If the passenger is verified as an individual on the No Fly List, the aircraft operator is prohibited from transporting the passenger. When an aircraft operator has a reservation from a passenger with a name that is the same as, or similar to, a name on the Selectee List, TSA requires the aircraft operator to identify the individual to TSA for enhanced screening at security screening checkpoints.[7]

2. Watch List Matching for International Flights

Covered aircraft operators also currently conduct watch list matching for passengers on international flights in the same manner described above for domestic flights as required in TSA security directives and emergency amendments to a security program. Additionally, CBP conducts various activities, including watch list matching, to screen passengers on commercial international flights arriving in and departing from the United States through the Advance Passenger Information System (APIS). CBP conducts such activities in order to protect the United States from threats of terrorism and to carry out CBP's border enforcement mission.

Under CBP's APIS regulations (19 CFR part 122), air carriers departing foreign ports destined for the United States are required to electronically submit passenger information to CBP no later than fifteen minutes after the departure of aircraft destined for the United States and 15 minutes prior to departure of aircraft from the United States. ''Departure'' currently is defined to be the moment the aircraft's wheels leave the tarmac. *See* 19 CFR 122.49. The current system allows CBP to supplement the watch list matching currently completed by air carriers prior to boarding. If CBP's screening identifies that a person on a no-fly list is on an aircraft bound for, or departing from, the United States, that aircraft will be diverted from its intended destination.

In this volume of the **Federal Register**, CBP is publishing a final rule entitled ''Advance Electronic Submission of Passenger and Crew Member Manifests for Commercial

[6] 71 FR 40035.

[7] Individuals may undergo enhanced screening at security screening checkpoints for a variety of other reasons, such as random selection or as a result of triggering a metal detector alarm.

Aircraft and Vessels'' (APIS Pre-Departure Final Rule). This rule, which becomes effective 180 days after publication, will require air carriers to provide the passenger information it currently provides to CBP, but requires air carriers to provide it no later than the time the flight crew secure the aircraft doors for takeoff.

When commercial air carriers are certified to transmit APIS data under the pre-departure APIS requirements of the new APIS Pre-Departure Final Rule, CBP will assume from those carriers the responsibility of conducting pre-departure watch list matching for international flights to or from the United States. Once CBP receives the information, it will complete the watch list matching process and return instructions concerning each passenger to the covered aircraft operators. Covered aircraft operators will be required to follow the instructions when issuing boarding passes to passengers, identifying passengers for enhanced screening, and allowing passengers to board the aircraft or preventing them from doing so. If the Secure Flight program is finalized as envisioned in this proposed rule, it will take over this watch list matching function for aircraft operators covered under this proposed rule from CBP.

B. Secure Flight Program Summary

1. Secure Flight Passenger Data

Under the Secure Flight program proposed under this rule, TSA would require covered aircraft operators to collect information from passengers, transmit passenger information to TSA for watch list matching purposes, and process passengers in accordance with TSA instructions regarding watch list matching results. Under this proposed rule, TSA would collect Secure Flight Passenger Data (SFPD), consisting of the information summarized below (and discussed in greater detail in section I.E.2 ''information collection requirements'' *infra*).

For passengers on covered flights, TSA is proposing to require covered aircraft operators to request a passenger's full name, gender, date of birth, and Redress Number [8] (if available) or known traveler number [9] (if available once the known traveler program is implemented). Even though covered aircraft operators would be required to request all of the above data elements from passengers, passengers would only be required to provide their full name at the time of reservation to allow TSA to perform watch list matching. They would not be required by TSA to provide the other data elements to aircraft operators at the time of reservation. Covered aircraft operators would be required to transmit to TSA the information provided by the passenger in response to the request described above.

Covered aircraft operators also would be required to transmit to TSA passport information, if available. Although not required to be requested by TSA under this proposed rule, passport information may be provided by passengers either voluntarily or under other travel requirements such as CBP APIS requirements if a passenger is traveling abroad. Additionally, covered aircraft operators would be required to transmit to TSA certain non-personally identifiable information such as itinerary information, record locator numbers etc. to allow TSA to effectively prioritize watch list matching efforts, communicate with the covered aircraft operator, and facilitate an operational response, if necessary, to an individual who is on the watch list.

When a non-traveling individual seeks authorization from a covered aircraft operator to enter an airport sterile area (such as to escort a minor or assist a passenger with a disability), TSA also is proposing to require covered aircraft operators to request from the non-traveler and transmit to TSA, the same information requested from passengers (to the extent available), as well as certain non-personally identifiable information, including the airport code for the sterile area to which the non-traveler seeks access.

The following chart details the information that TSA would require covered aircraft operators to request from passengers and certain non-traveling individuals, the information that those individuals would be required to provide, and the information covered aircraft operators would be required to transmit to TSA if available:

PROPOSED INFORMATION COLLECTION REQUIREMENTS FOR SECURE FLIGHT

Data elements	Covered aircraft operators must request from passengers and certain non-travelers	Passengers and certain non-travelers must provide	Covered aircraft operators must transmit to TSA, if available
Full Name	X	X	X
Date of Birth	X		X
Gender	X		X
Redress Number or Known Traveler Number	X		X
Passport Information [10]			X
Itinerary Information [11]			X
Reservation Control Number			X
Record Sequence Number			X
Record Type			X
Passenger Update Indicator			X
Traveler Reference Number			X

This proposed rule would not compel the passenger or non-traveler to provide the majority of the information that covered aircraft operators request. However, if that individual elected not to provide the requested information,

[8] A Redress Number is a unique number that DHS currently assigns to individuals who use the DHS Traveler Redress Inquiry Program (TRIP). Under the proposed rule, individuals would use the Redress Number in future correspondence with DHS and when making future travel reservations. The Redress Number is further discussed in the Secure Flight Information Collection Requirements section below.

[9] A known traveler number would be a unique number assigned to ''known travelers'' for whom the Federal Government has already conducted a threat assessment and has determined do not pose a security threat. The known traveler number is further discussed in the Secure Flight Information Collection Requirements section.

TSA may have insufficient information to distinguish him or her from a person on the watch list. Accordingly, the individual may be more likely to experience delays, be subject to additional screening, be denied transport, or be denied authorization to enter a sterile area. Without a full name, watch list matching is incredibly unreliable; therefore the proposed rule would require an individual seeking to travel on a covered flight or authorization to enter a sterile area to provide his or her full name, as it appears on the individual's verifying identity document. The proposed rule would also prohibit covered aircraft operators from accepting a reservation, or accepting a request for authorization to enter a sterile area, from an individual who does not provide a full name.

2. 72-Hour Requirement

Under the Secure Flight proposed rule, covered aircraft operators would be required to transmit Secure Flight Passenger Data to TSA approximately 72 hours prior to the scheduled flight departure time.[12] Requiring SFPD approximately 72 hours prior to scheduled flight departure time would support the security mission of the Secure Flight program and facilitate a streamlined watch list matching process for aircraft operators and passengers in at least the following ways.

TSA considered a number of factors in determining that aircraft operators should submit SFPD to TSA approximately 72 hours before scheduled flight departure time. TSA reviewed reservation trend analyses which indicates that, on average, an estimated 90–93% of travel reservations are finalized and become stable (e.g. not subject to cancellation or timing changes) 72 hours before the scheduled flight departure time. Accordingly, TSA determined that it would not be practicable to require aircraft operators to submit information earlier than 72 hours prior to flight departure time, as such information would still be subject to change and would not provide sufficiently reliable information for TSA to begin watch list matching or engage in any necessary coordination with law enforcement.

During a standard travel day, TSA estimates that over 2.4 million passengers use covered aircraft operators for domestic and international travel (either destined for or departing from the United States). Although approximately 99% of passenger travel reservations would be finalized within 24 hours of the departure of any flight, 24 hours would not provide TSA with sufficient time to adequately screen 2.4 million passengers and, when necessary, coordinate operational responses in the event of identification of a terrorist suspect or as needed to identify and disrupt a suspected terrorist plot potentially involving a variety of flights or aircraft operators, foreign or domestic.

It is important to note that, in any one day, TSA would be conducting watch list matching on not only the 2.4 million travelers for one designated travel day, but TSA also would continue to conduct watch list matching for the 2.4 million travelers for each of the two days before the date of departure of the flight. In total, over a 72-hour period, TSA could be conducting watch list matching for up to 7.2 million travelers traveling within a 72-hour period.

Accordingly, TSA is proposing that covered aircraft operators submit SFPD approximately 72 hours in advance.

Security benefits. A 72-hour period would provide the significant security benefit of allowing the U.S. government to coordinate an operational response to a match on a watch list—not only before the flight departs, but even in advance of the individual's arrival at the airport. Also, TSA could provide a single watch list matching solution for both domestic and international flights, because TSA would have the time to prioritize the domestic and international watch list matching workload and accommodate last-minute reservations and changes.

Benefits to covered aircraft operators and passengers. The 72-hour period would also allow TSA to complete watch list matching in time to allow covered aircraft operators to begin issuing boarding passes to passengers 24 hours prior to departure. Watch list matching that takes place immediately prior to the flight's departure, such as that allowed by CBP's APIS rule, would not allow TSA to communicate with covered aircraft operators regarding the issuance of boarding passes 24 hours prior to departure. Additionally, passengers' travel experiences would be enhanced because TSA would use that time to adjudicate potential watch list matches and coordinate with other government agencies as necessary, to resolve as many false positives as possible before such individuals arrive at the airport or experience delay or inconvenience.

TSA welcomes public comment on this timeframe, as well as on alternate timeframes, and will consider these comments in the development of the final rule. As always, comments that include an analytical justification are most useful.

3. Instructions to Covered Aircraft Operators

TSA would match the SFPD provided by covered aircraft operators against the watch list. Based on the watch list matching results, TSA would instruct an aircraft operator to process the individual in the normal manner, to identify the individual for enhanced screening at a security checkpoint, or to deny the individual transport or authorization to enter the airport sterile area. To ensure the integrity of the boarding pass instructions and to prevent use of fraudulent boarding passes, TSA would also provide instructions on placing codes on the boarding passes. Covered aircraft operators would be required to comply with the TSA instructions.

4. Summary of Requirements

A brief summary of the requirements proposed in this NPRM is presented below. A detailed explanation of these requirements is provided in the Section-by-Section Analysis.

- *Requirements of Covered Aircraft Operators.* This proposed rule would require aircraft operators that conduct certain scheduled and public charter flights to:
- Submit an Aircraft Operator Implementation Plan (AOIP) to TSA for approval.
- Conduct operational testing with TSA.
- Request full name, date of birth, gender, and Redress Number (if available) or known traveler number (if implemented and available) from passengers and non-traveling individuals.
- Transmit Secure Flight Passenger Data for passengers and non-traveling individuals, in accordance with the aircraft operator's AOIP, approximately 72 hours prior to the scheduled flight departure time.
- Make a privacy notice available on public Web sites and self-service kiosks before collecting any personally identifiable information from passengers or non-traveling individuals.

[10] Passport information is the following information from a passenger's passport: (1) Passport number; (2) country of issuance; (3) expiration date; (4) gender; (5) full name.

[11] Itinerary information is the following information about a covered flight: (1) Departure airport code; (2) aircraft operator; (3) departure date; (4) departure time; (5) arrival date; (6) scheduled arrival time; (7) arrival airport code; (8) flight number; (9) operating carrier (if available). For non-traveling individuals, the itinerary information is the airport code for the sterile area to which the non-traveling individual seeks access.

[12] In the APIS Pre-Departure Final Rule, CBP also encourages, but does not mandate, all carriers to submit the information up to 72 hours in advance when available, to facilitate clearance.

• Request a verifying identity document at the airport ticket counter if TSA has not informed the covered aircraft operator of the results of watch list matching for an individual by the time the individual attempts to check-in, or informs the covered aircraft operator that an individual must be placed on inhibited status and may not be issued a boarding pass or authorization to enter a sterile area. A verifying identity document is one that has been issued by a Federal, State, local, or tribal government that contains the individual's full name, photo, and date of birth, and is non-expired; though a non-expired passport issued by a foreign government will also be considered a verifying identity document. This requirement would be in addition to the current requirement that aircraft operators request all passengers and non-traveling individuals to provide identification at the time of check-in or at a screening checkpoint.

• When necessary, submit information from the verifying identity document to TSA to resolve potential watch list matches. In some cases, TSA may also request that the covered aircraft operator communicate a physical description of the individual.

• Not issue to an individual a boarding pass or authorization to enter a sterile area or permit an individual to board an aircraft or enter a sterile area if the individual does not provide a verifying identity document when requested under circumstances described above, unless otherwise authorized by TSA.

• Prohibit issuance of boarding passes or authorizations to enter a sterile area to individuals whom TSA has placed on inhibited status. Prohibit these individuals from boarding an aircraft.

• Comply with instructions from TSA to designate identified individuals for enhanced screening before boarding a flight or accessing a sterile area.

• Place separate codes on boarding passes in accordance with TSA instructions.

• *Requirements of Individuals.* Individuals who wish to make a reservation on a covered flight or to access a sterile area must provide their full names to the covered aircraft operators. This proposed rule would require those passengers and non-traveling individuals for whom TSA has not provided watch list matching results or has provided inhibited status to present a verifying identity document, in order to board an aircraft or to enter a sterile area. Individuals also would continue to be subject to the current requirement that aircraft operators request all passengers and non-traveling individuals to provide identification at the time of check-in or at a screening checkpoint.

• *Government Redress Procedures Available to Individuals.* This proposed rule explains the redress procedures for individuals who believe they have been improperly or unfairly delayed or prohibited from boarding a flight as a result of the Secure Flight program. These individuals may seek assistance through the redress process by submitting certain personal information, as well as copies of certain identification documents, to the existing DHS Traveler Redress Inquiry Program (DHS TRIP). The proposed rule explains the process the Federal Government will use to review the information submitted and to provide a timely written response.

C. Implementation Stages of Secure Flight

TSA proposes to implement this rule in two stages. The first stage would include covered flights between two domestic points in the United States, and the second stage would include covered flights to or from the United States, flights that overfly the continental United States, and all other flights (such as international point-to-point flights) operated by covered U.S. aircraft operators not covered in the first stage.

1. Implementation of Secure Flight for Domestic Flights

During the first stage of implementation, TSA would assume the watch list matching function for domestic flights conducted by covered U.S. aircraft operators. TSA would conduct operational testing with each covered U.S. aircraft operator to ensure that the aircraft operator's system is compatible with TSA's system. After successful operational testing with a covered U.S. aircraft operator, TSA would assume the watch list matching function for domestic flights from that aircraft operator.

2. Implementation of Secure Flight for International Flights

Until TSA implements the Secure Flight program for international flights by covered aircraft operators, DHS plans for CBP to conduct pre-departure watch list matching for international flights under the APIS Pre-Departure Final Rule. This interim approach will allow DHS to more quickly address the threat of terrorism on flights arriving in and departing from the United States.

During the second stage of Secure Flight implementation, TSA will assume the watch list matching function for covered international flights from CBP. There are a few differences between the two processes. First, covered aircraft operators would need to request passenger information at the time of reservation, as required under this proposed rule. Second, as described below, TSA would utilize Secure Flight Passenger Data, which requires collection of different data elements than under the APIS regulations. For its non-watch list matching functions, which CBP will continue to perform under the APIS rule, CBP would continue to collect APIS data. Given this, and to provide a single point of contact, covered aircraft operators can transmit both APIS data and Secure Flight Passenger Data in a single transmission to the DHS portal, which will route information to TSA and CBP as appropriate.

The following tables list the data elements that CBP will collect under its APIS regulations, and that TSA will collect under the Secure Flight program.

Data elements	APIS regulations (international flights) [13]	Secure flight NPRM [14]
Full Name	X	X
Date of Birth	X	X
Gender	X	X
Redress Number or Known Traveler Number		X
Passport Number*	X	X
Passport Country of Issuance*	X	X
Passport Expiration Date*	X	X
Passenger Name Record Locator	X	
International Air Transport Association (IATA) Foreign Airport Code—place of origination	X	X

Data elements	APIS regulations (international flights) [13]	Secure flight NPRM [14]
IATA Code—Port of First Arrival	X	X
IATA Code of Final Foreign Port for In-transit Passengers	X	
Airline Carrier Code	X	X
Flight Number	X	X
Date of Aircraft Departure	X	X
Time of Aircraft Departure	X	X
Date of Aircraft Arrival	X	X
Scheduled Time of Aircraft Arrival	X	X
Citizenship	X	
Country of Residence	X	
Status on Board Aircraft	X	
Travel Document Type	X	
Alien Registration Number**	X	
Address While in U.S.—(except for outbound flights, U.S. citizens, lawful permanent residents, crew and intransit passengers)	X	
Reservation Control Number		X
Record Sequence Number		X
Record Type		X
Passenger update indicator		X
Traveler Reference Number		X

*If required.
**If applicable.

TSA would require covered aircraft operators to transmit to TSA the available passenger information required under this proposed rule that resides in covered aircraft operators' systems. Covered aircraft operators must submit this information, through the same DHS portal used for APIS submissions, approximately 72 hours before departure of a covered flight. Those that elect to transmit all manifest information required under the Pre-Departure APIS rule at the same time would be able to send a single transmission to DHS for the Secure Flight and Pre-Departure APIS programs and would receive a single boarding pass printing instruction in return. Under the APIS regulations, such aircraft operators would then be required to validate the information submitted against the individual's passport or other travel document and transmit passenger information to DHS only if it is different from the information previously submitted, no later than 30 minutes prior to or up to the securing of the doors of an aircraft under CBP's APIS Pre-Departure rule.

Covered aircraft operators that do not elect to transmit all manifest information required under the Pre-Departure APIS rule approximately 72 hours in advance would submit validated APIS information no later than 30 minutes prior to or up to the securing of the doors of an aircraft under CBP's Pre-Departure APIS rule. The aircraft operator would only receive a boarding pass printing instruction from DHS after the APIS transmission if the transmitted APIS data differs from the SFPD that was transmitted 72 hours prior to departure.

Additionally, for reservations made within 72 hours of scheduled flight departure time, covered aircraft operators would be required to transmit Secure Flight Passenger Data as soon as possible. If the covered aircraft operator is also ready to transmit APIS information at that time, the covered aircraft operator would be able to send one transmission for both Secure Flight and Pre-Departure APIS and would receive one boarding pass printing instruction. If the covered aircraft operator is not ready to transmit passenger under Pre-Departure APIS at the same time, the covered aircraft operator would be required to transmit the passenger information separately for Secure Flight and APIS.

Covered aircraft operators would use the same portal to transmit Secure Flight Passenger Data to TSA as they will to transmit APIS data to CBP. Covered U.S. aircraft operators would not need to undergo additional operational testing during the second phase, because they would have already conducted operational testing with TSA during the first phase. TSA, however, would need to conduct operational testing with the covered foreign air carriers, which would not have previously conducted operational testing with TSA, to confirm that the Secure Flight process operates properly from end-to-end with these carriers.

Once TSA assumes responsibility under Secure Flight for the watch list matching function for the majority of passengers covered by the APIS regulation, CBP would no longer be responsible for pre-departure watch list matching or the issuance of related boarding pass printing instructions for covered flights. Consequently, covered aircraft operators would receive, and would have to comply with, one set of instructions from DHS, via TSA, regarding the issuance of boarding passes to or the boarding of passengers on covered international flights. CBP would, however, continue to require carriers to provide APIS data to carry out its border enforcement mission. CBP would continue to require covered aircraft operators and passengers to comply with CBP's APIS regulations, including passengers presenting their passports or other required travel documents at the airport to the aircraft operators in order for the aircraft operator to verify the APIS information and to transmit it to CBP if the APIS information was not previously transmitted or if the verified APIS information is different from the information previously transmitted.

