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U.S. Department of Transportation
Docket Operations, M-30, Ground Floor
Room W12-140
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Re: Notice of Proposed Rulemaking (NPRM) for Secure Flight Program

The Airports Council International-North America (ACI-NA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) regarding implementation of the Secure Flight Program. ACI-NA member airports enplane more than 95 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America.

ACI-NA and its members are committed to working with the Transportation Security Administration (TSA) and the Department of Homeland Security (DHS) to protect the public and ensure our nation's aviation system is secure.

As the aviation industry—airports, airlines, and other stakeholders—continue to work with TSA and DHS to enhance our security system and stay ahead of the ever evolving terrorist threat, it is critical that any proposed change, such as Secure Flight, be reviewed and eventually integrated with our overall aviation security regime in mind. This will help ensure that limited resources are directed in the most effective and efficient manner possible as part of a risk-based security system.

ACI-NA supports the objective of Secure Flight to better focus enhanced passenger screening efforts on individuals that are likely to pose a threat to civil aviation. Secure

Flight as proposed, however, has several issues that must be resolved before the most effective and efficient program can be implemented.

GENERAL APPLICATION OF THE SECURE FLIGHT PROGRAM

The NPRM states that the Secure Flight Program applies only to passengers and non-travelers that are either an individual escorting a minor who is a passenger or a passenger with disabilities. ACI-NA would affirmatively restate and endorse this application.

Also, as stated in the NPRM, ACI-NA would affirmatively restate and endorse that a non-traveling individual does not include employees or agents of airport or aircraft operators.

Additionally, as stated in the NPRM, ACI-NA would affirmatively restate and endorse that a non-traveling individual does not include other individuals whose access to a sterile area is governed by another TSA regulation or Security Directive. Therefore, for example, the Secure Flight Program would not apply where airports are granted authority to allow individuals into a sterile area as defined in Security Directive 1542-06-01D (November 9, 2006).

Concerning the definition of non-traveler as it applies to a minor, the NPRM states that the Secure Flight Program applies to "...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..." To ensure there is no confusion with this definition, ACI-NA would suggest that the language be amended as follows: "escort a minor *that is a passenger* or a passenger with disabilities."

APPLICATION OF THE SECURE FLIGHT PROGRAM TO AIRPORTS

While airports will not be responsible for implementing the Secure Flight Program (unless an airport determines they want to participate) their responsibilities in assisting airlines in their operations will impact the airport and require changes to airport infrastructure that must be accounted for in determining the implementation cost and schedule.

Some airports, for example, provide reservation and passenger data information transmission for affected aircraft operators. The airport, by performing this service, is not responsible for Secure Flight Program requirements. The airport, however, will likely have to modify its data system to accommodate the information that is being exchanged between the airline under its Secure Flight Aircraft Operator Implementation Plan (AOIP) and the TSA. As a result, the 60-day implementation timeframe for affected aircraft operators to begin requesting information is inadequate. ACI-NA would suggest that implementation be required 120 days after completion of the Consolidated User Guide. This is necessary to successfully accommodate what will be a complex processing system, with additional complexity resulting from those situations where affected aircraft operators will rely on airport systems for processing.

ACI-NA would suggest that TSA clarify when Secure Flight Program implementation would begin for non-traveler vetting. The NPRM does not specifically address this important issue. It would be reasonable to begin such non-traveler vetting simultaneously with respective domestic and international passenger vetting under the implementation framework.

The NPRM information for those airports that choose to participate in the Secure Flight Program also needs to be clarified. Specifically, the NPRM does not provide an adequate timeline regarding when TSA will respond to an airport's request to participate. The NPRM states only that the TSA is to respond, but does not provide a specific response deadline. ACI-NA would suggest that TSA respond to a request to participate from an airport within 30 days of the request being submitted to TSA.

Regarding the Secure Flight AOIP that would govern a participating airport, ACI-NA suggests that the proposed Secure Flight Program be amended to allow an airport, at its discretion, to develop its own AOIP, rather than to adopt the AOIP of an affected aircraft operator. There are several reasons for this, including that airline plans do not address the particular data systems at the airport as well as the fact that since an airport would likely be providing the service for a number of aircraft operators it would be difficult to adopt one specific airline's plan.

SECURE FLIGHT IMPLEMENTATION CONCERNS

ACI-NA and its member airports strongly support and want to assist as appropriate the affected aircraft operators in the implementation of the Secure Flight Program. Airports have a desire to ensure secure and safe air service while simultaneously accommodating the traveling public in as efficient a manner as is reasonably feasible.

