

## **Advance Passenger Information System Pre-Departure Final Rule & Secure Flight Notice of Proposed Rule Making**

The U.S. Department of Homeland Security (DHS) has announced steps to strengthen aviation security by applying uniform and consistent passenger pre-screening against government watch lists.

DHS is publishing two regulations to initiate these changes:

**Advance Passenger Information System (APIS) Pre-Departure Final Rule:** enables DHS to collect manifest information for flights to and from the United States and for vessels departing from the United States prior to boarding

**Secure Flight Notice of Proposed Rule Making (NPRM):** lays out (and provides the public with an opportunity to comment on) DHS plans to assume watch list matching responsibilities from air carriers for domestic flights and align domestic and international passenger pre-screening

### **FREQUENTLY ASKED QUESTIONS**

#### **What is the difference between APIS Pre-departure and Secure Flight?**

APIS pre-departure will enable DHS to review manifest information prior to boarding for flights to and from the United States and for vessels departing the United States.

Secure Flight is a passenger pre-screening program that would match limited passenger information against government watch lists to identify known and suspected terrorists, prevent known and suspected terrorists from boarding an aircraft, facilitate legitimate passenger air travel, all while protecting individuals' privacy.

#### **Why is the Department of Homeland Security undertaking these programs?**

Prior to 9/11, the U.S. Customs Service, now part of U.S. Customs and Border Protection (CBP), received advance passenger information from air carriers on a voluntary basis. APIS requirements were first implemented under the Aviation and Transportation Security Act (ATSA) of 2001 and the Enhanced Border Security and Visa Reform Act of 2002. As a result of 9/11 Commission recommendations, Congress mandated that CBP establish a requirement to receive advance information on international passengers traveling by air and sea, prior to their departure in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).

Also in response to the Intelligence Reform and Terrorism Prevention Act of 2004 and recommendations from the 9/11 Commission, the Transportation Security Administration (TSA) proposed the Secure Flight program to take over passenger pre-screening from airlines. Secure Flight, as envisioned in the proposed rule, would make watch list

matching more effective, efficient, and consistent, offering improvements in both security and customer service for the traveling public. TSA expects Secure Flight to add a vital layer of security to our nation's commercial air transportation system while maintaining the privacy of passenger information.

### **When will these programs begin and why has it taken so long to implement them?**

APIS is already being used by carriers; the only change resulting from the final rule will be the timing of the transmission of information. Currently, air carriers are required to transmit passenger information based on departure. The final rule requires passenger data transmission prior to "securing the doors."

On July 14, 2006, CBP published the Pre-Departure Notice of Proposed Rulemaking (NPRM) to screen passenger and crew information prior to departure. Under the new requirements, carriers could continue to provide an APIS manifest as a batch transmission or establish a link to CBP known as APIS Quick Query and provide information in a real-time basis. In either case arrival and departure data will be transmitted prior to departure. With the new interactive capability carriers will receive an automated watch list screening response to a batch transmission.

TSA is currently issuing the Secure Flight Notice of Proposed Rule Making (NPRM), which has a 60 day comment period. During this time, TSA will test the program and allow the public to comment on Secure Flight before the final program is implemented. TSA plans to begin implementation of Secure Flight in 2008 after issuing a final rule.

Initially, the program was subject to a larger debate about how to identify terrorists accurately and consistently while maintaining the individual privacy of legitimate passengers in the post 9/11 world. Once the mechanism was determined to be watch list matching, TSA committed to rebuild privacy and security into the foundation of the program.

### **How much will these programs cost?**

APIS already exists. The APIS Pre-Departure Final Rule only requires a change in the time of passenger data transmission. Air carriers will have to make system changes to accommodate this change in timing, and CBP invested in its infrastructure to receive and process that information early.

To date, TSA has spent roughly \$150 million on Secure Flight. Secure Flight used this funding to build the IT infrastructure and establish the watch list matching process.

The 2007 budget appropriated \$15 million for Secure Flight. The carry-over amount from previous budget cycles is approximately \$18 million. TSA has sufficient funds to complete the rulemaking process. Funding for implementation and the accelerated 2008 schedule will be address in upcoming budget cycles.

## **What are the benefits of these programs compared to the processes currently being used?**

The most significant benefits to initiating the APIS pre-departure and Secure Flight programs result from the government take over of the watch list matching responsibility from air carriers. From a security perspective, once these programs are implemented, DHS will no longer distribute the watch list to air carriers. DHS will also be able to more effectively and consistently perform the function – preventing certain known or suspected terrorists from boarding aircraft where they may jeopardize the lives of passengers and others. This includes the ability to institute a more agile process that can be calibrated immediately in times of elevated threat.

From the traveling public's perspective, more consistent and effective matching means fewer travelers misidentified as being on the watch list. In addition, DHS will uniformly apply the redress list (generated through DHS TRIP) to all matching.

Air carriers will also benefit as they will be relieved of the responsibility for watch list matching. In addition, uniform watch list matching conducted prior to boarding eliminates the potential for flight diversions or deplaning due to watch list concerns.