In some international airports, passengers may transit from one international flight to another, where the flights are operated by different aircraft operators and only the second flight would be a covered flight under this proposed rule. TSA understands that currently, in these situations, the aircraft operator operating the first flight

[13] All APIS data elements are required.

[14] Covered aircraft operators must provide data elements listed for Secure Flight, to the extent they are available.

may issue a boarding pass for both legs of the passenger's itinerary, including the flight to the United States. Under this proposed rule, the aircraft operator operating the first flight would not be able to issue a boarding pass for the second flight until that aircraft operator received an appropriate boarding pass printing instruction from TSA. This would allow TSA to minimize the security risk of allowing passengers who have not yet been compared against the watch list to have access to aircraft and the secure area of an airport. TSA is seeking comment on this proposed requirement.

D. Privacy Documents

TSA is committed to safeguarding individuals' privacy in conducting the Secure Flight Program to the greatest extent possible. In conjunction with this NPRM, TSA is publishing a Privacy Impact Assessment (PIA) for the Secure Flight Program, a Privacy Act System of Records Notice (SORN), DHS/TSA 019, and an NPRM proposing Privacy Act exemptions for the Secure Flight Program. All three documents outline how TSA would collect, use, store, protect, and retain personally identifiable information collected and used as part of the Secure Flight Program and identify the privacy risks and mitigation measures that would be employed to reduce or eliminate privacy risks, such as false positive matches or insufficient safeguards for the information. All three documents are available at *http://www.tsa.gov* and the SORN and the NPRM proposing the Privacy Act exemptions will be published in the **Federal Register**. TSA invites public comments on the SORN and NPRM proposing Privacy Act exemptions. TSA will respond to public comments received on the PIA, SORN, and NPRM through the rulemaking process and revise the respective documents as appropriate.

TSA has developed a comprehensive approach to promoting compliance with the Fair Information Practices codified in the Privacy Act of 1974, the E-Government Act of 2002, DHS and TSA privacy policies, and Office of Management and Budget (OMB) privacy guidance. Comprehensive privacy requirements are being included in the program requirements to allow TSA to identify privacy issues and risks at each phase of the program and implement privacy principles across Secure Flight systems and operations. The Secure Flight program has designated an individual to work closely with the TSA Director of Privacy Policy and Compliance as well as the DHS Chief Privacy Officer to promote compliance with the published documents for the program, including the SORN and the PIA. This individual would also routinely monitor and review the operations that authorized users perform on personal information according to a schedule to be determined and will be responsible for the implementation of the privacy program.

The Secure Flight program seeks to balance the competing interests of data collection minimization and reduction of false positives through individual choice. TSA has limited the proposed information collection requirements for Secure Flight to the data elements TSA believes are minimally necessary for effective watch list matching of aviation passengers, as discussed in Section E.2. below. The proposed rule leaves individuals with the choice to decline to provide certain data elements. For the vast majority of individuals, a decision to forgo providing these data elements should have no effect on their watch list matching results and will result in less information being held by TSA. For some individuals, however, TSA may be unable to perform effective automated watch list matching without this information and, as a result, those individuals may be more likely to be subject to additional screening or be denied boarding or authorization to enter a sterile area.

The Secure Flight Program also would mitigate the privacy risk of false positive matches to the watch list by supplementing the initial automated comparison with a manual assessment conducted by a Secure Flight analyst, but only if necessary to complete the watch list matching process. Individuals will be provided with the opportunity under the DHS Traveler Redress Inquiry Program (TRIP) redress process and under the Privacy Act of 1974 to access and correct personal information, subject to the Privacy Act exemptions proposed for Secure Flight records and other applicable legal constraints. Secure Flight would not utilize commercial data to verify identities, nor would it use algorithms to assign risk scores to individuals.

TSA is proposing to retain records for most individuals encountered by Secure Flight for a short period of time.[15] The vast majority of records are expected to be destroyed within seven (7) days of completion of directional travel.[16] Records for individuals not identified as potential matches by the automated matching tool would be retained for seven days after the completion of the individual's directional travel for audit purposes. Records for individuals who are potential matches would be retained for seven years after the completion of the individual's directional travel. These records would be available if needed as part of the redress process and, as a result, may help to expedite future travel. Records concerning confirmed matches are expected to be retained for 99 years. This retention period is consistent with TSC's NARA-approved records retention schedule for TSDB records. In case of a terrorist event, records concerning the event, which may possibly include passenger information, would be retained in accordance with a separate TSA record retention schedule covering major security incident records. This information would be retained to support the investigation and documentation of a terrorist event. Such records would be maintained in accordance with applicable SORNs, DHS/TSA 001, Transportation Security Enforcement Records System, 69 FR 71818, 71829 (December 10, 2004) and DHS/TSA 011, Transportation Security Intelligence Service Operations Files, 69 FR 71828, 71835 (December 10, 2004).

The Secure Flight Program would further minimize potential privacy risks by integrating administrative, technical, and physical security safeguards to limit collection of personally identifiable information and to protect information against unauthorized disclosure, use, modification or destruction. Specifically, administrative safeguards will restrict the permissible uses of personal information and implement the controls for adherence to those uses. As part of technical safeguards employed, Secure Flight will employ role-based access controls and audit logging (that is, the chronicling of information accesses and uses of information) to control and monitor the use of personal information. Further, all personnel who will be authorized to handle personal information for the Secure Flight program will be required to complete TSA privacy training when they join the program and on at least an annual basis thereafter. Personal information will only be disclosed to, and used by, authorized individuals who have a need to know the information in order to perform their duties. These safeguards will further minimize the potential privacy risk that personal information may be improperly used. The PIA

[15] The retention schedule will be submitted for approval to the National Archives and Records Administration (NARA). TSA will retain the records in accordance with the retention schedule approved by NARA.

[16] Directional travel means the individual's one-way travel to his or her destination.

addresses all of these safeguards in more detail.

TSA will issue an amended PIA and a revised SORN in conjunction with the Secure Flight Final Rule if necessary. Although not required, covered aircraft operators may voluntarily choose to begin testing with TSA prior to TSA publishing a final rule. The PIA and the SORN would cover any testing between an aircraft operator and TSA including both domestic and international flights.

E. Secure Flight Testing and Information Collection Requirements

After initial Secure Flight testing described below, TSA has limited the proposed information collection requirements for Secure Flight to the data elements TSA believes are minimally necessary for aviation passenger watch list matching. In making this determination, TSA balanced the privacy interest in minimizing the collection of personal information with the security need to conduct effective watch list matching, without unnecessarily delaying innocent individuals due to false positive watch list matches.

1. Secure Flight Testing

Prior to initiating this rulemaking, TSA performed testing of the agency's ability to conduct automated watch list matching for purposes of the Secure Flight program and separately, testing to determine whether the use of commercial data would be effective in identifying passenger information that is incorrect or inaccurate. On September 24, 2004, TSA published in the **Federal Register** a number of documents necessary to allow the agency to begin testing the Secure Flight program. These documents included: (1) A proposed order to U.S. aircraft operators directing them to provide a limited set of historical passenger name records (PNRs) to TSA for use in testing the program (69 FR 57342); (2) a Privacy Act System of Records Notice for records involved in testing the program (69 FR 57345); and (3) a Privacy Impact Assessment (PIA) of program testing (69 FR 57352[0]).

On November 15, 2004, after reviewing the comments received in response to these documents, TSA published in the **Federal Register** the final order directing U.S. aircraft operators to provide to TSA, by November 23, 2004, a limited set of historical PNRs for testing of the Secure Flight program.[17] TSA also published revisions to the system of records notice and the Privacy Impact Assessment (PIA) on June 22, 2005,[18] to make clear that the purpose of commercial data testing was ''to test the Government's ability to verify the identities of passengers using commercial data and to improve the efficacy of watch list comparisons by making passenger information more complete and accurate using commercial data.''

After reviewing the results of the testing and the comments received concerning the testing, TSA determined that it will not use commercial data in the program. This decision is consistent with Section 514(f) of the Department of Homeland Security Appropriations Act, 2007 (2007 DHS Appropriations Act), Public Law 109–295 (Oct. 4, 2006), which currently prohibits TSA from using appropriated funds on data or a database that is obtained from, or remains under the control of, a non-Federal entity (other than passenger information from aircraft operators) for the Secure Flight program.

2. *Information Collection Requirements*

Based on the automated watch list matching test results and TSA's experience in conducting security threat assessments that include watch list matching, TSA has carefully selected the personal information that TSA believes is necessary to conduct effective watch list matching for aviation passengers. Consequently, under the proposed rule, TSA would collect Secure Flight Passenger Data consisting of the information described below.

Full Name, Gender, and Date of Birth: Based on the automated watch list matching test results and TSA's experience in conducting security threat assessments that include watch list matching, TSA believes that an individual's full name, gender, and date of birth are critically important for effective automated matching against the watch list. This proposed rule, therefore, would require covered aircraft operators to request full name, gender, and date of birth from all passengers and non-traveling individuals accessing sterile areas. As discussed in the Section-by-Section Analysis below, TSA defines ''full name'' in proposed § 1560.3 (Terms Used in This Part) and uses it as the primary attribute to conduct watch list matching. Partial names, which some aircraft operators currently collect, would increase the likelihood of false positive matches, because partial names are more likely to match a number of different entries on the watch list. As a result, this proposed rule would require individuals seeking a reservation on a covered flight or authorization to enter a sterile area to provide their full names and would prohibit covered aircraft operators from authorizing entry to a sterile area or accepting a reservation for a passenger on a covered flight who does not provide a full name.

Many names, including English and non-English names, do not indicate gender, because they can be used by either gender. Additionally, names not derived from the Latin alphabet, when transliterated into English, do not generally denote gender. Providing information on gender will reduce the number of false positive watch list matches, because the information will distinguish persons who have the same or similar names but who are of different gender. Date of birth is also helpful in distinguishing a passenger from an individual on a watch list with the same or similar name, thereby reducing the number of false positive watch list matches.

Under the proposed rule, TSA would not compel individuals to provide their gender and date of birth when aircraft operators request it. Without this information, however, TSA may be unable to rule out such individuals as a watch list match, and consequently they may be subject to additional screening or be denied boarding or authorization to enter a sterile area. Covered aircraft operators would then be required to transmit to TSA the names, gender, and dates of birth for passengers on covered flights, to the extent they are available as part of the reservation process. For example, if a passenger provides a full name but does not provide gender or a date of birth, the covered aircraft operator would be required to transmit to TSA the full name. If a covered aircraft operator were to input data required to be requested from individuals into the system where it stores SFPD—such as data from a passenger profile stored by the aircraft operator in the ordinary course of business—the aircraft operator would be required to include that data as part of the SFPD transmitted to TSA, even though the individual did not provide that information at the time of reservation.

Redress Number: This proposed rule would also require covered aircraft operators to request an individual's Redress Number, if available. DHS will assign this unique number to individuals who use the DHS Traveler Redress Inquiry Program (DHS TRIP), because they believe they have been incorrectly delayed, identified for enhanced screening, denied boarding, or denied access to a sterile area.

[17] 69 FR 65619.

[18] 70 FR 36320.

Individuals who have already undergone TSA's redress process would not need to use DHS TRIP to reapply for redress once the Secure Flight process is operational. Individuals may be less likely to be delayed by false positive matches to the watch list if they provide their Redress Number at the time of making a flight reservation or requesting access to a sterile area. TSA is proposing to require that each covered aircraft operator request this information to provide the opportunity for an individual to use his or her assigned Redress Number to facilitate travel or access to a sterile area.

Known Traveler Number:

In addition, the proposed rule provides that covered aircraft operators may be required to request a known traveler number from passengers and non-traveling individuals, if available. The known traveler number would be a unique number assigned to ''known travelers'' for whom the Federal Government has already conducted a terrorist security threat assessment and has determined do not pose a terrorist security threat. The known traveler number would enable TSA to identify these ''known travelers,'' further reducing the number of false positive matches to the watch list, and reduce unnecessary duplication of Federal Government watch list matching efforts. Although TSA would continue to conduct watch list matching for ''known travelers,'' by having the known traveler numbers of these individuals, TSA would be able to identify them as individuals who have already completed a Federal terrorist security threat assessment. The proposed rule would not compel individuals to provide a known traveler number upon request from the aircraft operator. Without a known traveler number, however, the individual may be more likely to experience delays, be subjected to enhanced screening, be denied boarding, or be denied access to a sterile area.

Because TSA has not yet determined which categories of individuals should be considered ''known travelers,'' we specifically seek comment on this provision. The proposed rule would not require covered aircraft operators to initially request the known traveler number along with the other passenger identification information. Instead, once TSA has determined the categories of individuals that should be considered as ''known travelers,'' TSA would provide covered aircraft operators written notification 30 days in advance that they must begin to collect and transmit the known traveler number. TSA is adding this known traveler number requirement in the proposed rule now to allow covered aircraft operators advance planning in making all necessary system changes. Once TSA informs covered aircraft operators that they must begin to collect and transmit the known traveler number, covered aircraft operators may transmit the known traveler number in the Redress Number field, as it would not be necessary for the covered operators to send both the Redress Number and the known traveler number to TSA.

Passport Information:

TSA proposes to require covered aircraft operators to transmit certain information from an individual's passport (passport number, country of issuance, expiration date, gender, and full name), if available. The proposed rule, however, does not propose to require covered aircraft operators to collect the passport information if they do not otherwise collect it in the normal course of business or unless otherwise required by other rules, such as APIS. Based on TSA's experience in conducting security threat assessments that include watch list matching, TSA believes that passport information would enable TSA analysts to resolve possible false positive matches and make the watch list matching process more accurate.

For passengers who have previously flown on an international flight as part of their travel itinerary, the covered aircraft operator may already have the passport information if the covered aircraft operator was required to collect passport information for the previous flight pursuant to requirements under regulations issued by CBP. For such passengers, TSA would require covered aircraft operators to transmit passport information to TSA as part of the initial SFPD transmission. For passengers whose itinerary includes a domestic flight that connects to an international flight, covered aircraft operators often collect passport information when the passenger checks in for the domestic flight. For these passengers, covered aircraft operators would be required under this proposed rule to transmit the passport information to TSA as soon as it is available. In cases where passport information is available, the proposed rule would require covered aircraft operators to transmit the passport information to TSA, in order to verify the information provided at the time of reservation, facilitate identification of individuals who are on the watch list, and further minimize false positive matches.

Information Used To Manage Messaging:

This rule also proposes to require covered aircraft operators to provide certain non-personally identifiable data fields, including passenger itinerary information (or airport code for non-travelers requesting sterile area access) for TSA to effectively prioritize watch list matching efforts, communicate with the covered aircraft operator, and facilitate an operational response, if necessary, to an individual who is on the watch list. For example, if TSA identifies an individual on the watch list, TSA or the TSC may need to engage law enforcement officials to question or detain the individual, as appropriate.

F. The Watch List Matching Process Under Secure Flight

The proposed rule would require all covered aircraft operators to request the information discussed above from passengers on a covered flight and non-traveling individuals. The proposed rule, however, would not require all covered aircraft operators to begin transmitting that information to TSA at the same time. TSA proposes to bring covered aircraft operators into Secure Flight in phases and require aircraft operators to begin providing passenger and non-traveler information to TSA in accordance with the deadlines set forth in their approved AOIP, discussed further below.

For passengers, TSA proposes to require covered aircraft operators to transmit the SFPD including itinerary information. For non-traveling individuals, TSA proposes that covered aircraft operators transmit the SFPD including the airport code for the airport sterile area that the non-traveling individual seeks to enter.

TSA proposes that information be transmitted to TSA approximately 72 hours in advance of departure, unless the individual makes a reservation within 72 hours of the scheduled flight departure time, changes a flight within 72 hours of the scheduled flight departure time, or requests to enter a sterile area upon arrival at the airport. In such cases, TSA would require covered aircraft operators to send the required information to TSA immediately. TSA, in coordination with the TSC where necessary, would compare the passenger and non-traveler information obtained from each covered aircraft operator to information contained in the watch list. TSA would also compare passenger and non-traveler information to a list of individuals who have previously been distinguished from persons on the watch list.

If an automated comparison using the information transmitted to TSA

indicates that the passenger is not a match to the watch list, TSA will notify the aircraft operator that check-in and boarding pass issuance for the individual can proceed normally. Such individuals will undergo standard passenger and baggage screening. If the automated comparison using the passenger or non-traveler information identifies a potential match to the Selectee List, TSA will notify the covered aircraft operator that the passenger or non-traveling individual and his or her baggage must be identified for enhanced screening. TSA is also considering adding a random element to Secure Flight, whereby individuals may be selected for enhanced screening even though they are not a match to the watch list. The addition of this random element would provide Secure Flight with another layer of security, because it would introduce unpredictability into the process.

TSA expects to complete the watch list matching process for, and permit covered aircraft operators to issue boarding passes to, the vast majority of passengers through this fully-automated initial comparison. If the automated comparison indicates a reasonably similar or exact match to a person on the No Fly component of the watch list, TSA will inform the covered aircraft operator that the individual must be placed on inhibited status and consequently, the aircraft operator may not issue a boarding pass or other authorization to enter the sterile area for that individual unless further resolution procedures indicate that the individual may be issued a boarding pass or authorization to enter a sterile area. If the SFPD for that individual contains sufficient data, a TSA analyst will then conduct a preliminary analysis of the individual identified as a potential match. The TSA analyst will review all available information to determine if the passenger appears to be the individual on the No Fly component of the watch list. If necessary, the TSA analyst will check other classified and unclassified governmental terrorist, law enforcement, and intelligence databases, including databases maintained by the Department of Homeland Security, Department of Defense, National Counter Terrorism Center, and Federal Bureau of Investigation (FBI), in order to resolve the possible match between the individual and a person on the No Fly component of the watch list.

This careful review process is intended to significantly reduce the number of false positive matches identified by the automated watch list check. If the TSA analyst determines that the individual is not a match to the No Fly component of the watch list, TSA will inform the covered aircraft operator that the individual no longer has inhibited status, and the aircraft operator may issue a boarding pass or authorization to enter a sterile area to that individual. If the TSA analyst identifies a possible match between a passenger and an individual identified on the No Fly component of the watch list, TSA will send the passenger information to TSC and request confirmation of the match.

TSA may be unable to complete the watch list matching process for an individual, if, for instance, the individual fails to provide his or her full name, gender, and date of birth when making the flight reservation, or if the individual's full name, gender, and date of birth and other information in the SFPD are insufficient to distinguish him or her from an individual who appears on the No Fly component of the watch list. The proposed rule provides that if TSA or TSC cannot determine from the information provided by the covered aircraft operator whether an individual is a match to the No Fly component of the watch list prior to the individual's arrival at the airport or online check-in, it will be necessary for the individual to provide additional information at the airport. These individuals may be asked to present to the covered aircraft operator a verifying identity document, which must be an unexpired form of identification that is issued by a Government (Federal, State, local, or tribal), and contains the individual's full name, photo, and date of birth or an unexpired passport issued by a foreign government. This requirement would not replace current requirements that covered aircraft operators request all passengers and non-traveling individuals to provide identification, such as at check-in or at the screening checkpoint.

