

## Position Paper

19 November 2007

### AEA Comments on the NPRM for Secure Flight Programme

The Association of European Airlines (AEA) brings together 31 European established service and scheduled network carriers. AEA members have the highest passenger volumes and largest traffic shares in air transport between Europe and the United States. The Notice of Proposed Rule-making (NPRM) on Secure Flight published by TSA in August raises significant concerns for airlines operating in the US regarding overall coordination of US legal requirements for passenger data.

Secure Flight requirements, as detailed in the NPRM, differ significantly from the ones set for APIS Pre-departure. Secure Flight and APIS Pre-departure present several discrepancies in terms of scope, data elements, and transmission timeframe. These differences will certainly cause delays in implementation and increase redundant procedures for airlines, as well as additional annoyance for passengers.

AEA supports the proposed shift of responsibility for passenger watch list matching from the air carriers to DHS, as well as the creation of a "single window" portal for passenger data submission to DHS. AEA however deeply regrets the triplication of data submission implied by this proposal, ie, Push/pull PNR, watch list checks by carriers, H-72 passenger manifest push, between H-72 and H-24 another list of updates passenger list and finally APIS AQQ. This triplication as well as the clear extraterritorial impact of several measures proposed by the NPRM Secure Flight raises several concerns for AEA members, which are detailed below.

#### 1) Scope

The inclusion of over-flights in the programme does lack an international legal foundation (for example for the cases in which passengers are supposed to be excluded from flights due to the fact that they are "No Fly Passengers") and would imply that airlines will have to collect passenger data for routes where this was not the case before, like Canada, but also for the numerous flights crossing US airspace, like flights from Europe to the Caribbean and to Central America. This will imply costly system changes and additional information efforts for passengers over-flying the US. AEA would also like to draw the attention of TSA to the fact that airlines would also have to transmit data for passengers twice in case the destination country is also requiring API data. This double submission will be burdensome and might be impracticable if vetting responses differs.

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AEA would also seek confirmation from TSA that all airlines over flying US territory will be submitted to the same requirements irrespective of their nationality.

**2) Data elements**

Some of the Secure Flight Passenger Data as detailed in the NPRM are neither standard nor known to the air carriers. They are not included in the APIS pre-departure or in the UN-EDIFACT standards (not even in the future version). This would request costly changes in the IT system currently developed for the AQQ pre-departure APIS, but also re-opening negotiation of standards at international level, which is completely unrealistic. Moreover, the data required by CBP should be sufficient to allow for TSA vetting. AEA would therefore urge TSA to use APIS and/or PNR data requirements for Secure Flight Passenger Data (SFPD) exclusively.

**3) 72-hours requirement**

The main information available 72-hours prior to departure are the PNR data extracted from the reservation system and the Departure Control System (DCS). This information is already provided to CBP 72-hours prior to departure and several times after, which should be sufficient for TSA to extract the SFPD.

The NPRM also suggests that the full name of passengers be transmitted from the reservation system. However bookings are received from numerous reservation systems which do not use the same format for the name field. Harmonising these systems would be irrelevant for security purposes. In addition, a response to a message 72-hour prior to departure could also only be stored in the reservation systems (provided such functionality exists or is developed) and not in the DCS, where it could be used to inhibit boarding pass production. AEA therefore suggests that passengers' full name should be provided for vetting purposes as part of the APIS data, which are mainly collected at check-in.

AEA would also like to stress that the interdiction to issue boarding passes 24 hours before boarding does not make sense from a security perspective. The issuance of boarding passes is part of a business process, on which TSA should not interfere as long as the security requirements are met.

**Non-travellers**

Airlines do not possess data for non-travelling individuals and do not have a legal basis to collect such data. In any case, responsibility for controlling the access to security restricted areas and collecting data for non-travellers lies with the immigration or airport authorities and not with the airlines.

TSA should also be aware that at airports outside of the US, numerous carriers do not operate any flights to the US. Providing data to TSA for all non-travelling individuals that need to enter the sterile area of these airports is fully unjustified.