## **Why is it more effective for DHS to perform watch list matching rather than the airlines?**

DHS will be able to more effectively and consistently perform the watch list matching function than air carriers for many reasons. Most pointedly, the government is able to utilize real-time watch list information. Second, the matching will be uniformly conducted by one process with consistent results applied across airlines. Third, the system can be effectively and swiftly calibrated to meet the current threat – for example by increasing the number of potential matches that result based on an elevated threat period. Fourth, the watch lists themselves will not need to be distributed to air carriers – protecting that sensitive information. Fifth, the government will have the information sooner and will be able to coordinate an appropriate law enforcement response to potential threats. Last, redress procedures will also be uniformly applied.

## **How does watch list matching work now?**

Currently, individual airlines conduct watch list matching using a watch list provided by TSA. Because each aircraft operator conducts its own matching process, the ability to conduct watch list matching and coordinate law enforcement responses is not consistent across the aviation industry.

For international flights, CBP currently conducts watch list matching when carriers transmit data which, in almost all cases, take place after departure of the flight. With CBP's APIS Pre-Departure Final Rule, CBP will assume the function of conducting pre-departure watch list matching for international flights.

Under the Secure Flight NPRM, the Secure Flight program initially would assume the watch list matching responsibility for passengers on domestic flights from aircraft operators for pre-screening passengers against government watch lists. In a second stage of implementation, the Secure Flight program would assume the watch list matching function for passengers on international flights from CBP. TSA expects this change to be transparent to air carriers and to provide for a consistent in-house application of the process and resulting in:

- Decreased chance for compromised data
- Fair, equitable, and consistent matching process across all aircraft operators
- Expedited notification of law enforcement for confirmed matches
- Expedited and integrated redress process for misidentified passengers

### **Why does DHS need data 72 hours in advance of flight? How was that timeline determined?**

DHS is proposing 72 hours in advance for a number of reasons. First, as a result of analysis of reservation trends, 72 hours is a time at which most reservations are stable. This means that individuals have generally made their travel arrangements and flight schedules are fairly certain. This makes for more efficient processing with fewer updates. However, DHS only requires carriers to submit the information they have at that time. Second, DHS will have the operational flexibility and time needed to prioritize flights and processing based on scheduled departure times – ensuring that air carriers have results by the time travelers are able to obtain boarding passes for those flights. Third, 72 hours provides TSA with the time to engage law enforcement officials in the event that a match is made to the watch list.

### **How will the APIS and Secure Flight rules affect the individual traveler?**

Generally this change in the APIS rule should have minimal impact on the individual traveler. The rule change moves the requirement for submitting the APIS data to a time before the departure of a flight. Most travelers currently arrive at the airport approximately two hours prior to their departure, which is ample time for the carrier to gather their APIS data and submit it to Customs and Border Protection. Carriers also have the option of developing processes that will allow international travelers to provide at least the needed vetting data (full name, date of birth, gender) and potentially all APIS information at the time of reservation or some time prior to check in to assist carriers in complying with the new requirements.

Under the Secure Flight proposed rule, the most significant change would be airlines requesting limited passenger information from a passenger at the time of reservation. The Secure Flight NPRM would require airlines to ask for the following data elements when a passenger makes a reservation: full name, date of birth, gender, Redress Number, and Known Traveler Number. The rule proposes that passengers only be required to provide their full name; however, providing the additional data may help differentiate a passenger from an individual on the watch list and prevent misidentification.

Passengers can expect to be asked to provide this information to the airlines. The information will be used by DHS to help differentiate a legitimate passenger from an individual on the watch list and will help prevent misidentification.

**And how are these two programs being coordinated to minimize confusion to the airline industry to implement them?**

DHS is committed to having an integrated DHS solution for aviation pre-screening and other screening programs. For that reason, Secretary Chertoff created the Screening Coordination Office (SCO) last year. Under the guidance of the SCO, CBP and TSA have been working to align the CBP Pre-Departure requirements with the TSA Secure Flight program.

The APIS pre-departure final rule and Secure Flight NPRM and CBP and TSA operations have been coordinated. In addition, CBP and TSA prepared a Consolidated User Guide to provide operational and technical guidance for air carriers to implement the APIS Pre-Departure Final Rule (PDFR)/APIS Quick Query (AQQ) and the TSA Secure Flight proposed requirements. CBP and TSA have met with air carrier representatives to discuss the structure, content, and expectations of the Consolidated User Guide. The Consolidated User Guide will be provided to air carrier operational and technical staff for comment

**What new requirements for data collection do these rules impose on carriers?**

Carriers currently collect and transmit APIS data such as passport information. For APIS, the key change is the timing of when the information that is already being collected is transmitted.

For reference, APIS data elements include and are not limited to:

- Full Name
- Date of Birth
- Travel Document Information
- Gender
- Citizenship

While the rule does not require it, carriers have the option of developing processes that will allow international travelers to provide at least the needed vetting data (full name, date of birth, gender) and potentially all APIS information at the time of reservation or some time prior to check in. The carriers could then receive vetting results in advance and verify that at the time of passenger check in.