Once the individual provides a verifying identity document to the covered aircraft operator, the proposed rule would require the aircraft operator to update the passenger's SFPD with the additional information from the individual's verifying identity document and transmit it to TSA. There may be occasions where the aircraft operator will need to call TSA. In such cases, the aircraft operator may be asked to provide additional identifying information, such as a physical description, referred to as ''Passenger Resolution Information,'' that TSA may need to complete the watch list matching process. TSA will complete the watch list matching process, in coordination with the TSC, and provide the aircraft operator with watch list matching results for that individual.

Where warranted, any Federal agency or other public, private, or appropriate foreign government entity may be notified to initiate an operational response.[19] The agency or entity will be provided with sufficient information about the passenger and his or her itinerary to facilitate coordination of the operational response. The Federal Security Director, Federal Air Marshals, or other law enforcement personnel responsible for airport security may also be notified to facilitate a timely law enforcement response to the individual identified in the watch list. Further inquiry by law enforcement may, for example, help resolve a situation of mistaken identity or confirm the determination made in the screening process that an individual should be denied boarding or entry to a sterile area.

G. Operational Testing of Secure Flight

As part of the implementation of the Secure Flight program, TSA would conduct operational testing of TSA's capabilities to interact with and perform watch list matching for each covered aircraft operator before assuming the watch list matching function from each aircraft operator. During the operational testing for each covered aircraft operator, the covered aircraft operator would establish data transmission connections to TSA through an established DHS portal, and TSA would test its ability to receive passenger and non-traveler information, conduct watch list matching and transmit watch list matching results back to the aircraft operator in real-time. Operational testing will allow TSA to refine program operations and ensure that TSA will be able to effectively conduct watch list matching for passengers and non-traveling individuals of each covered aircraft operator before TSA assumes the watch list matching function.

Covered U.S. aircraft operators would continue to match passengers against the watch lists for domestic flights under current procedures during their operational test phase and would maintain responsibility for denying issuance of boarding passes or identifying individuals for enhanced screening as a result of their own watch list matching determinations. If, during operational testing, TSA identifies a

[19] For the types of public and private entities that TSA may notify, see ''Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses'' in the **Federal Register** notice entitled ''Privacy Act of 1974: System of Records; Secure Flight Records.'' [Add FR citation]

match to the No Fly and Selectee Lists that a covered aircraft operator has not identified, TSA may identify such passengers to the TSC and the covered aircraft operator for appropriate action, as permitted under section 514(d) of the 2007 DHS Appropriations Act. Once TSA assumes the watch list matching function from a covered aircraft operator, the aircraft operator would discontinue conducting watch list comparisons for passengers and non-traveling individuals.

For international flights, covered U.S. aircraft operators would be required to follow CBP boarding pass printing instructions in accordance with the APIS Pre-Departure Final Rule until TSA informs the covered U.S. aircraft operator that it will assume the watch list matching function. Foreign air carriers would also be required to follow CBP boarding pass printing instructions in accordance with the APIS Pre-Departure Final Rule during operational testing and until TSA informs the covered foreign air carrier that TSA will assume the watch list matching function.

The proposed rule also states that TSA would provide prior written notification to each covered aircraft operator of the date on which it would assume the watch list matching function from that covered aircraft operator. Because operational testing would begin with covered aircraft operators in phases, TSA would likely transition to implementation in phases as well and may continue operational testing with some covered aircraft operators while beginning implementation with others.

H. Proposed Compliance Schedule

TSA believes that most of the new provisions concerning covered aircraft operators' collection and transmission of SFPD in this proposed rule are achievable within 60 days after the effective date of the final rule. However, TSA intends to implement some provisions on a rolling basis. TSA requests comment on the proposed compliance schedule below:

(1) The final rule would become effective 60 days after the date of publication in the **Federal Register**.

(2) In accordance with proposed § 1560.109, TSA would require covered aircraft operators to submit their AOIP no later than 30 days after the effective date.

(3) In accordance with proposed §§ 1560.101(a) and 1560.103, TSA would require covered aircraft operators to begin requesting the information from passengers and non-traveling individuals and begin providing the privacy notice no later than 60 days after the effective date. TSA would not require covered aircraft operators to request information from passengers who made reservations on covered flights prior to that date.

(4) In accordance with proposed § 1560.101(a), TSA would require covered aircraft operators to begin requesting known traveler numbers from passengers and non-traveling individuals 30 days after receiving written notice from TSA.

(5) TSA anticipates that it would require covered aircraft operators to have the capability to transmit SFPD for covered flights to TSA no later than 60 days after the effective date.

(6) TSA proposes that covered aircraft operators be required to begin transmitting SFPD to TSA in accordance with a schedule approved by TSA, as provided in each covered aircraft operator's AOIP. TSA expects the first phase of implementation to cover domestic flights operated by covered U.S. aircraft operators. A second phase of implementation would extend to international flights operated by covered U.S. aircraft operators as well as flights arriving in or departing from the United States and flights overflying the continental United States operated by covered foreign air carriers.

(7) Once TSA assumes the function of watch list matching from a covered aircraft operator, in accordance with proposed § 1560.105, TSA would require that aircraft operator request identification, identify individuals for enhanced screening, or deny individuals boarding or access to a sterile area, in accordance with TSA instructions. TSA proposes to inform each covered aircraft operator in writing at least 60 days before the date on which TSA will assume the watch list matching function.

(8) Aircraft operators that begin covered operations after the effective date of this rule will be covered by this rule.

I. Additional Issues Under Consideration and Open to Public Comment

1. Data Elements

TSA requests comments on the proposed data elements TSA would require covered aircraft operators to request from passengers and transmit to TSA under this NPRM, as discussed in section I.D. of this preamble. During operational testing and implementation, TSA will continue to evaluate the value of the data elements required.

As part of the evaluation of data elements, TSA will consider, and seeks comment on, whether to mandate collection of not just the full name, but also date of birth and gender. As currently proposed, it is optional for individuals to provide their date of birth and gender in order to provide individuals with the greatest ability to exercise control over the data elements provided. For the vast majority of individuals, a decision to forgo providing these data elements should have no effect and will result in aircraft operators, reservations agents, and TSA holding less information. For what is expected to be a relatively small number of individuals, however, a decision not to provide date of birth and gender will result in an inability to automatically distinguish them from someone on the watch list. These individuals may be inconvenienced by secondary screening that they otherwise might not have undergone or, if they are possible matches to the No-Fly List, they may be required to provide more information than they would have provided had they simply initially provided date of birth and gender. Mandating collection of all three data elements will reduce possible matches down to the smallest number of individuals.

2. Identification Requirements

In order to increase the security benefit of the Secure Flight program, TSA is also considering strengthening the identification requirements at the security screening checkpoint. For example, TSA may consider requiring individuals to present a form of identification to be able to proceed through the checkpoint and enter a sterile area. Strengthening the requirement that an individual provide evidence at the security screening checkpoint that he or she is the person to whom the boarding pass or other authorization was issued would provide additional assurance that the individual has not used an assumed identity when making a reservation in order to defeat the watch list matching process.

J. Department of Homeland Security Appropriations Act

On October 18, 2004, the President signed into law the Department of Homeland Security Appropriations Act, 2005 (2005 DHS Appropriations Act) (Pub. L. 108–334, 118 Stat. 1298, Oct. 18, 2004). Section 522(a) of the 2005 DHS Appropriations Act purports to prohibit TSA from implementing the Secure Flight program, by prohibiting the use of appropriated funds for Secure Flight on other than a test basis, until the Government Accountability Office (GAO) submits a report to the Senate and House Appropriations Committees

addressing ten operational and policy items.

Further, on October 4, 2006, the President signed into law the 2007 DHS Appropriations Act, which purports to prohibit TSA from implementing the Secure Flight program, by prohibiting the use of appropriated funds for Secure Flight on other than a test basis, until the Secretary of Homeland Security certifies, and the GAO reports, that the ten items listed in the 2005 DHS Appropriations Act are successfully met. Department of Homeland Security Appropriations Act of 2007, Pub. L. 109–295, Sec. 514 (Oct. 4, 2006).

TSA is taking appropriate action to address the ten items listed in the 2005 DHS Appropriations Act provisions. On February 23, 2007, TSA submitted a report to Congress outlining TSA's plan for certification under the 2007 DHS Appropriations Act.

Certification of some of the 2005 DHS Appropriations Act provisions cannot be completed until operational testing is conducted with at least one covered aircraft operator. As discussed above, TSA would conduct operational testing with aircraft operators before fully implementing the Secure Flight program for covered aircraft operators under this proposed rule. Additionally, although not required, covered aircraft operators may voluntarily choose to begin testing with TSA prior to publication of a final rule.

After operational testing with at least one aircraft operator and the correction of any problems uncovered during the testing, DHS will be able to certify that the ten items listed in the 2005 DHS Appropriations Act have been successfully met. Once DHS makes the required certification, the Department plans to provide an opportunity for GAO to submit its report. TSA would publish a notice in the **Federal Register** announcing that it is ready to assume the watch list matching function from the first covered aircraft operator.

II. Section-by-Section Analysis

Part 1540—Civil Aviation Security: General Rules

Section 1540.107—Submission to Screening and Inspection

Under current § 1540.107, individuals must submit to screening and inspection of their persons and their accessible property in order to enter a sterile area or board an aircraft. The proposed rule would add an additional requirement concerning the verifying identity document. The current regulatory text in § 1540.107 would become proposed § 1540.107(a).

The proposed rule would add § 1540.107(b), which provides that an individual must provide his or her full name when making a reservation for a covered flight or a request for authorization to enter a sterile area.

When TSA has not provided watch list matching results or has placed an individual on inhibited status, covered aircraft operators would not be permitted to issue a boarding pass to the individual and would be required to request a verifying identity document, as described in § 1560.3, from the individual, as explained further in the discussion of § 1560.9 below. Therefore, the proposed rule would add § 1540.107(c) to prohibit any individual from boarding an aircraft or accessing a sterile area who fails to present a verifying identity document when a covered aircraft operator requests it under proposed § 1560.9. TSA may permit certain individuals who do not present a verifying identity document, as described in § 1560.9(c)(1), to board a flight or enter a sterile area, on a case-by-case basis after determining that the individuals have valid reasons for not presenting a verifying identity document.

Part 1544—Aircraft Operator Security: Air Carriers and Commercial Operators

Section 1544.103—Form, Content, and Availability

Section 1544.103(c) lists the contents of aircraft operators' security programs. The proposed rule adds § 1544.103(c)(22) to make the AOIP a part of the security programs. Further discussion of the inclusion of the AOIP in the security program is included in the Section-by-Section Analysis portion for § 1560.13—Aircraft Operator Implementation Plan.

Subpart A—General

Part 1560—Secure Flight Program

The proposed rule adds a new part 1560 to title 49, setting forth the obligations of covered aircraft operators and covered airport operators under the Secure Flight program.

Section 1560.1—Scope, Purpose, and Implementation

Section 1560.1 of the proposed rule states the scope, purpose, and implementation of new part 1560. Under § 1560.1(a), new part 1560 would apply to aircraft operators required to adopt a full program under 49 CFR 1544.101(a) and foreign air carriers required to adopt a security program under 49 CFR 1546.101(a) or (b). This proposed rule would also cover airport operators rule in the event that TSA approves a program through which an airport operator may similarly authorize non-traveling individuals to enter a sterile area.

Proposed § 1560.1(b) also sets forth the purpose of new part 1560, which is intended for the dual mission of facilitating legitimate air travel by the general public, as well as the effective detection of individuals identified on Federal Government watch lists. As part of TSA's layered approach to aviation security, the Secure Flight program seeks to enhance the security of domestic and international air travel by moving the passenger watch list matching function from individual aircraft operators to the Government. To support this mission, TSA requires enhanced watch list matching capabilities and processes to accurately and consistently identify individuals on Government watch lists who may pose a threat to aviation or national security.

Finally, proposed § 1560.1(c) describes an implementation approach where Secure Flight program capabilities are phased in over a period of time. Each covered aircraft operator would be required to begin requesting passenger and non-traveler information and have the capability to transmit the required information to TSA by a TSA-specified date. As discussed in section I(G) of this preamble, TSA anticipates that the date would be 60 days after the effective date of the final rule. The date and manner in which individual covered aircraft operators would begin transmitting passenger information to TSA for watch list matching would be set forth in the covered aircraft operator's AOIP, as described in further detail in the analysis of § 1560.109. TSA would not publicly release the specific implementation dates for each covered aircraft operator, because such information is sensitive security information (SSI) under 49 CFR part 1520.

TSA anticipates that the first phase of Secure Flight under this proposed rule would result in the transfer of responsibility for domestic passenger watch list matching from covered U.S. aircraft operators to TSA. The second phase of Secure Flight under this proposed rule would result in the transfer of responsibility for all other passenger watch list matching conducted by covered U.S. aircraft operators as well as passenger watch list matching for flights arriving in or departing from the United States and flights overflying the continental United States operated by covered foreign air carriers to TSA.

Below is a table that sets forth the proposed implementation requirements of this NPRM:

	Optional implementation available[20]	Notification sent to covered operator	Implementation required
Submission of an AOIP	The date of publication of the final rule.	This notice of proposed rulemaking.	30 days after the effective date of this rule.
Covered aircraft operators begin requesting required information from passengers for domestic flights.	None	This notice of proposed rulemaking.	60 days after the effective date of this rule.
Covered aircraft operators begin transmitting SFPD to TSA for domestic flights.	None	Provided in the covered aircraft operator's AOIP.	The date specified in the covered aircraft operator's AOIP.
TSA will assume watch list matching function from covered aircraft operators.	None	Written notification 60 days prior to the date of required implementation.	60 days after notification from TSA.
Covered aircraft operators must begin requesting known traveler number from passengers.	None	Written notification 30 days prior to the date of required implementation.	30 days after notification from TSA.
Covered aircraft operators begin requesting required information from passengers for international flights.	None	This notice of proposed rulemaking.	60 days after the effective date of this rule.
Covered aircraft operators begin transmitting SFPD to TSA for international flights.	None	Provided in the covered aircraft operator's AOIP.	The date specified in the covered aircraft operator's AOIP.

Section 1560.3—Terms Used in This Part

Aircraft Operator Implementation Plan (AOIP). Under proposed § 1560.3, ''Aircraft Operator Implementation Plan'' or ''AOIP'' means a written procedure describing how and when a covered aircraft operator or airport operator transmits passenger and flight information and non-traveler information to TSA, as well as other related matters discussed in § 1560.109 or the Consolidated User Guide.

Airport Code. This proposed rule defines ''airport code'' as the official code for an airport designated by the International Air Transport Association (IATA).

Consolidated User Guide. The proposed rule defines ''Consolidated User Guide'' as the document developed by DHS to provide guidance to aircraft operators that must transmit passenger information to one or more components of DHS on operational processing and transmission of passenger information to all required components in a unified manner.

Covered Aircraft Operator. Section 1560.3 of this proposed rule defines ''covered aircraft operator'' as each aircraft operator required to carry out a full program under 49 CFR 1544.101(a) or a security program under 49 CFR 1546.101(a) or (b).

Covered Airport Operator. For purposes of proposed part 1560, ''covered airport operator'' means each airport operator that seeks to authorize non-traveling individuals to enter a sterile area for a purpose permitted by TSA. ''Airport operator'' is defined in § 1540.5 as a person that operates an airport serving an aircraft operator or a foreign air carrier required to have a security program under 49 CFR parts 1544 or 1546. Because non-traveling individuals who enter a sterile area must be subject to watch list matching, airport operators that seek to authorize their entry to a sterile area are covered by this proposed rule.

Covered Flight. This proposed rule defines the term ''covered flight'' to describe those flights for which TSA would conduct passenger watch list matching. This proposed rule would cover any operation of a U.S. aircraft operator that is subject to or operated under a full program under 49 CFR 1544.101(a). This includes flights operated by such aircraft operators anywhere in the world. ''Covered flight'' also means any operation of a foreign air carrier subject to or operated under a security program under 49 CFR 1546.101(a) or (b) arriving in or departing from the United States, or overflying the continental United States. Covered flight does not include any flight for which TSA has determined that the Federal Government (e.g., CBP) is conducting passenger matching comparable to the matching conducted pursuant to this part.

In the event TSA determines that a different Federal Government agency is conducting comparable watch list matching to matching under Secure Flight for a particular flight, TSA would inform the covered aircraft operator that that flight does not constitute covered flights under the proposed rule.

Date of Birth. For purposes of proposed part 1560, ''date of birth'' means the day, month, and year of an individual's birth.

Department of Homeland Security Traveler Redress Inquiry Program or *DHS TRIP.* For purposes of this proposed rule, DHS TRIP means the voluntary program through which individuals may request redress if they believe they have been unfairly or incorrectly (1) denied or delayed boarding transportation due to DHS screening programs, (2) denied or delayed entry into or departure from the United States at a port of entry, or (3) identified for additional (secondary) screening at U.S. transportation facilities, including airports and seaports.

Full Name. TSA needs an individual's complete name to perform effective watch list matching. However, TSA recognizes that in many non-English speaking cultures, family names may be given first, as opposed to being used as a last name. In order to address the differences in naming conventions, TSA is proposing to define ''full name'' as an individual's full name as it appears on a verifying identity document held by that individual.

Inhibited Status. Proposed § 1560.3 defines ''inhibited status'' as the status of a passenger or non-traveling individual to whom TSA has instructed a covered aircraft operator or a covered airport operator not to issue a boarding pass or provide access to the sterile area.

Itinerary Information. This proposed rule defines ''itinerary information'' as

[20] Aircraft operators that voluntarily choose to participate in testing with TSA before required to do so under the final rule may begin to implement some or all of the requirements of this proposed rule.

information reflecting a passenger's or non-traveling individual's itinerary specified in the covered aircraft operator's AOIP. For passengers, itinerary information includes:

(1) Departure airport code.
(2) Aircraft operator.
(3) Departure date.
(4) Departure time.
(5) Arrival date.
(6) Scheduled arrival time.
(7) Arrival airport code.
(8) Flight number.
(9) Operating carrier (if available).

For non-traveling individuals, itinerary information is the airport code for the sterile area to which the non-traveler seeks access.

Known Traveler Number. For purposes of proposed part 1560, ''known traveler number'' means a unique number assigned to individuals for whom the Federal Government has conducted a security threat assessment and determined do not pose a security threat. TSA would require covered aircraft operators to request a known traveler number from passengers and non-traveling individuals after TSA implements this provision and notifies covered aircraft operators in writing that they must begin to request it.

Non-traveling Individual (non-traveler). For purposes of proposed part 1560, ''non-traveling individual'' or ''non-traveler'' means an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. ''Non-traveling individual'' does not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA regulation or security directive.

Overflying the Continental United States. This proposed rule defines ''overflying the continental United States'' as departing from an airport or location outside the United States, and transiting the airspace of the continental United States en route to another airport or location outside the United States. Airspace of the continental United States includes the airspace over the continental United States and the airspace overlying the territorial waters between the continental United States coast and 12 nautical miles from the continental United States coast. However, the proposed rule provides that ''overflying the continental United States'' does not apply to flights that transit the airspace of the continental United States between two airports or locations in the same country, where that country is Canada or Mexico. For example, a flight operated by Air Canada between Toronto and Vancouver that transits the airspace over Michigan and Illinois would not be ''overflying the continental United States'' for purposes of this proposed rule. The Assistant Secretary of Homeland Security (Transportation Security Administration) may exclude other categories of flights from the definition of ''overflying the continental United States'' in writing to the affected aircraft operators. TSA is also considering, and requests comments on, whether ''overflying the continental United States'' should not apply to flights overflying selected geographic areas of the continental United States, based on a risk assessment.