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### 5) Vetting

CBP is planning to provide a real time response for watchlist vetting within 4 second via an automated system, through individual AQQ transmission. TSA would now only be able to provide a response within 24 hours. AEA would seek further clarification on this difference. It is AEA view that TSA should be able to use the same system as CBP.

AQQ also allows vetting requests to be submitted up to departure, whereas the NPRM requests the data to be transmitted 30 minutes prior to departure. Again, Secure Flight should be based on the AQQ systems. AEA would also welcome additional clarification on this discrepancy.

### 6) Outage Procedures

The NPRM suggests that if the outage is for a long period of time then operators should revert to their internal watch list checking systems. This is not a realistic option as carriers will not keep any internal checking systems once vetting is transferred back to TSA. In addition, for outages under 30 minutes it is advised that airlines can provide data verbally in order to receive passenger clearance. This option in our view does not take into consideration the magnitude of the data that would have to be orally provided and cannot be seriously considered as viable.

### 7) Verification of identity documents

The NPRM foresees that identity documents are verified at the check-in counter before issuing a boarding pass and entering a sterile area. This measure would prevent through check of international passenger, as well as the use of internet check-in with home printed boarding passes and electronic boarding passes (in the form of a message on the passenger's mobile phone), which are increasingly introduced by airlines. Verification of identification document should therefore be allowed at any point before boarding.

AEA would like to remind TSA that the issuance of a boarding pass is part of a business process and does not give free access to planes. It merely gives the passenger the possibility to proceed to the boarding gate where, in all cases, his pass is controlled both automatically by the Departure Control System and by staff prior to effective boarding of the aircraft.

The NPRM also proposes placing codes on boarding passes. The purpose for introducing such codes does not appear clearly in the NPRM. AEA would question the relevance of this measure, especially as industry standards already exist for bar codes on boarding passes, which can carry a very limited number of data.

### 8) Connecting passengers

Under the proposed rule, air carrier operating an inbound flight would not be able to issue a boarding pass for the connecting flight before SFPD data are collected. For many connecting passenger, this cannot be done until they reach the transfer area. The purpose of the Secure Flight programme is to prevent suspected terrorists from

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boarding. CBP already allows the air carrier operating the inbound flight to issue a boarding pass as long as the carrier to the US takes full responsibility for collecting all APIS data and perform AQQ. It should therefore be possible to provide APIS data at the departure gate for connecting passengers already in possession of a boarding pass. Again, a boarding pass does not give free access to aircraft.

**9) Requirement for physical description of passengers**

The requirement for physical description is not foreseen in any airline message. Not only that the description needs personal interaction but this is also a condition which cannot be performed in an objective and comprehensible way.

**10) Data privacy**

For the sake of transparency, DHS should publish a clear statement regarding its requirement for the airlines to 'participate' in the Secure Flight programme. In line with airlines' obligation (art. 29 WP) to inform passengers regarding the disclosure of their data to the US Government, air carriers must be able to refer to this statement, to respond to passengers' enquiries about the use of their personal data by US-DHS and its departments.

Retention of SFPD (of up to 99 years) should be consistent with both EU and US data privacy rules. The fact that carriers should also provide data for passengers who have no intention entering the US raises also several concerns. Passengers' rights to access and correct records containing information about them may be diminished due to the exemption of portions of Secure Flight from the provisions of US Privacy Act.

TSA is invited to note that some carriers might also not be allowed to collect and transmit data for these passengers according to their national data privacy laws. AEA suggests that these issues should be extensively discussed with the appropriate European Authorities.

**11) Time for implementation**

NPRM foresees implementation of the Secure Flight programme 60 days after publication of a final rule. This is certainly not achievable, considering the present imprecision of the system proposed. A minimum of 180 days should be required provided no additional requirements are imposed on airlines. The same timeframe should be used for the implementation of any new functionality, like the introduction of the known traveller number in the DCS systems.

AEA welcomes the opportunity to provide initial comments on the NPRM published in August, and calls upon the TSA to significantly reconsider the programme proposed. Secure Flight programme need to be developed on the basis of the APIS systems and not in parallel. AEA and its members are deeply committed to working together with TSA and DHS in order to guarantee the highest level of security for air transport and is looking forward to a constructive dialogue.