Under Secure Flight, air carriers would be required to provide for all passengers:

- Full Name
- Itinerary

Air carriers would be required to ask passengers for:

- Date of Birth
- Gender
- Redress Number (if available)

While some data elements would be optional for the passenger to provide, as proposed in the NPRM, it would be to the passenger's advantage to provide the requested data elements as doing so may prevent delays or inconveniences at the airport. Particularly for those individuals who are possible matches to watch lists, failure to provide the additional elements could result in inconvenience.

TSA is requesting comment on the data elements through the rulemaking process to determine whether date of birth and gender should be mandatory data elements, and will consider all comments received. TSA will not collect or use commercial data to conduct Secure Flight watch list matching.

### **What traveler data will Secure Flight use?**

Secure Flight will use the limited passenger information needed to conduct watch list matching. Under the proposed rule, air carriers would be required to provide full name and itinerary for each passenger. Air carriers would be required to ask for date of birth and gender and provide it to TSA if collected. Secure Flight does NOT assign a score to individuals, use commercial data, or predict behavior.

### **What are the options that a carrier has in submitting passengers APIS data?**

There are two options:

- APIS batch, known as APIS 30, can be used to send a large number of passengers' APIS data, at one time, and have the CBP process respond with a vetting result for all names.
- APIS Quick Query (AQQ), or APIS interactive, provides an immediate response from the CBP system for a single name, or up to 10 names at one time.

Carriers will have the opportunity to employ one or both of these options, depending on the complexity of their systems.

### **Will these programs help get my name off the No Fly List?**

If a passenger is permitted to board the flight, their name is not on the No-Fly list. Today carriers must notify TSA of watch list matches. TSA coordinates law enforcement response based on each individual case.

The government is working to ensure the integrity of the watch list process and continues to make improvements. For example, in February 2007, the Terrorist Screening Center (TSC) and TSA completed a name-by-name review of the No Fly list. Individuals that are no longer deemed to pose a threat to aviation were removed or downgraded to Selectee status, resulting in 50 percent reduction of names on the No Fly list.

However, for those passengers who believe they have been placed on the No-Fly list erroneously, DHS's Travel Redress Inquiry Program (DHS TRIP) provides a single portal for travelers to seek redress for adverse screening experiences and to resolve possible watch list misidentification issues. For example, travelers may seek redress because they have been delayed or denied boarding, delayed or denied entry into the U.S. at a port of entry; or been subject to additional (secondary) screening or inspection. The overwhelming majority of individuals who submit redress requests are those who have been misidentified. Secure Flight implementation will assist in reducing these cases.

It is important to understand that travelers may be referred for additional screening or inspection for reasons other than information in law enforcement databases, such as the circumstances of their travel or random selection. Individuals who receive redress through DHS TRIP may still be referred for additional screening for unrelated reasons in the future.

### **How will these programs identify people against the No Fly List?**

Currently, air carriers have varying systems and methods by which they accomplish the watch list matching requirements, based on information submitted by passengers at the time of reservation. DHS is taking over this responsibility for international passengers and, under Secure Flight, proposes to take over domestic watch list matching. Government conducting the watch list process will apply consistent and uniform name matching to all flights.

### **Is the privacy of travelers being adequately addressed by the programs?**

Ensuring the privacy of individuals is a cornerstone of both of these programs.

Both APIS and Secure Flight have developed comprehensive privacy plans to incorporate privacy laws and practices into all areas of the program, and to maximize individual privacy.

APIS will collect the minimum amount of data necessary to facilitate travel into or out of the United States. TSA plans to collect the minimum amount of personal information necessary to conduct effective watch list matching.

Secure Flight is a watch list matching program. Minimal personal data is needed to conduct the check. If additional, voluntary, personal data is provided it will greatly decrease the chance of an individual being misidentified.

APIS and Secure Flight are publishing Privacy Impact Assessments (PIA) and System of Records Notices (SORN) to provide detailed information about the programs privacy approach in conjunction with the Final Rule and the NPRM, respectively.

**What about passengers who believe they have been improperly or unfairly delayed or prohibited from boarding an aircraft as a result of the Secure Flight program?**

TSA will work with the passenger through the DHS Traveler Redress Inquiry Program (TRIP), the DHS one-stop shop for traveler redress. DHS TRIP provides a single portal for travelers to seek redress for adverse screening experiences and to resolve possible watch list misidentification issues. For example, travelers may seek redress because they have been delayed or denied boarding, delayed or denied entry into the U.S. at a port of entry; or been subject to additional (secondary) screening or inspection.

**How do the Secure Flight NPRM and the APIS Pre-Departure Final Rule relate to the recently signed EU/PNR Agreement?**

The APIS Pre-Departure Final Rule is not related to the recent announcement of an agreement between the United States and the E.U. regarding PNR data sharing.

The Secure Flight NPRM requires the collection of limited data elements by the airlines for the purpose of watch list matching. Secure Flight Passenger Data differs from PNR in that it is not commercial data but, like APIS, is information collected pursuant to a government security mandate. Although SFPD is not defined as PNR data, this data will be treated by DHS consistent with the terms of the recently signed EU/PNR Agreement.