In this proposed rule, flights ''overflying the continental United States'' are a category of ''covered flights'' for which TSA would conduct passenger watch list matching in order to protect the airspace over the continental United States and prevent individuals on a watch list from taking control of an aircraft with the hostile intent to harm the United States. As discussed above, TSA has limited the proposed information collection requirements for Secure Flight, including for passengers ''overflying the continental United States,'' to the data elements TSA believes are minimally necessary for effective watch list matching of aviation passengers. The limited Secure Flight Passenger Data collected for passengers on flights ''overflying the continental United States'' will be used for the limited purpose of watch list matching and will be retained for a short period of time. We welcome comments on the timeframe for retention of information collected for passengers on such flights.

Under the proposed rule, individuals on the No Fly component of the watch list would be prohibited from boarding flights that would be entering the airspace of the continental United States and individuals on the Selectee component of the watch list would undergo enhanced screening prior to boarding such a flight. An aircraft carrying an individual or individuals on the watch list may be kept out of the airspace of the continental United States or rerouted away from populated areas and critical infrastructure within the continental United States. In addition, if an aircraft carrying an individual on the watch list were permitted to continue through the airspace of the United States, the aircraft may be escorted by military aircraft to protect against an effort to harm the United States.

Passenger. This proposed rule defines ''passenger'' as an individual who has, or seeks to obtain, a reservation for transport on a covered flight. Proposed § 1560.3 expressly excludes from the definition of ''passenger'' any crew member traveling on duty. The definition also excludes any individual with flight deck privileges under 49 CFR 1544.237 traveling on the flight deck. The definition does not exclude an employee who is not on duty, such as an employee on deadhead status, and who is traveling in the cabin.

Passenger Resolution Information (PRI). For purposes of proposed part 1560, ''Passenger Resolution Information'' or ''PRI'' is the information that TSA may request that a covered aircraft operator or covered airport operator provide to TSA for an individual whom TSA places in an inhibited status and from whom the covered aircraft operator or covered airport operator is required to request additional information. TSA may request that a covered aircraft operator or covered airport operator provide to TSA any subset of PRI that is necessary to resolve a potential match to a watch list. PRI includes, but is not limited to, the following:

(1) Covered aircraft operator's agent identification number or agent sine, which is a term used in the aviation industry to mean an agent's personal identification code;
(2) Type of verifying identity document presented by the passenger;
(3) Identification number on the verifying identity document;
(4) Verifying identity document issue date;
(5) Name of the Governmental authority that issued the verifying identity document; and
(6) Physical attributes of the passenger such as height, eye color, or scars, if requested by TSA.

Passport Information. Proposed § 1560.3 defines ''Passport information'' to include the following information from an individual's passport:

(1) Passport number.
(2) Country of issuance.
(3) Expiration date.
(4) Gender.
(5) Full name.

Redress Number. For purposes of proposed part 1560, ''Redress Number'' means the number assigned by DHS TRIP to an individual through the redress process described in proposed 49 CFR part 1560, subpart C.

Secure Flight Passenger Data (SFPD). For purposes of this proposed rule, ''Secure Flight Passenger Data'' or ''SFPD'' is the information regarding a passenger or non-traveling individual

that a covered aircraft operator or covered airport operator transmits to TSA, to the extent available, pursuant to § 1560.101. SFPD is the following information regarding a passenger or non-traveling individual:

(1) Full name.
(2) Date of birth.
(3) Gender.
(4) Redress number or known traveler number (once implemented).
(5) Passport information.
(6) Reservation control number.
(7) Record sequence number.
(8) Record type.
(9) Passenger update indicator.
(10) Traveler reference number.
(11) Itinerary information.

Self-service Kiosk. A ''self-service kiosk'' is a kiosk operated by a covered aircraft operator that is capable of accepting a passenger reservation or a request for authorization to enter a sterile area from a non-traveling individual.

Sterile Area. A ''sterile area'' is the portion of an airport defined in 49 CFR 1540.5 and generally means an area with access limited to persons who have undergone security screening by TSA.

Terrorist Screening Center (TSC). This proposed rule defines TSC as the entity established by the Attorney General to carry out Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Verifying Identity Document. Proposed § 1560.3 defines ''verifying identity document'' as a valid non-expired passport issued by a foreign government or a valid non-expired document issued by a Government (Federal, State, or tribal) and that includes the following information for the individual:

1. Full name.
2. Date of birth.
3. Photograph of the individual.

Watch list. For purposes of proposed part 1560, ''watch list'' refers to the No Fly and Selectee List components of the TSDB maintained by the TSC. For certain flights, the ''watch list'' may include the larger set of watch lists maintained by the Federal Government as warranted by security considerations.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

Section 1560.101—Request for and Transmission of Information to TSA

Proposed § 1560.101 sets forth the requirement that covered aircraft operators request passenger information and non-traveler information and transmit such information to TSA.

Under proposed § 1560.101(a), covered aircraft operators must begin requesting all required information and have the capability to transmit required information on a date to be specified by TSA. TSA anticipates requiring covered U.S. aircraft operators to begin requesting all required information no later than 60 days after the effective date of the final rule. TSA would require aircraft operators that become covered aircraft operators after the effective date to begin requesting passenger and non-traveler information the date it becomes a covered operator. Covered aircraft operators would then begin transmitting required information to TSA in accordance with their AOIP. TSA plans to phase covered aircraft operators into Secure Flight over an extended period of time, with the first covered aircraft operators projected to transmit their SFPD to TSA no later than 60 days after the effective date.

The proposed definition of SFPD lists the information that covered aircraft operators would be required to transmit, to the extent available, under proposed § 1560.101(b). From that list, covered aircraft operators would be required to ask individuals for their full name, date of birth, gender, and Redress Number or known traveler number when they make a reservation with the covered aircraft operator or seek access to an airport sterile area. Proposed § 1560.101(a)(3) states that covered aircraft operators may not accept a reservation, or accept a request for access to a sterile area, for any individual who does not provide a full name. Although aircraft operators would be required to request this information for watch list matching purposes, passengers and non-traveling individuals would not be required to provide their date of birth, gender, or Redress Number (if applicable) to make a reservation or a request for authorization to enter a sterile area. Although individuals would not be required to provide their date of birth, gender, or Redress Number, were they to provide it they would be subject to § 1540.103(b) regarding making a fraudulent or intentionally false record entry.

Secure Flight Passenger Data with missing information may result in TSA being unable to distinguish the individual from a person on the watch list. Consequently, TSA may instruct the covered aircraft operator to place the individual on inhibited status or to designate the individual for enhanced screening. A covered aircraft operator would not be able to issue a boarding pass or authorization to enter a sterile area to an individual on inhibited status unless the resolution process resulted in TSA giving an instruction permitting the covered aircraft operator to issue a boarding pass or authorization.

Although TSA would not require covered aircraft operators to ask for passport information from individuals, TSA would require covered aircraft operators to transmit that information if they collect passport information in the normal course of business or in accordance with another regulatory requirement, such as APIS. TSA would use passport information, as well as full name, date of birth, gender, and Redress Number for watch list matching purposes.

TSA would use the other information in the Secure Flight Passenger Data—the reservation control number, the record sequence number, the record type, the passenger update indicator, the traveler reference number, and the itinerary information—to manage the SFPD. TSA would use the reservation control number and the record sequence number to identify SFPD for a particular individual and to establish the version level of watch list matching requests or changes to the SFPD. The record type would indicate the type of record the covered aircraft operator is transmitting and the passenger update indicator would flag an individual's SFPD if that individual's information has changed. The traveler reference number would be assigned to each passenger in a SFPD transmission to TSA. This would allow the system to correctly associate watch list matching results to each passenger in a SFPD transmission, which is particularly important in cases where a SFPD transmission contains more than one passenger.

Proposed § 1560.101(a)(2) also provides TSA may require covered aircraft operators to begin accepting other known traveler numbers from Federal programs approved for use by TSA from passengers and non-travelers. TSA would inform covered aircraft operators in writing of the date on which they must begin to request an approved category of known traveler numbers. TSA expects that the covered aircraft operator would request this information from the individual making a reservation on a covered flight or requesting access to a sterile area. The covered aircraft operator must include the information provided by the passenger in response to this request in the SFPD. When TSA begins accepting known traveler numbers, TSA will only require the covered aircraft operator to include one reference number in the SFPD. That reference number could be

a redress number or a known traveler number.

To ensure that covered aircraft operators request and collect the required information at the time an individual makes a reservation, proposed § 1560.101(a)(4) makes covered aircraft operators responsible for ensuring that third parties (*i.e.*, travel agencies) that generate a reservation on the covered aircraft operator's behalf take the steps necessary to comply with the requirements of proposed § 1560.101.

Proposed § 1560.101(b) requires covered aircraft operators to transmit SFPD to TSA prior to flight departure time, in accordance with each aircraft operator's AOIP. TSA anticipates requiring that covered aircraft operators transmit SFPD to TSA approximately 72 hours prior to scheduled flight departure time for reservations made 72 hours or more before the scheduled departure time of the flight, because the vast majority of reservations are completed by 72 hours prior to flight departure time and remain unchanged after that time. For reservations made within 72 hours of scheduled flight departure time, TSA anticipates requiring covered aircraft operators to transmit the SFPD immediately after the reservation is made.

TSA would require covered aircraft operators to transmit SFPD for each flight even if the flight is a connecting flight or the return flight of a roundtrip reservation for the passenger. TSA would not require covered aircraft operators to transmit separate SFPD for continuing segments of a through flight. After TSA receives the SFPD transmission under proposed § 1560.101, it will compare the SFPD provided by the covered aircraft operators to the watch list.

Covered aircraft operators would have the option to transmit SFPD to TSA individually or in batch transmissions. Covered aircraft operators would also have to establish connectivity to TSA, most likely through one of the following methods: (1) By establishing a direct connection to TSA; (2) through a secure virtual private network using the Internet or a service provider's private network; or (3) through a third-party value added network. Regardless of which connectivity method covered aircraft operators would use to communicate with TSA, the covered aircraft operators would be responsible for all costs associated with transmitting data from the covered aircraft operator to TSA and vice versa. TSA anticipates that covered aircraft operators would select the most efficient method for the anticipated volume of messaging between their system and Secure Flight.

TSA is aware that other Federal agencies, such as CBP, are conducting, or will conduct, watch list matching for airline passengers. TSA is working with these other agencies to develop ways to eliminate unnecessary duplication of comparable screening efforts and thereby reduce governmental and private sector costs.

Covered aircraft operators would be required to accurately transmit passenger and non-traveler SFPD. However, covered aircraft operators would not be required to validate the underlying accuracy of the collected passenger information on covered domestic flights [21] or non-traveler information. Furthermore proposed § 1560.101(d) would require covered aircraft operators to transmit information updates to reflect changes to any information required in the SFPD.

Section 1560.103—Notice

TSA is committed to providing transparency about the Secure Flight program. In order to inform passengers and non-traveling individuals about the use of their personally identifying information, TSA will publish on its Web site a privacy notice that explains why TSA is collecting this information, how it will use the information, and the effect of not providing this information. Additionally, this proposed rule would require covered aircraft operators that collect information for TSA to use in connection with Secure Flight watch list matching to provide the privacy notice to individuals from whom information is collected through a Web site or a self-service kiosk.

Proposed § 1560.103(a) would require a covered aircraft operator to make the privacy notice available before the covered aircraft operator collects the information. Covered aircraft operators must make available, on their Web sites, through the aircraft operator's self-service kiosk, or through a link to TSA's Web site, the following complete privacy notice, as set forth in proposed § 1560.103(b):

The Transportation Security Administration requires us to collect information from you for purposes of watch list matching, under the authority of 49 U.S.C. sec. 114, and the Intelligence Reform and Terrorism Prevention Act of 2004. Providing this information is voluntary; however, if it is not provided, you may be subject to additional screening or denied transport or authorization to enter a sterile area. TSA may share information you provide with law enforcement or intelligence agencies or others under its published system of records notice. For more on TSA Privacy policies or to view the system of records notice and the privacy impact assessment, please see TSA's Web site at *www.tsa.gov.*

This requirement would also apply to information collected on third party internet reservation Web sites for reservations on covered flights. Covered aircraft operators would be responsible for ensuring that these Web sites make available the complete privacy notice or provide a link to TSA's Web site.

Covered aircraft operators must use the above language to provide the complete privacy notice, unless TSA approves alternative language. For instance, if a governmental entity or entities develop a common privacy notice for use for international flights, that common privacy notice may be approved for use in lieu of the privacy notice above. Individuals who wish further information with respect to TSA's privacy policies are referred to TSA's Web site.

In the event a covered aircraft operator creates an alternative electronic means to request information in order to comply with § 1560.101(a) from individuals directly, proposed § 1560.103(a) would require the covered aircraft operator to make the privacy notice available through that new mechanism, unless TSA provided an exemption. This provision is intended to ensure that the privacy notice is available to individuals in the event electronic means to collect information directly from individuals, beyond Web sites and self-service kiosks, emerge in the future through aviation industry innovation.

DHS requests comments on this notice provision generally. In particular, DHS requests comments on how a privacy notice could be provided (if necessary and considering such issues as feasibility, costs, and the effectiveness of the notice) during the collection of information through means not identified in proposed sec. 1560.103.

Section 1560.105—Denial of Transport or Sterile Area Access and Designation for Enhanced Screening

Proposed § 1560.105 would apply to a covered aircraft operator beginning on the date that TSA assumes the watch list matching function from that aircraft operator. In order to determine whether

[21] Covered aircraft operators would validate passenger information on covered international flights because CBP regulations at 19 CFR Part 122 require covered aircraft operators to validate passengers' APIS information (which includes the passport or other appropriate travel document).

a passenger or non-traveling individual poses a threat to civil aviation or national security under the proposed Secure Flight program, TSA must conduct watch list matching of the individual. Therefore, consistent with authorities granted under 49 U.S.C. 114(h)(3) and 44901(a) regarding the screening of passengers and property, TSA would prohibit covered aircraft operators from issuing a boarding pass until TSA has authorized release of the boarding pass upon conclusion of the watch list matching process. TSA also is proposing to apply this requirement to non-traveling individuals who seek authorization from a covered aircraft operator to enter an airport sterile area, because such individuals may attempt to board a flight as a passenger, pass prohibited items to a passenger, or otherwise become a security threat for that airport, acting alone or in concert with others in the sterile area.

Once TSA receives passenger or non-traveler SFPD from covered aircraft operators, TSA, in coordination with TSC where necessary, will compare that information to information contained in the watch list. TSA will then send the covered aircraft operator the results of the watch list matching process. In most cases, TSA expects to be able to complete the watch list matching process for a passenger based on the SFPD transmitted to TSA in accordance with proposed § 1560.101, and then communicate the boarding pass printing instruction to the covered aircraft operator prior to the time the passenger arrives at the airport for the flight.

Proposed § 1560.105(b) provides that a covered aircraft operator would not be permitted to issue a boarding pass or other authorization to enter a sterile area to a passenger or a non-traveling individual and must not allow that individual to board an aircraft or enter a sterile area until TSA informs the covered aircraft operator of the results of watch list matching for that passenger or non-traveling individual. If the covered aircraft operator transmitted updated SFPD in accordance with proposed § 1560.101(c), previous TSA instructions would be voided. The covered aircraft operator would then be required to wait for watch list matching results from TSA, in response to the most recent SFPD submission for that passenger or non-traveling individual, to ensure that the covered aircraft operator is acting on the most accurate instruction from TSA.

Under proposed § 1560.105(b), TSA would send one of three instructions to covered aircraft operators after they transmit SFPD to TSA. First, TSA may instruct a covered aircraft operator that a passenger or non-traveling individual must be placed on inhibited status. In that case, the covered aircraft operator must not issue a boarding pass, or other authorization to enter a sterile area, to the passenger or a non-traveling individual, and the covered aircraft operator must not allow an inhibited individual to board a flight or enter a sterile area.

Second, TSA may instruct the covered aircraft operator that the passenger or non-traveling individual has been selected for enhanced screening at a security checkpoint. In that situation, the covered aircraft operator may issue the passenger a boarding pass or the non-traveling individual authorization to enter the sterile area but must identify the passenger or non-traveling individual for enhanced screening, in accordance with procedures in the aircraft operator's security program. Third, TSA may send a cleared instruction for a passenger or non-traveling individual. In that case, the covered aircraft operator is permitted to issue the passenger or non-traveling individual a cleared boarding pass or authorization to enter the sterile area, unless the covered aircraft operator is required to identify the passenger or non-traveling individual for enhanced screening under other TSA procedures.

As part of TSA's efforts to enhance boarding pass security and prevent fraud, TSA would require covered aircraft operators to place certain information on the boarding passes for passengers or authorizations to enter a sterile area for non-traveling individuals. As reflected in the proposed rule and explained in further detail below, TSA is considering requiring the information to be in a code format such as a bar code or optical character recognition format. The purpose of placing a code on the boarding passes and the authorizations to enter a sterile area is to prevent the use of unauthorized or altered boarding passes or authorizations to enter a sterile area by individuals who wish to fraudulently gain access to the sterile area or to board an aircraft. The code would not include any personally identifying information. TSA may also consider other forms of technology to verify the authenticity of boarding passes and authorizations to enter a sterile area. TSA seeks comments on the use of bar codes, optical character recognition, or other form of technology to ensure the integrity of the boarding passes and authorizations to enter a sterile area.

Under the proposed rule, TSA's boarding pass instructions would include coding instructions for placing codes on the boarding passes or authorizations to enter a sterile area. The coding instructions would include a unique TSA-generated character string for security. TSA would not permit covered aircraft operators to issue a boarding pass or authorization to enter a sterile area unless the covered aircraft operator had placed the code on the boarding pass or authorization to enter a sterile area, and TSA would require covered aircraft operators to place the code on the boarding passes or authorizations to enter a sterile area separately from codes used for any other purposes. TSA authorized personnel with devices to read the codes would have the ability to scan the codes and authenticate the document. The Consolidated User Guide would provide technical information concerning the transmission and receipt of coded data. TSA would require aircraft operators to comply with the technical requirements in the Consolidated User Guide for placing codes on boarding passes and authorizations.

TSA may consider developing a system whereby the devices used to read the code may be able to communicate with the Secure Flight program to verify some of the information in the SFPD and whether the individual has been selected for enhanced screening. With this system, the codes themselves still would not include any personally identifying information and the personally identifying information could only be accessed through a secure reading device. TSA seeks comment on the technology, privacy, and compliance issues associated with implementing a system that would place information on boarding passes and authorizations to enter a sterile area to ensure that the watch list matching results correspond to the information on boarding passes and authorizations to enter a sterile area.

After TSA has returned to a covered aircraft operator a boarding pass instruction that a passenger must be placed on inhibited status or selected for enhanced screening, the covered aircraft operator cannot change that boarding pass instruction unless TSA sends an updated instruction based on additional information, such as an updated watch list or updated SFPD or otherwise authorizes the covered aircraft operator to change the boarding instruction. If TSA sends an updated instruction to a covered aircraft operator for a passenger or non-traveling individual, the covered aircraft operator must acknowledge receipt of the updated instruction, comply with the updated instruction, and ignore all

previous instruction for that passenger or non-traveling individual. However, a covered aircraft operator can designate a more restrictive boarding pass status in conjunction with other TSA or aircraft operator procedures.