A seamless and efficient Secure Flight Program will be viewed by passengers as contributing to a secure aviation system. ACI-NA would also note that both the positive experiences that travelers will encounter as well as the negative experiences will reflect not only on TSA, but also the airlines, and airports together as partners in aviation security. Therefore, it is important that the program be well coordinated throughout the implementation process.

To ensure effectiveness and efficiency, there should be common information collection and transmission requirements for the Secure Flight and Advance Passenger Information System pre-departure programs. At this point, there is no "harmonized" solution to passenger data requirements and the Consolidated User Guide is not yet completed. These components are necessary to ensure a successful program.

The Secure Flight Program, if not implemented correctly, will introduce unnecessary complexity to the passenger experience in several areas. First, the proposed requirements could complicate passenger processing, potentially causing delays and increasing costs. Passengers, for example, who have already been vetted or who will be subject to

evaluation by U.S. Customs and Border Protection should not have to undergo additional vetting because of ticket change or travel on a multiple segment international journey. Also, it is unclear what the benefits would be to adding a code-reading device that would, besides reading the Secure Flight code, also communicate with the Secure Flight program. This appears duplicative. Additionally, there is no apparent electronic channel for collecting and transmitting a physical description of a passenger. Lastly, to maximize usefulness of the proposed category of Known Travelers, TSA should add airport and airline employees that have been subject to a TSA-administered Security Threat Assessment and individuals with secret or higher security clearances to the Known Traveler registry.

Second, the Secure Flight Program, as a precondition for air travel, could become a bottleneck for travelers. ACI-NA is concerned, for example, whether TSA will be able to accommodate in a timely way the processing of the high volume of data generated. TSA must more fully describe how it will accommodate *its* Secure Flight requirements. ACI-NA would note that when TSA implemented on October 1, 2007, Security Threat Assessments for individuals working at airports that significant technical problems were encountered that delayed processing. This process vets far fewer individuals than the millions of individuals that will be processed daily under Secure Flight. It is incumbent on TSA and the industry to ensure that the Secure Flight Program will work as intended in an efficient manner and that the aviation system will not be brought “to its knees” because of technical processing problems *unrelated to security*.

To this end, TSA should establish a standard to measure the adequacy of Secure Flight performance, most notably response times. What TSA and the stakeholders regard as acceptable performance must be clear before the Secure Flight Program is implemented. It must also be clear that this performance standard can be immediately met upon implementation of the program.

To further ensure success, TSA should provide complete information on the contingency measures that will be implemented in the event of a Secure Flight Program system outage. Even with technical redundancy in other sophisticated technical aviation systems such as the air traffic system and airline reservation systems, for example, problems do arise from time-to-time. Because Secure Flight is a security system and concerns exist about who is flying, if the system goes down the air travel network will be unable to operate.

It is important that Secure Flight Program implementation be “right the first time.” Ensuring efficient and effective implementation is more important than meeting arbitrary timeframes. ACI-NA appreciates the need to put the Secure Flight Program in place as soon as reasonably feasible. It makes no sense, however, to implement the program if it is not going to work. All stakeholders, TSA, airlines, airports, other aviation businesses, and most importantly the flying public whom we are protecting want Secure Flight to be successful; so extensive testing must be done and realistic implementation timeframes set.

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The proposed implementation schedules are unrealistic. Airlines will not be able to determine if they can meet the various proposed deadlines until the Secure Flight rule is final and a Consolidated User Guide is complete. Also, the proposed implementation deadlines must be adjusted to reflect this need for a Consolidated User Guide.

Third, TSA should harmonize its proposed Secure Flight requirements with certain international principles. Otherwise, U.S. airlines will be subject to inconsistent or retaliatory demands of foreign governments.

Among the changes that TSA should make include a uniform privacy notice for Secure Flight that would meet the various country or agency specific privacy notice requirements. The current Secure Flight privacy notice does not meet these requirements.

Also, in keeping with Chicago Convention principles, a more thorough legal analysis is needed regarding the proposed requirement to vet passengers on foreign carrier overflights of the U.S. This is an extremely sensitive foreign relations matter that could derail the success of the Secure Flight Program if not handled appropriately. ACI-NA would note that the U.S. Government has worked extensively to develop a special security relationship with Canada and Mexico that Secure Flight appears not to incorporate or recognize.

Additionally, the U.S. Government should confirm with the European Union whether the proposal to retain "confirmed matches" for 99 years under the Secure Flight Program is acceptable in light of the recent European Union/United States Passenger Name Record Agreement.

COMMENTS FILED BY THE ATA, ACAA and NACA

ACI-NA endorses the comments on the Secure Flight Program submitted by the Air Transport Association (ATA), the Air Carrier Association of America (ACAA) and the National Air Carrier Association (NACA).

Respectfully submitted,



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