If TSA has not provided a covered aircraft operator with watch list matching results for an individual by the time the individual attempts to check-in, or has informed the aircraft operator that an individual has been placed on inhibited status, the covered aircraft operator must provide TSA with additional information on the individual. This may be necessary if the available information for that individual is insufficient to distinguish him or her from a person on the watch list. Therefore, under proposed § 1560.105(c) it would be necessary for the covered aircraft operator to request a verifying identity document from the individual to verify the SFPD already provided or obtain SFPD that was not provided at the time of reservation or at the time of check-in at the airport. Covered aircraft operators would then be required to update the SFPD with information from the verifying identity document and transmit the updated SFPD to TSA.

However, under proposed § 1560.105(c)(4), this requirement would not apply to minors under the age of 18 who do not have a verifying identity document. For those minors, TSA may authorize the minor, or an adult accompanying the minor, to state the minor's full name and date of birth on a case-by-case basis.

In this regard, the NPRM also proposes to amend TSA's regulations by adding a new requirement in 49 CFR 1540.107 that a passenger seeking to obtain a boarding pass, or a non-traveling individual seeking access to an airport sterile area, must present a verifying identity document, as described in proposed § 1560.105(c)(1), if a covered aircraft operator requests one for watch list matching purposes, in accordance with proposed § 1560.105(c)(1). Under the proposed amendment to § 1540.107 and proposed § 1560.105(d), if an individual fails to comply with this request from a covered aircraft operator, he or she would be denied a boarding pass (or authorization to enter a sterile area), unless otherwise authorized by TSA. As discussed previously, TSA may authorize exceptions to the above requirement for verifying identity document on a case-by-case basis.

If TSA needs additional information to resolve a possible misidentification, or to confirm that the passenger or non-traveling individual is the individual on the watch list, TSA may request that the aircraft operator communicate additional identifying information, referred to as PRI. For example, TSA may request biographical information such as height, hair color, eye color, or distinctive scars. TSA may request the information necessary for TSA, in coordination with the TSC, to resolve the possible misidentification or confirm that the individual is the person on a watch list. TSA will not require the covered aircraft operator to transmit such biographical information in a SFPD transmission. TSA anticipates requesting such biographical information over the telephone.

TSA plans to retain the information necessary to complete an individual's watch list matching process, in accordance with a record retention schedule, which it will submit for approval to NARA, in order to expedite the watch list matching process for that individual during future travel. The requirements of this proposed rule would not supersede other requirements currently in effect that aircraft operators verify the identities of individuals prior to their entry into a sterile area.

Section 1560.107—Use of Watch List Matching Results by Covered Aircraft Operators

Drawing upon the privacy principle of use limitation, TSA would only share watch list matching results with covered aircraft operators for purposes of compliance with their obligations to issue boarding passes to those who are authorized to receive them, identify individuals for enhanced screening, or deny individuals boarding or sterile area access. Therefore, under proposed § 1560.107, TSA would limit covered aircraft operators' use of the watch list matching results to the purposes provided in §§ 1560.1 and 1560.105 of the proposed rule. Under the proposed rule, covered aircraft operators may not use the watch list matching results for any purpose other than security purposes.

Section 1560.109—Aircraft Operator Implementation Plan

Section 1560.109 of this proposed rule details the procedures for submission, approval, and modification of an AOIP. Under proposed § 1560.109(a), each covered aircraft operator must submit a proposed AOIP to TSA for approval. The proposed AOIP must set forth the specific means by which the covered aircraft operator will transmit passenger information and non-traveler information to TSA, the timing and frequency of transmission, and any other related matters. The AOIP may include, for example, the covered aircraft operator's plan for dealing with a system outage.

Because DHS recognizes that covered aircraft operators would be required to comply with multiple requirements from Federal agencies, DHS is developing the means to consolidate the receipt and management of passenger information within a single communications interface. The consolidation of required data for both TSA and CBP into a single submission is intended to ease the operational and technical burden on the aircraft operator. DHS will provide guidance on these requirements in a Consolidated User Guide. Consequently, covered aircraft operators would need to prepare their proposed AOIP in accordance with DHS's Consolidated User Guide. DHS will issue the Consolidated User Guide on, or shortly after, the date of publication of the final rule and will work with each covered aircraft operator, as necessary, to provide technical assistance in developing its AOIP. DHS will issue a draft Consolidated User Guide based on this proposed rule on, or shortly after, the date of this NPRM. Because the Consolidated User Guide is SSI, the release, handling, and protection of the Consolidated User Guide would be subject to the regulations concerning the protection of SSI in 49 CFR part 1520.

Proposed § 1560.109(a)(1) would require aircraft operators that are covered aircraft operators on the effective date of the final rule to submit their AOIP for approval no later than 30 days after the effective date. Under § 1560.109(a)(2), aircraft operators that become covered aircraft operators after the effective date must submit their AOIP as part of their security program under 49 CFR 1544.105(a) or 49 CFR 1546.105(a). TSA will review, approve, and modify these covered aircraft operators' proposed AOIP as part of its review of these covered aircraft operators' security programs.

For aircraft operators that are covered aircraft operators on the effective date, TSA will review, modify, and approve their proposed AOIP under proposed §§ 1560.109(b) and (c). If TSA approves a covered aircraft operator's proposed AOIP, the covered aircraft operator must implement the plan according to the schedule approved by TSA and set forth in the AOIP. If TSA disapproves and orders modifications to a proposed AOIP, TSA will provide written notice to the covered aircraft operator. Under proposed § 1560.109(c)(1), the covered aircraft operator has two options. The first option is to make any changes to the AOIP that TSA requests in the notice and implement the AOIP

according to the schedule approved by TSA and set forth in the AOIP. The second option is to seek a reconsideration of TSA's initial decision. In order to seek a reconsideration, a covered aircraft operator must submit its petition for reconsideration to TSA within 30 days of receiving the notice. The petition should include all supporting documentation. Under proposed § 1560.109(c)(2), a designated TSA official will review the petition and will either amend or withdraw the notice or forward the petition to the Administrator for a final decision. Within 30 days of receiving the petition, the Administrator will dispose of the petition by amending or withdrawing the notice or affirming the notice to modify. TSA may, at its discretion, grant extensions to any schedule deadlines, on its own initiative or upon the request of a covered aircraft operator.

Proposed § 1560.109 would require that the AOIP become part of the covered aircraft operator's security program (as described in 49 CFR part 1544, subpart B or 49 CFR part 1546, subpart B) once TSA approves the AOIP. Because the AOIP would be part of the security program, proposed § 1560.109(e) states that amendments to the AOIP will be reviewed and approved or disapproved in accordance with the procedures in 49 CFR 1544.105 or 49 CFR 1546.105, which govern amendments to security programs. Sections 1544.105 and 1546.105 provide procedures by which aircraft operators may seek amendments to their security programs and TSA may order amendments to security programs including emergency amendments. These sections also describe how aircraft operators may seek reconsideration of the initial decision on the amendments.

Proposed § 1560.109(f) requires that the AOIP be handled and protected as SSI in accordance with 49 CFR part 1520. Because the AOIP would be a part of the covered aircraft operator's security program, the AOIP would be SSI under § 1520.5(b)(1)(i).

Section 1560.111—Covered Airport Operators.

Section 1560.111 of this proposed rule applies to a covered airport operator that has a program approved by TSA through which the airport operator may authorize non-traveling individuals to enter a sterile area. Under proposed § 1560.111, no later than 30 days after receiving written notice from TSA, or such longer period as TSA may determine for good cause, a covered airport operator must adopt and carry out an AOIP and follow the procedures required of covered aircraft operators with respect to non-traveling individuals specified in proposed § 1560.109. A covered aircraft operator's AOIP would become a part of the covered airport operator's security program under 49 CFR part 1542, subpart B. Each covered airport operator must comply with the procedures required of covered aircraft operators in §§ 1560.101(a), (c) and (d), 1560.103, and 1560.107 of this part, and any other applicable TSA requirements.

Subpart C—Passenger Redress

Section 1560.201—Applicability

Sections 4012(a)(1) and 4012(a)(2) of IRTPA require TSA to establish appeal procedures for airline passengers who are delayed or denied boarding as a result of the watch list matching process as required by 49 U.S.C. 44903(j)(2)(C)(iii)(I), (j)(2)(G), and 49 U.S.C. 44909(c)(6)(B). Accordingly, the NPRM proposes subpart C, which provides the redress procedures for individuals who believe they have been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program.

Section 1560.203—Representation by Counsel

Proposed § 1560.203 provides that any person seeking redress under subpart C may be represented by counsel at his or her own expense.

Section 1560.205—Redress Process

DHS and TSA currently provide a redress process for individuals who believe that they have been denied or delayed in boarding a flight. Proposed § 1560.205 explains the regulatory framework for the redress process for Secure Flight. If an individual believes that he or she has been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program, the individual may initiate the redress process through the existing DHS TRIP process. DHS TRIP is a web-based customer service initiative developed as a voluntary program to provide a one-stop mechanism for individuals to request redress. DHS TRIP provides traveler redress intake and processing support while working with relevant DHS components to review and respond to requests for redress.

Under proposed § 1560.205, an individual seeking redress may obtain the necessary forms and information to initiate the redress process for Secure Flight on the DHS TRIP Web site at *http://www.dhs.gov/trip* or by contacting DHS TRIP by mail. The DHS TRIP Office would assign the individual a unique identifier, recognized by the Secure Flight Program as a Redress Number. Under § 1560.101 of this proposed rule, covered aircraft operators would be required to request the Redress Number from passengers and non-traveling individuals at the time of reservation or request for sterile area access, and transmit the number to TSA in the SFPD, if available.

DHS TRIP will then share the redress request with TSA and any other necessary agencies for resolution. TSA, in coordination with the TSC and other appropriate Federal law enforcement or intelligence agencies, if necessary, will review all the documentation provided by the individual and provide the individual with a timely written response. TSA will correct any erroneous information and will inform the individual when the redress process has been completed. However, TSA will neither confirm nor deny whether an individual is on the watch list, because this information is derived from classified and sensitive law enforcement and intelligence information. This protects the operational counterterrorism and intelligence collection objectives of the Federal Government, as well as the personal safety of those involved in counterterrorism investigations. The watch list remains an effective tool in the Government's counterterrorism and transportation security efforts, because its contents are not disclosed.

If TSA determines that the delay or prohibition from boarding, or access to a sterile area, resulted from a misidentification of the individual, TSA will retain the information provided by the individual to facilitate authentication of the individual's identity during future air travel and to prevent repeated and unnecessary delays of misidentified individuals, as required under 49 U.S.C. 44903(j)(2)(G)(ii).

Section 1560.207—Oversight of process

Finally, § 1560.207 of the proposed rule provides that the redress program and its implementation are subject to review by the TSA and DHS Privacy Officers and the TSA and DHS Offices for Civil Rights and Civil Liberties to ensure that the process is protecting the privacy and civil liberties of passengers and non-traveling individuals.

III. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This proposed rule contains new information collection activities subject to the PRA. Accordingly, TSA has submitted the following information requirements to OMB for its review.

Title: Secure Flight Program.

Summary: TSA is proposing to establish this information collection in accordance with 49 U.S.C. 44903(j)(2)(C), which requires TSA to assume the passenger matching function of comparing passenger information to Federal watch lists and to establish an appeal procedure for those passengers delayed or denied boarding as a result of this process. In order to carry out effective watch list matching, TSA has determined that it must receive each individual's full name and, to the extent available, gender, date of birth, Redress Number, and known traveler number (when implemented) and passport information. Therefore, TSA is proposing to require U.S. aircraft operators that conduct certain scheduled and public charter flights, and foreign air carriers that conduct certain scheduled and public charter flights within, to or from the United States, and overflying the continental United States, to request this information from passengers or non-travelers seeking sterile area access on those flights. The covered aircraft operator must then communicate this information, as well as passport information, message management information, and itinerary information to the extent available, to TSA. The covered aircraft operator must also transmit relevant updates to the passenger's or non-traveler's information. Additionally, TSA may need the covered aircraft operators to obtain and communicate information from an individual's form of identification or a physical description (e.g., gender, height, weight, hair color, or eye color) of the individual. TSA would use all of this information during watch list matching.

Prior to submitting any passenger information or non-traveler information, covered aircraft operators must first submit to TSA an AOIP describing how and when they will transmit passenger (or non-traveler) information to TSA.

In addition to aircraft operators that authorize non-traveling individuals to enter a sterile area, TSA may require airport operators that authorize non-traveling individuals to enter a sterile area for a purpose approved by TSA to provide TSA with information regarding non-traveling individuals seeking authorization to enter a sterile area, for purposes of watch list matching, under the proposed rule.

Use of: Under 49 U.S.C. 44903(j)(2)(C)(iv), TSA is authorized to collect from aircraft operators the passenger information needed to begin implementation of this matching function. TSA will use the information to enhance the security of air travel and support the Federal Government's counterterrorism efforts by enabling TSA to conduct watch list matching through the Secure Flight program and to identify individuals who warrant further scrutiny prior to entering an airport sterile area or boarding an aircraft or who warrant denial of boarding or access to an airport sterile area on security grounds. To identify those individuals, TSA will compare individuals' identifying data to information about individuals identified on the watch list.

Respondents (including number of): The Secure Flight Program would require covered aircraft operators to submit passenger information to DHS for the purpose of watch list matching. Prior to submitting any passenger information to DHS, covered aircraft operators would first submit to TSA an Aircraft Operator Implementation Plan (AOIP). The AOIP would specify in detail the technology and processes an aircraft operator would use to transmit passenger information to DHS and receive and apply watch list responses. At the time of submission, 66 domestic and 146 foreign aircraft operators would be required to respond to the information collection. Consequently, TSA has determined this information collection would affect a total of 212 respondents. Each of these operators would be subject to both information collections; however, due to differences in the frequency of the submissions, the two collections result in differing numbers of annual respondents. Submission of AOIPs would affect an average of 71 respondents and transmission of passenger information would affect an annual average of 163 respondents. With regards to airport operators authorizing non-traveling individuals to enter a sterile area for a purpose approved by TSA, there are currently 437 domestic airports that are eligible. TSA has adopted this total as the maximum number of airport operator respondents that might transmit information to Secure Flight.

Frequency: The AOIP would be a one-time submission, whereas collection of passenger information for purposes of watch list matching must occur on at least a daily basis. The commercial passenger aviation industry provides air transport to more than 2.5 million passengers per day, and aircraft operators accept reservations for transport on a continuous basis. Therefore, in order to be effective as a security measure, watch list matching of passengers and non-traveling individuals must be carried out on a near or real-time basis. Collecting passenger or non-traveling individuals' information from respondents less frequently than daily would not allow TSA to complete watch list matching of every passenger or non-traveling individual prior to their arrival at an airport security checkpoint. TSA's collection of information from respondents must occur on at least a daily basis, if not more frequently, in order to take into account new or changed reservations for air travel.

Annual Burden Estimate: TSA has determined that the information aircraft operators would be required to collect from passengers is similar to that collected in the normal course of business and is therefore exempt from the PRA as defined in 5 CFR 1320.3(b)(2). Further, TSA was unable to estimate an hour burden for aircraft operators to transmit passenger information to DHS. TSA did not have sufficient data to calculate this burden. However, TSA has monetized the burden on the aircraft operators to modify and update their systems to transmit passenger information (see below). Accordingly, TSA has only estimated an hour burden for aircraft operators to submit their AOIPs.

TSA estimated that each covered aircraft operator would invest 400 hours in the AOIP process if the covered aircraft operator has not already connected to Customs and Border Protection's (CBP) APIS Quick Query (AQQ).[22] TSA's estimate includes high-level planning, resource allocation, budgeting and management review and approval before submitting the AOIP to TSA. Since TSA was unable to estimate the number of respondent aircraft operator that might connect to AQQ prior to implementation of Secure Flight, TSA assessed the 400 hours

[22] For carriers that are already connected to AQQ, TSA estimated that such carriers would invest 200 hours in developing their AOIPs.

against each of the respondent aircraft operator, yielding a total of 84,800 hours. Based on this total, the annual burden would be 28,300 hours.

In addition to the hour burden, it may cost respondents $129.2 million in the first three years to modify and maintain systems to accommodate the new communication requirements. This breaks down to $125,200,000 in the first two years for capital startup costs and $4,000,000 in the second and third years for operations and maintenance, for an annual average of $43,000,000. The capital startup costs encompass the cost for additional bandwidth that aircraft operators may require to transmit data from reservations booked online as well as extensive system modifications to enable two-way communication between respondents and the Secure Flight system.

With regards to airport operators authorizing non-traveling individuals to enter a sterile area for a purpose approved by TSA, TSA assumes respondents would submit an annual total of 240,000 responses. TSA anticipates that airport operators would use a web application to transmit the personal information to Secure Flight and receive a response in real time. In most cases, the TSA response should be nearly instantaneous; thus, TSA believes the proposed provision would not result in an appreciable hour burden on respondents.

TSA is soliciting comments to

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by October 22, 2007. Direct the comments to the address listed in the **ADDRESSES** section of this document, and fax a copy of them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395–5806. A comment to OMB is most effective if OMB receives it within 30 days of publication. TSA will publish the OMB control number for this information collection in the **Federal Register** after OMB approves it.

As a protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Regulatory Impact Analyses

1. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to assess the effect of regulatory changes on foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international trade standards and where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

TSA has prepared a separate detailed analysis document which is available to the public in the docket. With respect to these analyses, TSA provides the following conclusions and summary information.

1. TSA has determined that this is an economically significant rule within the definition of Executive Order (EO) 12866, as estimated annual costs or benefits exceed $100 million in any year. The mandatory OMB Circular A–4 Accounting statement is included in the separate complete analysis and is not repeated here.

2. The Initial Regulatory Flexibility Analysis (IRFA) shows that there is not likely a significant impact on a substantial number of small entities. As a normal practice, we provide the IRFA to the public but withhold the final formal certification of determination as required by the RFA until after we receive public comments and publish the Final Regulatory Flexibility Analysis (FRFA).

3. Although the rule in general is unlikely to cause any adverse impact on international trade, there may be potential unfavorable responses to the overflight provisions of the proposed rule.

4. The regulatory evaluation provides the required written assessment of Unfunded Mandates. The proposed rule is not likely to result in the expenditure by State, local, or tribal governments, in the aggregate, of $100 million or more annually (adjusted for inflation). However, the estimated impact on the private sector does exceed the inflation adjusted Unfunded Mandates threshold. The E.O. 12866 analysis provided below also serves as the analysis required under UMRA.

2. Executive Order 12866 Assessment Benefits

Benefits of the rule would occur in two phases: The first during operational testing and the second post-implementation. During operational testing, Secure Flight would screen passengers in parallel with the airlines. Primary responsibility for watch list matching would remain with covered aircraft operators during this period, but Secure Flight might notify aircraft operators if its watch list matching technology enabled it to detect a potential match the aircraft operator may have missed. Therefore, during the operational testing phase, benefits may include increased aviation security resulting from the detection of threats not identified by covered carriers participating in the testing.

Most of the rule's benefits would occur post-implementation. Secure Flight would standardize the watch list matching process across domestic and foreign commercial airlines. Resulting benefits could include more accurate, timely, and comprehensive screening, and a reduction in false positives. This would occur because Secure Flight would have access to more data with which to distinguish passengers from records in the watch lists than is currently available to airlines. Further, the airlines would be relieved of watch list matching responsibilities, and TSA would be relieved of distributing the watch lists. Together, these factors would contribute to the overall objective of focusing resources on passengers identified as potential threats to aviation security.

This benefit would be further augmented by the proposal to require covered airlines to print on boarding passes a unique code generated by the Secure Flight system for each watch list result returned. Depending on the final implementation method, this requirement would at a minimum allow checkpoint personnel to verify that a boarding or gate pass had been processed by the Secure Flight system. This would prevent individuals from passing through the checkpoint with a boarding or gate pass that had not originated in an airline system.

By transferring responsibility for watch list matching of international passengers from CBP to TSA, the proposed rule would consolidate passenger prescreening operations within the Department of Homeland Security (DHS), thereby reducing redundancies between similar programs and facilitating better governance. The proposed rule would enable CBP to focus its resources on its mission of protecting U.S. borders while permitting TSA to apply its expertise in watch list matching consistently across all commercial air traffic within and overflying the United States. DHS expects that reducing overlap between these agencies' missions will improve national security through more efficient and targeted use of national resources.

Other benefits could include increased security due to the watch list matching of non-traveling individuals who request access to a sterile area. Also, TSA anticipates it may allow airports to authorize non-traveling individuals to enter the airport sterile area. As a result, the proposed rule would establish requirements related to airports' transmission of data from non-traveling individuals to Secure Flight for watch list matching. These requirements would only apply to airports that requested and received authorization from TSA to grant non-traveling individuals access to the airport sterile area.

Once TSA assumed primary responsibility for watch list matching, airlines would be relieved of their passenger watch list matching responsibilities. For the purposes of its analysis, TSA assumed that domestic implementation would be completed in the first year of the rule, and international implementation would be completed in the second year. However, the actual date the carriers would be completely relieved was unknown at the time of writing and would be contingent on several factors, such as the impact of budgetary constraints and the results of operational testing. Prior to implementation, operational testing would have to demonstrate that Secure Flight did not produce a large number of false positives, processed all matching requests in an efficient and accurate manner, and interfaced with a redress system for passengers who believe they have been incorrectly delayed or denied boarding as a result of Secure Flight matching. Elimination of their watch list matching responsibilities would enable airlines to reallocate to other tasks some of their operational resources currently dedicated to comparing passenger information to the watch lists and offset some costs imposed by the regulation. Due to the vast difference in resources used by each airline for watch list matching and uncertainty regarding the actual date each would be relieved of watch list duties, TSA was unable to quantify these cost savings.

Further, while TSA conducted significant testing using previously collected passenger name record (PNR) data, no testing has been completed in a live environment using all of the passenger information requested by this proposed rule. The testing phase would provide TSA the opportunity to work with the airlines and other stakeholders to refine Secure Flight to achieve optimal results while the airlines continue to have primary responsibility for watch list matching. Thus, the testing phase would also allow TSA to collect baseline data necessary for quantification of potential benefits of Secure Flight.

TSA has included in the Regulatory Evaluation a rough ''break-even'' analysis which indicates the tradeoffs between program cost and program benefits (in the form of impact on baseline risk of a significant aviation-related terror attack) that would be required for Secure Flight to be a cost beneficial undertaking.

Costs

As required, alternatives to the primary rule requirements were analyzed. The following table provides the ten-year primary, high, and low estimates each at undiscounted, 7%, and 3% discount rates.

TOTAL COSTS BY SCENARIO AND DISCOUNT RATE

Total by scenario	Undiscounted	7% Discount	3% Discount
Primary Scenario	$3,129.9	$2,179.3	$2,659.7
High Scenario	3,907.8	2,725.8	3,323.0
Low Scenario	2,456.0	1,703.4	2,083.4

All costs in the following summary are discounted present value costs using a 7% discount rate over 10 years unless noted as an annual cost. Both in this summary and the economic evaluation, descriptive language conveys the consequences of the regulation. Although the regulatory evaluation attempts to mirror the terms and wording of the regulation, no attempt is made to precisely replicate the regulatory language and readers are cautioned that the actual regulatory text, not the text of the evaluation, is binding.

Given the global nature of commercial aviation and the prevalence of airline partnerships, TSA was unable to divide the incidence of the estimated costs between the domestic and foreign economies. Thus, the table below presents the aggregate costs attributable to the proposed Secure Flight rule. TSA has divided its discussion within each of the cost sections in the regulatory evaluation between domestic and international operations, reflecting the scope and phasing of the proposed rule. However, this distinction between costs accruing to domestic and international operations should not be confused with costs to the domestic and foreign economies.

TSA estimated the cost impacts of this rulemaking would total from $1.703 billion to $2.726 billion over 10 years, discounted at 7%. Air carriers would incur total costs of $145.2 to $476.7 million, and travel agents would incur costs of $86.5 to $257.4 million. TSA projected Federal Government costs would be from $1.114 to $1.326 billion. The total cost of outlays would be from $1.346 billion to $2.060 billion. Additionally, the cost to individuals (value of time) would be between $357.9 and $666.2 million. The following paragraphs discuss these costs.

Air carriers would incur costs to comply with requirements of this rulemaking. Over the 10-year period from 2008 to 2017, TSA estimated air

carriers would incur average annual discounted costs of $15.6 to $52.5 million to reprogram their computer systems to accept the additional data fields required by the rule and achieve two-way connectivity with TSA. Although TSA would require covered aircraft operators to collect and transmit SFPD, TSA would not mandate how covered aircraft operators would store or extract passengers' SFPD. Covered aircraft operators may choose to extract SFPDs from their reservation system or develop a separate system. Based on interviews with covered airlines, TSA has assumed for the purposes of this analysis that airlines would choose to use their reservation systems to collect and transmit SFPD.

Because the proposed rule would require additional information to be requested, additional time would be required for airline call centers to complete reservations. TSA estimated these costs would be between $5.1 and $15.3 million per year. Together, the air carriers' average annual costs would range from $20.7 to $67.8 million.

The proposed rule would not directly regulate travel agents. However, aircraft operators would be required to ensure that travel agencies request the additional passenger information. Therefore, travel agents, like covered aircraft operators, would have to spend additional time to complete airline reservations. TSA estimated the average annual cost to travel agents would range from $12.3 to $36.7 million.

The Federal Government would incur several costs as a result of the rule. These costs would include network infrastructure to enable communication between TSA and covered aircraft operator data systems, hardware and software procurement, operations and maintenance, and general support for implementation. The government would further incur costs to complete adjudication of name similarities or watch list matches and also for redress activities. Finally, the government would incur costs to implement a system at checkpoints to verify the codes issued by the Secure Flight system and printed on boarding and gate passes. The Government's estimated average annual cost would be from $158.6 million to $188.7 million.

The proposed rule would also impact individuals. Time is a valuable economic resource, like labor, capital, and other factors of production, which may be utilized for work or relaxation. The loss of time imposes an opportunity cost on individuals. TSA attempted to quantify opportunity costs to individuals based on the incremental additional time required to make a reservation. TSA estimated these average annual costs to individuals would range from $51.0 to $94.8 million.

3. *Regulatory Flexibility Act Assessment:* Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. Although TSA does not believe the proposed rule will have a significant impact on a substantial number of small entities, the agency has prepared an Initial Regulatory Flexibility Analysis (IRFA) for public review and comment. TSA requests comments on this IRFA and the potential impacts of the proposed rule on small businesses.

Section 1: Reasons for and Objectives of the Proposed Rule

2.1.1 Reason for the Proposed Rule

Section 4012(a) of the Intelligence Reform and Terrorism Prevention Act requires the Transportation Security Administration (TSA) to assume from aircraft operators the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists.

2.1.2 Objective of the Proposed Rule

This proposed rule would allow TSA to begin implementation of the Secure Flight program, under which TSA would receive passenger and non-traveler information, conduct watch list matching, and transmit gate and boarding pass printing instructions back to aircraft operators indicating whether individuals should be cleared to enter the sterile area, marked as selectees, or prohibited from receiving a gate or boarding pass.

Section 2: Affected Small Business Population and Estimated Impact of Compliance

2.2.1 Aircraft Operator Small Business Population

The proposed Secure Flight rule would affect all aircraft operators conducting flight operations under a full security program per 49 CFR 1544.101(a). In general, these aircraft operators are the major passenger airlines that offer scheduled and public charter flights from commercial airports. Specifically, the covered carriers would be those performing scheduled service or public charter passenger operations either with an aircraft having a passenger seating configuration of 61 or more seats or having 60 or fewer seats if the aircraft enplanes from or deplanes into a sterile area.

Of the 66 aircraft operators that are covered by the proposed rule, TSA estimated that 24 of these can be identified as small business entities. This is based on the Small Business Administration (SBA) Office of Size Standards' size standard of ''fewer than 1,500 employees'' for small businesses within NAICS Code 481111, Scheduled Passenger Air Transportation, and those within NAICS Code 481211, Nonscheduled Chartered Passenger Air Transportation.[23] For this analysis, air carrier employee counts were developed from publicly available information and from carrier filings with the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS) and Federal Aviation Administration.

In the Secure Flight regulatory evaluation, TSA divided covered carriers into four ''cost groups'' based on the nature of their reservations systems and BTS size classification (i.e., major, national, large regional, etc.).[24] These groupings correspond to the estimated costliness of reprogramming airline

[23] Small Business Administration. Table: ''Small Business Size Standards Matched to North American Industry Classification System.'' Available at *http://www.sba.gov/size/sizetable2002.html.* Accessed May 4, 2006.

[24] For more information, please see Section 1.4.1.

reservation systems to comply with the proposed Secure Flight requirements. Implementation Group 1 represents all legacy marketing carriers and their affiliates utilizing an older GDS or host airline reservation system (ARS). Legacy airlines, those flying prior to the Airline Deregulation Act of 1978, are all major airlines and have the oldest computer systems. Accordingly, TSA assumed this group would incur the highest compliance costs. Implementation Group 2 includes marketing carriers utilizing a newer GDS or host ARS, as well as national carriers subscribing to an older GDS. Implementation Group 3 represents carriers with independently maintained reservation systems TSA determined were capable of receiving a direct connection to Secure Flight, as well as regional, commuter, and small airlines subscribing to an older GDS or host ARS. Airlines with very simple or no computerized reservation systems form Group 4. Rather than requiring Group 4 carriers to establish complex systems capable of connecting directly with Secure Flight, TSA would allow them to transmit passenger information through a secure Internet portal.

In Groups 1 and 2, smaller airlines often use the reservation systems of larger airlines. For example, a passenger may book a reservation with a large, marketing airline, but the flight may be operated by a smaller airline owned by or contracting with the marketing airline (an affiliate). In such cases, TSA assumed in its regulatory evaluation that the marketing airline would bear the cost of changes to the reservation system and designated those carriers as ''points of implementation.'' Section 1.4.1 of the regulatory evaluation describes this distinction in greater detail.

In the discussion below, TSA relaxes this assumption and treats affiliate carriers as if they are marketing carriers. Since no Group 1 affiliate carriers are major airlines, they were re-categorized as Group 3 carriers (regional, commuter, or small carriers using an older GDS). Specifically, these are Carriers 3, 4, 8, and 9 in the tables.[25] Although this method ensures a potential cost is estimated for all small business carriers, TSA notes that it likely overstates the actual cost that would be incurred. Thus, for this small business analysis, TSA considers 10 carriers under Implementation Groups 2 and 3. The remaining 14 carriers belong to Group 4.

Table 2.2.1.a reports annual 2005 employment and operating revenues or sales[26] TSA gathered for these 24 airlines (in one case the financial data is from 2002). These small air carriers are active in different areas of the passenger air transportation marketplace. Some provide scheduled passenger service in small niche markets, often as part of the larger route system of an established hub and spoke carrier; others provide charter transportation services to tour groups or organizations such as professional sports teams. Some of those that provide scheduled passenger services use reservation systems hosted by one of the existing ARS providers, while others handle phone reservations or receive reservations from travel agents. All of these small airlines would be subject to the proposed rule, however, due to the size of aircraft they use and/or because of the airport environments in which they operate. Thus, these airlines would collect more information from passengers, but TSA would take over their current requirement to compare passenger manifests to the watch lists.

[25] Since in some cases the reported revenue data is proprietary, TSA substituted an ID number in place of company names.

[26] In cases for which annual revenues were not available, carrier filings of total annual sales were used as a proxy for revenue.

Table 2.2.1.a Secure Flight Small Business Air Carriers (2005 Data)

	Small Business Carrier ID #	Employees (Total Full- and Part-Time)	Annual Operating Revenues	Enplanements	Share of Total Covered Carrier Enplanements
Aircraft Operators in Implementation Groups 2 and 3	1	914	$204,000,000	1,266,293	0.199%
	2	893	$80,300,000	1,132,207	0.178%
	3	546	$78,100,000	838,959	0.051%
	4	545	$60,000,000	440,865	0.069%
	5	400	$45,100,000	636,768	0.100%
	6	380	$42,800,000	570,291	0.090%
	7	255	$18,600,000	49,242	0.008%
	8	230	$39,600,000	355,607	0.056%
	9	220	$24,000,000	141,252	0.022%
	10	50	$5,000,000	48,221	0.008%
Aircraft Operators in Implementation Group 4	11	964	$74,300,000	208,120	0.033%
	12	826	$76,392,000	344,741	0.054%
	13	739	$137,900,000	506,292	0.080%
	14	600	$68,600,000	91,571	0.014%
	15	593	$132,500,000	836,409	0.132%
	16	549	$33,400,000	329,418	0.052%
	17	411	$105,266,000	82,529	0.013%
	18	220	$6,330,000	18,707	0.003%
	19	212	$35,649,000	329,083	0.052%
	20	159	$12,000,000	35,788	0.006%
	21	75	$14,230,000	22,511	0.004%
	22	19	$930,000	Unavailable	Unavailable
	23	Unavailable	Unavailable	38,471	0.006%
	24	Unavailable	Unavailable	17,521	0.003%

2.2.2 Estimated Impact to Aircraft Operator Small Businesses

TSA determined that the proposed rule would not cause a significant economic impact for a substantial number of these small business entities based on several considerations. First, under the current procedures, these small airlines must devote effort to matching passenger identification information to TSA watch lists but are not able to establish staff and back office activities that are dedicated to these security functions due to the small scale of their operations. Instead, the existing security responsibilities are fulfilled by airline personnel who may have other unrelated duties. These scale considerations suggest that the benefits of changing the current responsibilities by implementing the proposed rule may be weighted toward these smaller airlines, when considered on a per enplanement basis.

In addition, given the variety of business activities pursued by the small carriers under consideration—scheduled passenger operations or charter operations, operations that collaborate with a larger hub and spoke carrier or that are independent of larger carriers, and operations that do or do not make use of an existing ARS host for processing reservations—it is difficult to estimate the costs that would be incurred by these small carriers should the proposed rule be implemented. In order to evaluate the possible economic impact of the proposed rule on small aircraft operators, TSA utilized two calculation methods: One for carriers in Groups 2 and 3, and a second for carriers in Group 4.

Since reprogramming and data collection costs have already been presented in the aggregate for Groups 2 and 3 in Sections 1.6.2 and 1.6.3 of the regulatory evaluation, TSA used the same techniques to calculate the potential impact to small business carriers in these two groups. Table 2.2.2.a below shows the outcome of these calculations.

TSA first assigned an estimated initial reprogramming cost to each small business carrier based on whether it belonged to Group 2 or 3 (column B). The initial reprogramming cost was used since this is the highest expenditure in any one year. Each carrier would also experience an increase in the time required to collect passenger data during reservations, as discussed in Section 1.6.3. To arrive at the maximum annual collection cost (column D), TSA annualized the total High Scenario Airline Collection Costs from Table 1.6.3.a. These airline collection costs are a function of reservations and TSA assumed an airline's share of reservations is proportional to its share of enplanements. Thus, TSA multiplied the total annual collection cost by each

carrier's share of enplanements (column C) to arrive at its proportion of the annual collection cost (column E). Adding the collection cost to the initial reprogramming cost yielded a per-carrier estimated cost of compliance (column F). TSA divided these estimated compliance costs by each carrier's reported revenue to determine the percent of revenue that would be expended on Secure Flight (column G).

Although there is no hard and fast definition for ''significant economic impact,'' agencies frequently use 2% of an entity's revenue as a threshold. As can be seen in the table, in one case the estimated compliance cost exceeds 2% of the carriers' reported 2005 revenues and in one case it exceeds 8%. After reviewing the relevant information, however, TSA determined the threshold may not be applicable in this particular case. This is because the percentage is extremely sensitive to the estimated reprogramming cost (column B). TSA's estimated reprogramming costs for these carriers are based on assumptions about limited data and may overstate the costs to smaller carriers. This consideration is especially true of carrier 10. This carrier maintained its own reservation system until August 2005, when it began subscribing to a GDS. Consequently, its reprogramming costs may be significantly lower than projected here. Further, these carriers would have the option to use the Secure Flight web interface rather than reprogram their reservation systems if they determine reprogramming would be too costly.

Based on these considerations, TSA determined the estimated compliance cost likely does not meet the requirements of a significant economic impact under the RFA; however, the agency invites comments on this analysis.

TABLE 2.2.2.a.—ESTIMATED SMALL BUSINESS IMPACT, CARRIER GROUPS 2 AND 3

Small business carrier ID #	2005 annual operating revenues (000) (A)	Estimated carrier reprogram costs (000) (B)	Share of total covered carrier Enp (percent) (C)	Annualized airline collection costs* (000) (D)	Share of airline collection costs* (000) (E) = C*D	Estimated total compliance cost* (000) (F) = B+E	Compliance cost as percent of revenues* (G) = F/A
1	$204,000	$850	0.20	$11,690	$23	$873	0.43
2	80,300	425	0.18	11,690	21	446	0.56
3	78,100	425	0.13	11,690	15	440	0.56
4	60,000	425	0.07	11,690	8	433	0.72
5	45,100	425	0.10	11,690	12	437	0.97
6	42,800	425	0.09	11,690	11	436	1.02
7	18,600	425	0.01	11,690	1	426	2.29
8	39,600	425	0.06	11,690	7	432	1.09
9	24,000	425	0.02	11,690	2	427	1.78
10	5,000	425	0.01	11,690	1	426	8.52

* Reflect totals from the high case scenario presented in the regulatory evaluation.

As discussed in Section 1.6.2 of the regulatory evaluation, TSA assumed Group 4 carriers would not have any reprogramming costs associated with implementation of Secure Flight but that 13 of the 16 Group 4 carriers would spend $100,000 in the first year of the program on staff retraining and customer outreach. TSA did not have sufficient information, however, to reliably estimate costs incurred by these carriers due to changes in their reservation process. For the purpose of discussion, TSA here calculates a unit compliance cost per enplanement in order to illustrate the average impact of the proposed rule. The results of this calculation are shown in Table 2.2.2.b.

TSA chose to use a broad assumption in developing its unit cost and therefore included the annual costs related to the entire reservations process for air transportation providers. As reported in Tables 1.6.3.a and 1.6.4.a, costs associated with the reservations process include airline and travel agency costs to make available privacy notices and request additional passenger information. In TSA's high scenario, these two categories total to approximately $34.2 million in fiscal year 2008. This value can be normalized to a per enplanement basis using the reservations forecast reported in Table 1.4.1.a, which totals 672.1 million in 2008. This normalized cost per enplanement equals $34.2/672.1, or about $0.05 per enplanement (column B).

Multiplying this normalized value by each carrier's 2005 annual enplanements total (column B) and adding in the implementation expenditure where applicable (column A), TSA estimated the cost to each of the small business entities identified (column D). As column F of Table 2.2.2.b indicates, this estimate for costs never exceeds 2% of 2005 annual revenues for these small carriers. Note further that the annual enplanements value is unadjusted for round trip itineraries or for reservations that may have been generated as part of a marketing carrier's reservations process. Thus, the estimated values in Table 2.2.2.b are very likely to be overstatements of the impact of the proposed rule on these small carriers.

Finally, as noted previously, DHS will make available a Secure Flight Internet portal for the transmittal of passenger and other itinerary data from Group 4 small airlines to TSA. The availability of this interface would simplify the transition to the environment that will prevail once the proposed rule is implemented, while providing greater assurance regarding the provision of the relevant security data to TSA for comparison to the watch lists.

TABLE 2.2.2.b.—ILLUSTRATIVE SMALL BUSINESS IMPACT, CARRIER GROUP 4

Small business carrier ID #	Assumed start-up outlay (A)	FY 2005 enplanements (B)	Maximum unit compliance cost per enplanement (C)	Compliance cost (D) = A+B*C	2005 annual operating revenues (E)	Compliance cost as percent of 2005 revenues (F) = D/E
11	$100,000	208,120	$0.05	$110,400	$74,300,000	0.15
12	100,000	344,741	0.05	117,200	76,392,000	0.15
13	100,000	506,292	0.05	125,300	137,900,000	0.09
14	100,000	91,571	0.05	104,600	68,600,000	0.15
15	100,000	836,409	0.05	141,800	132,500,000	0.11
16	100,000	329,418	0.05	116,500	33,400,000	0.35
17	100,000	82,529	0.05	104,100	105,265,872	0.10
18	100,000	18,707	0.05	100,900	6,330,280	1.59
19	100,000	329,083	0.05	116,500	35,649,201	0.33
20	100,000	35,788	0.05	101,800	12,000,000	0.85
21	100,000	22,511	0.05	101,100	14,229,510	0.71
22	0	0*	0.05	0	930,000	(1)
23	0	38,471	0.05	1,900	0	(1)
24	0	17,521	0.05	900	0	(1)

* Carrier had not yet begun reporting enplanements to BTS.
(1) Data not available.

The estimates provided in Table 2.2.2.b show how Group 4 small businesses would be impacted by Secure Flight were their operations comparable to those of airlines in Groups 1 through 3. As has been noted above, however, this is not the case. Consequently, the costs Group 4 airlines would actually incur to comply with Secure Flight may diverge significantly from the estimates presented. Nevertheless, the table illustrates that these costs would have to increase dramatically before they would constitute a significant economic impact.

In the interest of arriving at more accurate estimates, TSA has outlined the assumptions underlying its calculations in Appendix A. TSA invites comments from the public and industry. TSA particularly welcomes comments that include or identify sources of data that will assist TSA in improving its assumptions.

2.2.3 Travel Agency Small Business Population

The Small Business Administration (SBA) classifies any travel agency as a small business if it has revenues of less than $3.5 million annually.[27] The SBA data provided in Table 2.2.3.a indicate that in 2003 more than 98% of travel agencies had annual revenues less than $5 million. Although the division of the SBA revenue categories do not allow for a precise count of the number of small business, the average revenue per firm of $1.9 million for the $1 million to $5 million category indicates that many of the firms in this category have revenues below the $3.5 million threshold. Consequently, the discussion of small businesses in the travel agency industry will be a discussion about the vast number of firms.

TABLE 2.2.3.a.—DISTRIBUTION OF TRAVEL AGENCIES (NAICS 561510) BY REVENUE, 2003[28]

	Total	$0–$99,999	$100,000–$499,999	$500,000–$999,999	$1,000,000–$4,999,999	Total <$5,000,000	Total >$5,000,000
Number of Firms	14,838	6,125	6,627	1,098	714	14,564	274
Percent of Total	100.00	41.28	44.66	7.40	4.81	98.15	1.85

Tables 2.2.3.b through 2.2.3.d below reflect the recent story of the travel agent industry. The first two tables are based on 2002 data provided by the Airlines Reporting Corporation (ARC) to the National Commission to Ensure Consumer Information and Choice in the Airline Industry (the Commission). These ARC data include the gross value of airline tickets, which travel agents remit to the airlines, in addition to their commission and fee revenue. To factor out this airline revenue, the Commission stated that ''the average leisure agency derives slightly more than 50% of its revenue from commissions and fees for sale of airline tickets.''[29]

When the Commission prepared its report ''Upheaval in Travel Distribution: Impact on Consumers and Travel Agents, Report to Congress and the President'' (Commission Report), the SBA had just increased the small business revenue threshold from $1 million to $3 million for travel agents. Consequently, the Commission used $5 million in total revenue (approximately $2.5 million in commission and fee revenue) as a proxy threshold for small businesses when creating Tables 2.2.3.b and 2.2.3.c below. Although these tables do not capture the full universe of travel

[27] Small Business Administration. Table: ''Small Business Size Standards matched to North American Industry Classification System.'' Available at *http://www.sba.gov/size/sizetable2002.html.* Accessed May 4, 2006.

Note: The SBA size standard for travel agencies is based on ''total revenues, excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.''

[28] Small Business Administration. Table: ''All Industries by NAICS codes, 2003.'' See TXT file ''2003'' available at *http://www.sba.gov/advo/research/data.html.* Accessed May 6, 2006.

[29] ''Upheaval in Travel Distribution: Impact on Consumers and Travel Agents, Report to Congress and the President,'' National Commission to Ensure Consumer Information and Choice in the Airline Industry, November 13, 2002 (''Commission Report''), p 89.

agency small businesses, they nevertheless illustrate general trends affecting these entities.

As can be seen in Tables 2.2.3.b and 2.2.3.c, the number of travel agencies whose sales are less than $5 million per year declined steadily through 2001. Correspondingly, the share of industry sales by these smaller firms also fell. At the same time, however, the largest firms increased both their share of industry sales and the dollar value of their sales.

TABLE 2.2.3.b.—NUMBER OF TRAVEL AGENCIES BY SIZE CATEGORY [30]

Agency Size	1995	1997	1999	2001
$2M or Less	19,851	19,226	17,855	15,253
$2M–$5M	2,356	2,803	2,482	1,770
$5M–$50M	1,059	1,2177	1,236	1,1015
Greater than $50M	77	107	117	117
Total	23,343	23,413	21,690	18,425

TABLE 2.2.3.c.—SHARE OF TRAVEL AGENT SALES BY SIZE CATEGORY [31]

Agency Size	1995	1997	1999	2001
$2M or Less	25.3%	20.6%	16.9%	14.2%
$2M–$5M	13.5	12.8	10.7	8.4
$5M–$50M	24.8	24.5	22.5	20.1
Greater than $50M	36.4	42.1	49.9	57.2

Table 2.2.3.d shows aggregate monthly statistics released by the Airlines Reporting Corporation indicating that the travel agent industry continued to contract and consolidate through 2005. Corresponding revenue data, however, was not available.

TABLE 2.2.3.d.—TRAVEL AGENCIES ACCREDITED BY THE AIRLINES REPORTING CORPORATION [32]

	2001	2002	2003	2004	2005
Retail Locations	27,633	24,679	22,244	20,729	19,871
Home Offices	1,651	1,368	1,203	1,118	1,041
Independent/Single Entities	15,057	13,206	11,670	10,578	9,874
Branch	6,696	6,171	5,695	5,474	5,451
Restricted Access	862	950	1,039	1,120	1,205
On-site branch	3,367	2,984	2,637	2,439	2,300
Satellite Ticket Providers	6,347	4,693	3,204	2,413	1,975
Corporate Travel Departments	108	150	172	182	197
Total Locations	34,088	29,522	25,620	23,324	22,043
Change over previous year	N/A	13.39%	13.22%	8.96%	−5.49%
Total Entities *	17,678	15,674	14,084	12,998	12,317
Change over previous year	N/A	11.34%	10.14%	7.71%	−5.24%

* Sum of Home Offices, Independent/Single Entities, Restricted Access, and Corporate Travel Departments.

2.2.4 Estimated Impact to Travel Agency Small Businesses

While not directly regulated, small travel agencies will certainly be affected by the implementation of Secure Flight. TSA anticipated the most significant burden on these entities would result from the increased time to collect additional passenger information. Small travel agencies may also incur incremental costs due to retraining of staff and reaching out to clients in order to update customer profiles prior to their next trip.

In Section 1.6.4 of the regulatory evaluation, TSA estimated a cost that would be borne by non-Internet (brick-and-mortar) travel agencies as a result of the proposed requirements. Detailed industry data did not exist, however, that would allow TSA to determine the portion of that cost that would be borne by small travel agencies. In lieu of such information, TSA chose to calculate a minimum number of airline reservations the smallest travel agency size category would have to process in order for the requirements of the proposed rule to result in a ''significant economic impact.'' This calculation corresponds to the high estimate scenario and depends on a number of assumptions:

1. The average hourly wage of small business travel agents is $20.69 (including benefits).

2. In TSA's highest cost scenario, an additional 30 seconds per airline reservation would be needed to collect additional passenger information.

3. The additional time to collect passenger information would be incurred for every airline reservation booked through a travel agency.

[30] Commission Report, p. 114.

[31] Ibid.

[32] ''End of Year Reporting and Settlement Results,'' Airlines Reporting Corporation press release, December 2002, December 2003, December 2004, December 2005. Available at *http://www.arccorp.com/regist/news_sales_doc_stats.jsp*. Accessed May 12, 2006.

4. The average revenue of the smallest travel agency firms (revenues between $0 and $99,999) is $47,204.[33]

5. Two percent of a small travel agency's revenue constitutes a ''significant economic impact.''

Accepting these assumptions, 2% of the smallest firm revenue would constitute an impact of $942 ($47,204 × 0.02). Reversing the calculations used in Section 1.6.4, this total must be converted into the additional reservation time it represents. This is accomplished by dividing $942 by the travel agent hourly wage, which yields 45.5 hours ($942 ÷ $20.69/hour). This cumulative 45.5 hours can then be broken down into individual reservations by dividing by the total incremental time per reservation, which is 0.008 hours (30 incremental seconds ÷ 3600 seconds/hour). Thus, 45.5 hours represent approximately 5,690 airline reservations (45.5 hours ÷ 0.008 hours/reservation). Under the most burdensome scenario, then, on average the smallest travel agencies would need to book 5,690 airline reservations in a year in order to potentially incur a significant economic impact as a result of the proposed rule.

Table 2.2.4.a presents this threshold number of reservations for the range of data collection times presented in the Secure Flight regulatory evaluation. Alternatively, the table also presents the number of airline reservations a travel agency would have to process to meet 2% of the SBA small business threshold for travel agents.

TSA has included these estimates and identified their accompanying assumptions in order to enable small travel agencies to provide comments to TSA on whether the proposed Secure Flight requirements would constitute a significant economic impact. These estimates below should be considered as a range of ''worst case scenarios.'' For example, reservations made for clients for whom a travel agency already has the requested Secure Flight information saved in a profile would not incur the additional data collection time.

TABLE 2.2.4.a.—AIRLINE RESERVATIONS THRESHOLD FOR SMALL BUSINESS TRAVEL AGENCIES

	Revenue class $0–$99,999			SBA Small business threshold		
Firm Revenue (A)	$47,120			$3,500,000		
2% of Revenue (B)	$942			$70,000		
Average Agent Hourly Wage (C)	$20.69			$20.69		
Total Incremental Hours (D) = B/C	45.5			3,383.5		
Estimate Scenario	High	Primary	Low	High	Primary	Low
Additional Hours per Reservation (E)	0.008 (30 sec.)	0.006 (20 sec.)	0.003 (10 sec.)	0.008 (30 sec.)	0.006 (20 sec.)	0.003 (10 sec.)
Reservations (F) = D/E	5,690	7,580	15,170	422,900	563,900	1,127,800

Section 3: Significant Alternatives Considered

The proposed rule provides small business carriers the flexibility of either reprogramming their reservation systems to interface directly with the Secure Flight system or to transmit passenger and non-traveler information to Secure Flight through a secure Internet interface. Thus, small business carriers identified in Groups 2 and 3 would have the option of joining Group 4 and using the Internet portal if they determined reprogramming their systems to communicate directly with Secure Flight would be too costly. Similarly, small business carriers TSA has identified in this analysis as scheduled to use the Secure Flight Internet portal would have the option to reprogram their systems to communicate directly with Secure Flight if they determined using the portal would be too burdensome on their business processes.

While either method would impose some costs on small businesses, TSA determined that exempting these carriers from the requirements of the proposed rule would fail to meet the mandate within the IRTPA that TSA assume the watch list matching function. Taking this into consideration, TSA determined the options described above would effectively minimize the impact to small businesses. TSA welcomes comments on these options and analyses as well as suggestions that may further reduce the impact on covered small businesses while achieving the heightened security objective of the proposed rule.

Section 4: Identification of Duplicative or Overlapping Federal Rules

TSA is aware that other Federal agencies, such as the Centers for Disease Control and Prevention (CDC) and Customs and Border Protection (CBP), collect data concerning aviation passengers and may conduct or will conduct watch list matching for these passengers. TSA is working with other agencies, including the CDC and CBP, to develop ways to eliminate unnecessary duplication of comparable screening efforts and thereby reduce governmental and private sector costs. Therefore, the proposed rule allows TSA to relieve covered aircraft operators of the requirement to transmit passenger information if TSA determines that the U.S. government is conducting watch list matching for a passenger on a particular flight that is comparable to the screening conducted pursuant to proposed part 1560. TSA will work with each covered aircraft operator to establish the specific procedures and times for these transmissions as it develops its Aircraft Operator Implementation Plan.

Section 5: Initial Determination of No Significant Impact

Based on the considerations above, TSA believes that it is unlikely the proposed rule would have a significant economic impact on a substantial number of the small entities subject to this rulemaking. However, TSA withholds final determination until receiving public comment and completing a Final Regulatory Flexibility Analysis (FRFA). In conducting this analysis, TSA acknowledges that the ability of carriers to share the incidence of security costs with their customers has been limited. TSA solicits comment on its analysis.

While not required by the RFA, TSA has also considered the potential impact to small business travel agencies, as these entities would likely be indirectly impacted by the proposed rule given

[33] Small Business Administration. Table: ''All Industries by NAICS codes, 2003.'' See TXT file ''2003'' available at *http://www.sba.gov/advo/research/data.html.* Accessed May 6, 2006. Estimated receipts divided by number of firms, revenue class 0–99,999.

their role in the airline reservation process. TSA was unable to determine if the proposed rule would have a significant economic impact on a substantial number of these small business travel agencies. TSA welcomes comments from the industry and other interested parties that will assist the agency in improving its assumptions and estimates.

4. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general benefits and desirability of free trade, it is the policy of TSA to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the U.S.

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is TSA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. TSA has determined that there are no ICAO Standards and Recommended Practices that correspond to the regulatory standards established by this notice of proposed rulemaking (NPRM). TSA has assessed the potential effect of this NPRM and has determined that it is unlikely it would create barriers to international trade.

However, when TSA reviewed the impact of foreign carrier overflights, the conclusion is not clear. The right of airlines from one country to overfly another country in the course of traveling to the destination country is the first of the well known ''freedoms of the air.'' This technical freedom has been engrained in international aviation since the Chicago Convention of 1944. How countries might react to the new conditions being placed on the fulfillment of this freedom is uncertain. International trade in travel and international shipping may be negatively impacted should foreign countries choose to respond in a retaliatory manner. One response by foreign carriers might be to avoid overflying the U.S. entirely, thereby lengthening flight routes and the costs of operation to those carriers. These reroutings would change airline costs and thus contribute to fare increases, which would affect trade between the departure and arrival countries, even though it would not directly affect trade involving the U.S. If the foreign carrier response is to reroute, it is not clear that such a change would eliminate all risks, since aircraft skirting the boundaries of U.S. airspace could be redirected into U.S. airspace by hijackers or terrorists.

5. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This proposed rulemaking would not impose an unfunded mandate on State, local, or tribal governments, but it would impose an unfunded mandate on the private sector. The analysis required under Title II of the Act is satisfied with the full Regulatory Impact Assessment in the docket.

C. Executive Order 13132, Federalism

TSA has analyzed this notice of proposed rulemaking under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

D. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact Analysis

TSA has assessed the energy impact of the action in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Aviation safety, Explosives, Freight forwarders, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1560

Air carriers, Aircraft, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendments

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend Chapter XII of Title 49, Code of Federal Regulations, as follows:

SUBCHAPTER C—CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

1. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. Revise § 1540.107 to read as follows:

Subpart B—Responsibilities of Passengers and Other Individuals and Persons

* * * * *

§ 1540.107 Submission to screening and inspection.

(a) No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter.

(b) An individual must provide his or her full name, as defined in § 1560.3 of this chapter, when—

(1) The individual makes a reservation for a covered flight, as defined in § 1560.3 of this chapter, or

(2) The individual makes a request for authorization to enter a sterile area.

(c) An individual may not enter a sterile area or board an aircraft if the

individual does not present a verifying identity document as defined in § 1560.3 of this chapter, when requested for purposes of watch list matching under § 1560.105(c) of this chapter, unless otherwise authorized by TSA on a case-by-case basis.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

3. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

4. Amend § 1544.103 by adding new paragraph (c)(22) to read as follows:

§ 1544.103 Form, content, and availability.

* * * * *

(c) * * *

(22) The Aircraft Operator Implementation Plan (AOIP) as required under 49 CFR 1560.109.

5. Add a new part 1560, to read as follows:

PART 1560—SECURE FLIGHT PROGRAM

Subpart A—General

Sec.
1560.1 Scope, purpose, and implementation.
1560.3 Terms used in this part.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

1560.101 Request for and transmission of information to TSA.
1560.103 Notice.
1560.105 Denial of transport or sterile area access; Designation for enhanced screening.
1560.107 Use of watch list matching results by covered aircraft operators.
1560.109 Aircraft Operator Implementation Plan.
1560.111 Covered airport operators.

Subpart C—Passenger Redress

1560.201 Applicability.
1560.203 Representation by counsel.
1560.205 Redress process.
1560.207 Oversight of process.

Authority: 49 U.S.C. 114, 40113, 44901, 44902, 44903.

Subpart A—General

§ 1560.1 Scope, purpose, and implementation.

(a) *Scope.* This part applies to the following:

(1) Aircraft operators required to adopt a security program for a full program operation under 49 CFR 1544.101(a);

(2) Foreign air carriers required to adopt a security program under 49 CFR 1546.101(a) or (b); and

(3) Airport operators that seek to authorize individuals to enter a sterile area for purposes approved by TSA.

(b) *Purpose.* The purpose of this part is to enhance the security of air travel within the United States and support the Federal Government's counterterrorism efforts by assisting in the detection of individuals identified on Federal Government watch lists who seek to travel by air, and to facilitate the secure travel of the public. This part enables TSA to operate a watch list matching program known as Secure Flight, which involves the comparison of passenger and non-traveler information with the identifying information of individuals on Federal Government watch lists.

(c) *Implementation.* Each covered aircraft operator must begin requesting the information described in § 1560.101(a)(1) and have the capability to transmit Secure Flight Passenger Data to TSA 60 days after the effective date of this rule. Each covered aircraft operator must begin transmitting information to TSA as required in § 1560.101(b) on the date specified in, and in accordance with, its Aircraft Operator Implementation Plan. TSA will inform each covered aircraft operator 60 days prior to the date on which TSA will assume the watch list matching function from that aircraft operator.

§ 1560.3 Terms used in this part.

In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply to this part:

Aircraft Operator Implementation Plan or *AOIP* means a written procedure describing how and when a covered aircraft operator or airport operator transmits passenger and flight information and non-traveler information to TSA, as well as other related matters.

Airport code means the official code, designated by the International Air Transport Association (IATA), for an airport.

Consolidated User Guide means a document developed by the Department of Homeland Security (DHS) to provide guidance to aircraft operators that must transmit passenger information to one or more components of DHS on operational processing and transmission of passenger information to all required components in a unified manner.

Covered aircraft operator means each aircraft operator required to carry out a full program under 49 CFR 1544.101(a) or a security program under 49 CFR 1546.101(a) or (b).

Covered airport operator means each airport operator that seeks to authorize non-traveling individuals to enter a sterile area for a purpose permitted by TSA.

Covered flight means any operation of an aircraft operator that is subject to or operates under a full program under 49 CFR 1544.101(a). *Covered flight* also means any operation of an aircraft that is subject to or operates under a security program under 49 CFR 1546.101(a) or (b) arriving in or departing from the United States, or overflying the continental United States. *Covered flight* does not include any flight for which TSA has determined that the Federal Government is conducting passenger matching comparable to the matching conducted pursuant to this part.

Date of birth means the day, month, and year of an individual's birth.

Department of Homeland Security Traveler Redress Inquiry Program or *DHS TRIP* means the voluntary program through which individuals may request redress if they believe they have been: (1) Denied or delayed boarding transportation due to DHS screening programs; (2) denied or delayed entry into or departure from the United States at a port of entry; or (3) identified for additional (secondary) screening at U.S. transportation facilities, including airports, and seaports.

Full name means an individual's full name as it appears on a verifying identity document held by the individual.

Inhibited status means the status of a passenger or non-traveling individual to whom TSA has instructed a covered aircraft operator or a covered airport operator not to issue a boarding pass or to provide access to the sterile area.

Itinerary information means information reflecting a passenger's or non-traveling individual's itinerary specified in the covered aircraft operator's AOIP. For non-traveling individuals, itinerary information is the airport code for the sterile area to which the non-traveler seeks access. For passengers, itinerary information includes the following:

(1) Departure airport code.
(2) Aircraft operator.
(3) Departure date.
(4) Departure time.
(5) Arrival date.
(6) Scheduled arrival time.
(7) Arrival airport code.
(8) Flight number.
(9) Operating carrier (if available).

Known traveler number means a unique number assigned to individuals for whom the Federal Government has

conducted a security threat assessment and determined do not pose a security threat.

Non-traveling individual or *non-traveler* means an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. The term *non-traveling individual* or *non-traveler* does not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA regulation or security directive.

Overflying the continental United States means departing from an airport or location outside the United States and transiting the airspace of the continental United States en route to another airport or location outside the United States. Airspace of the continental United States includes the airspace over the continental United States and the airspace overlying the territorial waters between the continental U.S. coast and 12 nautical miles from the continental U.S. coast. *Overflying the continental United States* does not apply to:

(1) Flights that transit the airspace of the continental United States between two airports or locations in the same country, where that country is Canada or Mexico; or

(2) Any other category of flights that the Assistant Secretary of Homeland Security (Transportation Security Administration) designates in writing.

Passenger means an individual who has, or seeks to obtain, a reservation for transport on a covered flight. The term *passenger* does not include:

(1) A crew member traveling on duty; or

(2) An individual with flight deck privileges under 49 CFR 1544.237 traveling on the flight deck.

Passenger Resolution Information or *PRI* means the information that a covered aircraft operator or covered airport operator transmits to TSA for an individual who TSA places in an inhibited status and from whom the covered aircraft operator or covered airport operator is required to request additional information and a Verifying Identity Document. *Passenger Resolution Information* includes, but is not limited to, the following:

(1) Covered aircraft operator's agent identification number or agent sign.

(2) Type of Verifying Identity Document presented by the passenger.

(3) The identification number on the Verifying Identity Document.

(4) Issue date of the Verifying Identity Document.

(5) Name of the governmental authority that issued the Verifying Identity Document.

(6) Physical attributes of the passenger such as height, eye color, or scars, if requested by TSA.

Passport information means the following information from an individual's passport:

(1) Passport number.

(2) Country of issuance.

(3) Expiration date.

(4) Gender.

(5) Full name.

Redress Number means the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

Secure Flight Passenger Data (SFPD). For purposes of this proposed rule, ''Secure Flight Passenger Data'' or ''SFPD'' is information regarding a passenger or non-traveling individual that a covered aircraft operator or covered airport operator transmits to TSA, to the extent available, pursuant to § 1560.101. SFPD is the following information regarding a passenger or non-traveling individual:

(1) Full name.

(2) Date of birth.

(3) Gender.

(4) Redress number or known traveler number (once implemented).

(5) Passport information.

(6) Reservation control number.

(7) Record sequence number.

(8) Record type.

(9) Passenger update indicator.

(10) Traveler reference number.

(11) Itinerary information.

Self-service kiosk means a kiosk operated by a covered aircraft operator that is capable of accepting a passenger reservation or a request for authorization to enter a sterile area from a non-traveling individual.

Sterile area means ''sterile area'' as defined in 49 CFR 1540.5.

Terrorist Screening Center or TSC means the entity established by the Attorney General to carry out Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Verifying Identity Document means an unexpired passport issued by a foreign government or an unexpired document issued by a government (Federal, State, or tribal) that includes the following information for the individual:

(1) Full name.

(2) Date of birth.

(3) Photograph of the individual.

Watch list refers to the No Fly and Selectee List components of the Terrorist Screening Database maintained by the Terrorist Screening Center. For certain flights, the ''watch list'' may include the larger set of watch lists maintained by the federal government as warranted by security considerations.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

§ 1560.101 Request for and transmission of information to TSA.

(a) *Request for information.* (1) Each covered aircraft operator must request the full name, gender, date of birth, and Redress Number for passengers on a covered flight and non-traveling individuals seeking access to an airport sterile area. The covered aircraft operator must include the information provided by the passenger in response to this request in the Secure Flight Passenger Data.

(i) Except as provided in paragraph (a)(1)(ii) of this section, each covered aircraft operator must begin requesting the information described in paragraph (a)(1) of this section 60 days after the effective date of this rule.

(ii) An aircraft operator that becomes a covered aircraft operator after the effective date must begin requesting the information on the date it becomes a covered aircraft operator.

(2) Beginning on a date no later than 30 days after being notified in writing by TSA, each covered aircraft operator must additionally request the known traveler number for passengers on a covered flight and non-traveling individuals seeking access to an airport sterile area. The covered aircraft operator must include the known traveler number provided by the passenger in response to this request in the SFPD.

(3) Each covered aircraft operator may not accept a reservation for any passenger on a covered flight who does not provide a full name. Each covered aircraft operator may not accept a request for authorization to enter a sterile area from a non-traveling individual who does not provide a full name.

(4) Each covered aircraft operator must ensure that each third party that accepts a reservation, or accepts a request for authorization to enter a sterile area, on the covered aircraft operator's behalf complies with the requirements of this section.

(b) *Transmission of Secure Flight Passenger Data to TSA.* Beginning on

the date provided in a covered aircraft operator's AOIP, the covered aircraft operator must electronically transmit Secure Flight Passenger Data (SFPD) to TSA, prior to the scheduled departure of each covered flight, in accordance with the AOIP.

(1) To the extent available, each covered aircraft operator must electronically transmit SFPD to TSA for each passenger on a covered flight.

(2) Each covered aircraft operator must transmit SFPD to TSA prior to the scheduled flight departure time, in accordance with the covered aircraft operator's AOIP.

(c) *Transmission of non-traveler information to TSA.* Beginning on the date provided in a covered aircraft operator's AOIP, the covered aircraft operator must electronically transmit SFPD to TSA for each non-traveling individual, prior to authorizing access to an airport sterile area.

(d) *Retransmission of information.* Each covered aircraft operator must retransmit to TSA updates to the information listed in paragraphs (b) and (c) of this section to reflect most recent changes to that information, as specified in the covered aircraft operator's AOIP.

§ 1560.103 Notice.

(a) *Electronic collection of information.* (1) *Current electronic collection of information.* Prior to collecting information through a Web site or self-service kiosk from a passenger or non-traveling individual to comply with § 1560.101(a), a covered aircraft operator must make available the complete privacy notice set forth in paragraph (b) of this section.

(2) *Other electronic collection of information.* If a covered aircraft operator collects information directly from a passenger or non-traveling individual to comply with § 1560.101(a) through an electronic means not described in paragraph (a)(1) of this section, the covered aircraft operator must make available the complete privacy notice set forth in paragraph (b) of this section.

(b) *Privacy notice.* The covered aircraft operator may substitute its name for the word ''us,'' but the complete privacy notice otherwise must be identical to the following paragraph unless TSA has approved alternative language:

The Transportation Security Administration requires us to collect information from you for purposes of watch list screening, under the authority of 49 U.S.C. section 114, and the Intelligence Reform and Terrorism Prevention Act of 2004. Providing this information is voluntary; however, if it is not provided, you may be subject to additional screening or denied transport or authorization to enter a sterile area. TSA may share information you provide with law enforcement or intelligence agencies or others under its published system of records notice. For more on TSA Privacy policies or to view the system of records notice and the privacy impact assessment, please see TSA's Web site at *www.tsa.gov.*

§ 1560.105 Denial of transport or sterile area access; designation for enhanced screening.

(a) *Applicability.* (1) This section applies to a covered aircraft operator beginning on the date that TSA assumes the watch list matching function for the passengers and non-traveling individuals to whom that covered aircraft operator issues a boarding pass or other authorization to enter a sterile area. TSA will provide prior written notification to the covered aircraft operator no later than 60 days before the date on which it will assume the watch list matching function from that covered aircraft operator.

(2) Prior to the date that TSA assumes the watch list matching function from a covered aircraft operator, the covered aircraft operator must comply with existing watch list matching procedures for passengers and non-traveling individuals, including denial of transport or sterile area access or designation for enhanced screening for individuals identified by the covered aircraft operator or TSA.

(b) *Watch list matching results.* A covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to a passenger or a non-traveling individual and must not allow that individual to board an aircraft or enter a sterile area, until TSA informs the covered aircraft operator of the results of watch list matching for that passenger or non-traveling individual, in response to the covered aircraft operator's most recent SFPD submission for that passenger or non-traveling individual.

(1) *Denial of boarding pass.* If TSA sends a covered aircraft operator an instruction that the passenger or non-traveling individual must be placed on inhibited status, the covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area.

(2) *Selection for enhanced screening.* If TSA sends a covered aircraft operator an instruction that the passenger or non-traveling individual has been selected for enhanced screening at a security checkpoint, the covered aircraft operator may issue a boarding pass or other authorization to enter a sterile area to that individual and must identify the individual for enhanced screening, in accordance with procedures approved by TSA. The covered aircraft operator must place a separate code on the boarding pass that meets the requirements described in the Consolidated User Guide.

(3) *Cleared for boarding or entry into a sterile area.* If TSA sends a covered aircraft operator an instruction that a passenger or non-traveling individual is cleared, the covered aircraft operator may issue a boarding pass or other authorization to enter a sterile area to that individual, unless required under another TSA requirement to identify the passenger or non-traveling individual for enhanced screening. The covered aircraft operator must place a separate code on the boarding pass that meets the requirements described in the Consolidated User Guide.

(4) *Override by a covered aircraft operator.* No covered aircraft operator may override a TSA instruction to place a passenger or non-traveling individual in an inhibited status or to identify a passenger or non-traveling individual for enhanced screening, unless explicitly authorized by TSA to do so.

(5) *Updated SFPD from covered aircraft operator.* When a covered aircraft operator sends an updated SFPD to TSA under § 1560.101(d) for a passenger or non-traveling individual for whom TSA has already issued an instruction, all previous TSA instructions concerning the passenger or non-traveling individual are voided. The covered aircraft operator may not issue a boarding pass or grant authorization to enter a sterile area until it receives an updated instruction from TSA authorizing the issuance of a boarding pass or authorization to enter a sterile area. Upon receiving an updated instruction from TSA, the covered aircraft operator must acknowledge receipt of the updated instruction, comply with the updated instruction, and disregard all previous instructions.

(6) *Updated instruction from TSA.* After TSA sends a covered aircraft operator an instruction under paragraph (b)(1), (b)(2), or (b)(3) of this section, TSA may receive additional information concerning the passenger and may send an updated instruction concerning that passenger to the covered aircraft operator. Upon receiving an updated instruction from TSA, the covered aircraft operator must acknowledge receipt of the updated instruction, comply with the updated instruction, and disregard all previous instructions.

(c) *Request for identification.* (1) *In general.* If TSA has not informed the

covered aircraft operator of the results of watch list matching for an individual by the time the individual attempts to check in, or informs the covered aircraft operator that an individual has been placed in inhibited status, the aircraft operator must request from the individual a verifying identity document.

(2) *Transmission of Updated Secure Flight Passenger Data.* Upon reviewing a passenger's verifying identity document, the covered aircraft operator must transmit the SFPD elements from the individual's verifying identity document to TSA.

(3) *Provision of Passenger Resolution Information.* If requested by TSA, the covered aircraft operator must also provide to TSA the individual's Passenger Resolution Information as specified by TSA.

(4) *Exception for minors.* If a covered aircraft operator is required to obtain information from an individual's verifying identity document under this paragraph (c), and the individual is younger than 18 years of age and does not have a verifying identity document, TSA may, on a case-by-case basis, authorize the minor or an adult accompanying the minor to state the individual's full name and date of birth in lieu of providing a verifying identity document.

(d) *Failure to obtain identification.* If a passenger or non-traveling individual does not present a verifying identity document when requested by the covered aircraft operator, in order to comply with paragraph (c) of this section, the covered aircraft operator must not issue a boarding pass or give authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area, unless otherwise authorized by TSA.

§ 1560.107 Use of watch list matching results by covered aircraft operators.

A covered aircraft operator must not use any watch list matching results provided by TSA for purposes other than those provided in § 1560.105 and security purposes.

§ 1560.109 Aircraft Operator Implementation Plan.

(a) *Content of the Aircraft Operator Implementation Plan (AOIP).* Each covered aircraft operator must adopt and carry out an AOIP that sets forth the specific means by which the covered aircraft operator will request and transmit information under § 1560.101, the timing and frequency of transmission, and any other related matters, in accordance with the Consolidated User Guide.

(b) *Submission of Aircraft Operator Implementation Plan (AOIP).* Each covered aircraft operator must submit a proposed AOIP to TSA for approval.

(1) Aircraft operators that are covered aircraft operators on the effective date of this rule must submit their proposed AOIP no later than 30 days after the effective date. Review, modification, and approval of proposed AOIPs will be conducted under paragraphs (b) and (c) of this section.

(2) An aircraft operator that becomes a covered aircraft operator after the effective date must submit a proposed AOIP as part of its proposed security program under 49 CFR 1544.105(a) or 49 CFR 1546.105(a). Review, modification, and approval of the proposed AOIP will be conducted under the procedures set forth in 49 CFR 1544.105 or 1546.105, as appropriate, rather than paragraphs (b) and (c) of this section.

(c) *Approval and implementation of Aircraft Operator Implementation Plan (AOIP).* If TSA approves a covered aircraft operator's proposed AOIP, the covered aircraft operator must implement the plan according to the schedule set forth in the AOIP and approved by TSA.

(d) *Disapproval and modification of Aircraft Operator Implementation Plan (AOIP).* (1) If TSA disapproves and orders modifications to a proposed AOIP submitted under paragraph (a)(1) of this section, TSA will provide written notice to the covered aircraft operator. The covered aircraft operator must either:

(i) Make any changes to the AOIP that TSA requests in the notice and implement the plan according to the schedule approved by TSA and set forth in the AOIP; or

(ii) Petition TSA to reconsider the modification(s) in the notice within 30 days of receiving the notice. A petition for reconsideration with supporting documentation must be filed with the designated official.

(2) The designated official, upon receipt of a petition for reconsideration and supporting documentation, may amend or withdraw the notice to modify, or transmit the petition, together with any pertinent information and supporting documentation, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice, or by affirming the notice to modify.

(3) TSA may, at its discretion, grant extensions to any schedule deadlines, on its own initiative or upon the request of a covered aircraft operator.

(e) *Incorporation Into Security Program.* Once an AOIP is approved, the AOIP becomes part of the covered aircraft operator's security program as described in 49 CFR part 1544, subpart B, or 49 CFR part 1546, subpart B, as appropriate, and any amendments will be made in accordance with the procedures in those subparts.

(f) *Handling of Aircraft Operator Implementation Plan (AOIP).* An AOIP contains sensitive security information (SSI) and must be handled and protected in accordance with 49 CFR part 1520.

§ 1560.111 Covered airport operators.

(a) *Applicability.* This section applies to a covered airport operator that has a program approved by TSA through which the covered airport operator may authorize non-traveling individuals to enter a sterile area.

(b) *Requirements.* No later than 30 days after receiving written notice from TSA, or such longer period as TSA may determine for good cause, a covered airport operator must adopt and carry out an AOIP in accordance with § 1560.109. Each covered airport operator must comply with the procedures required of covered aircraft operators in §§ 1560.101(a), (c), and (d), 1560.103, and 1560.107 of this part and any other applicable TSA requirements when authorizing non-traveling individuals to enter a sterile area.

Subpart C—Passenger Redress

§ 1560.201 Applicability.

This subpart applies to individuals who believe they have been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area, as a result of the Secure Flight program.

§ 1560.203 Representation by counsel.

A person may be represented by counsel at his or her own expense during the redress process.

§ 1560.205 Redress process.

(a) If an individual believes he or she has been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program, the individual may seek assistance through the redress process established under this section.

(b) An individual may obtain the forms and information necessary to initiate the redress process on the DHS TRIP Web site at *http://www.dhs.gov/trip* or by contacting the DHS TRIP office by mail. Written requests may be

sent to the DHS TRIP office and must include the individual's name and current address. DHS will provide the necessary documents and information to individuals through its Web site or by mail.

(c) The individual must send to the DHS TRIP office the personal information and copies of the specified identification documents. If TSA needs additional information in order to continue the redress process, TSA will so notify the individual in writing and request that additional information. The DHS TRIP office will assign the passenger a unique identifier, which TSA will recognize as the Redress Number, and the passenger may use that Redress Number in future correspondence with TSA and when making future travel reservations.

(d) TSA, in coordination with the TSC and other appropriate Federal law enforcement or intelligence agencies, if necessary, will review all the documentation and information requested from the individual, correct any erroneous information, and provide the individual with a timely written response.

§ 1560.207 Oversight of process.

The redress process and its implementation are subject to review by the Offices of the TSA and DHS Privacy Officers and the TSA and DHS Offices for Civil Rights and Civil Liberties.

Issued in Arlington, Virginia, on August 8, 2007.

Kip Hawley,

Assistant Secretary.

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