

BEFORE THE
DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION PUBLIC MEETING

ON

PROPOSED RULE FOR
CERTIFICATION OF SCREENING COMPANIES

Docket No. FAA-1999-6673 - 12

Friday, March 10, 2000

Federal Aviation Administration Auditorium
800 Independence Avenue, S.W.
Washington, D.C. 20590

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I N D E X

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<u>OPENING REMARKS:</u>	<u>PAGE::</u>
IDA M. KLEPPER	3
 <u>PUBLIC PRESENTATIONS:</u>	
DANIEL DI GIUSTO AHL Services	7
TOM VAIDEN ITS	12
DICK DOUBRAVA Air Transport Association	25
NORM NELIGAN Qantas	59
 <u>CLOSING REMARKS:</u>	
IDA M. KLEPPER	61

1 P R O C E E D I N G S

2 (9:00 a.m.)

3 MS. KLEPPER: Good morning, ladies and
4 gentlemen. My name is Ida Klepper and I'd like to
5 welcome all of you to this public meeting this morning.
6 The purpose of the meeting is to solicit comments on the
7 Proposed Rule on the Certification of Screening
8 Companies.

9 I'd like to first introduce the FAA Panel
10 Members and then go over the meeting procedures. At the
11 end of the table is Mr. David Teitelbaum, Economist,
12 Office of Aviation Policy & Plans. Next is Mardi
13 Thompson, Senior Attorney, Regulations Division, Office
14 of the Chief Counsel.

15 Next is Scott Cummings, Civil Aviation Security
16 Specialist, Civil Aviation Security Division, Office of
17 Civil Aviation Security Policy & Planning. Next to
18 Mr. Cummings is Karl Shrum, Manager of the Civil Aviation
19 Security Division, Office of Civil Aviation Security
20 Policy & Planning.

21 Again, my name is Ida Klepper, I'm the Manager
22 of the Airmen & Airspace Rules Division of the Office of
23 Rulemaking here at the FAA and I'll be serving as the
24 Program Facilitator.

25 The Panel Members are here to listen to the

1 presentations by the members of the public and to ask the
2 presenters questions for clarification, if needed. A
3 court reporter will prepare a verbatim transcript of the
4 meeting. Copies of the complete transcript will be
5 available after March 22 and can be ordered directly from
6 the court reporter. A copy of the transcript will also
7 be placed in the official public docket.

8 Ordering information is available at the
9 registration table. Other documents that are available
10 at the registration table include the Notice of Proposed
11 Rulemaking on the Certification of Screening Companies,
12 *The Federal Register* notice announcing this meeting, the
13 agenda for this meeting and a general information sheet.

14 Two additional public meetings are being
15 scheduled to be held in early April. One will be held in
16 San Francisco, California on April 4 and the last will be
17 held in Fort Worth, Texas on April 6. In addition, we do
18 anticipate extending the comment period until May 4. A
19 notice announcing those public meetings and extending the
20 comment period will be published in *The Federal Register*
21 shortly.

22 This meeting is open on a space available basis
23 to each person that registers at the door. An attendee
24 list will be prepared and placed in the docket, so if you
25 haven't registered, please do so before you leave today.

1 We request that anyone who wishes to make a
2 presentation please inform the staff at the registration
3 table and we'll add your name to the agenda. Speakers
4 are cautioned to limit their comments to issues directly
5 pertaining to the Certification of Screening Companies
6 Notice of Proposed Rulemaking and to the draft Regulatory
7 Evaluation associated with that rulemaking.

8 Because these proceedings are conducted in a
9 public forum, sensitive security information pertaining
10 to air carrier and airport security programs cannot be
11 discussed at this meeting. If you would like to make
12 comments that include or reference national security
13 information or sensitive security information, you should
14 send those comments to the following address: The Federal
15 Aviation Administration, Office of Civil Aviation
16 Security Operations, Attention FAA Security Control
17 Point, Docket No. FAA-1999-6673, 800 Independence Avenue,
18 S.W., Washington, D.C. 20591.

19 You may also contact Scott Cummings in the
20 Office of Civil Aviation Security Policy & Planning.
21 Scott's number is (202) 267-9468, and he'll be able to
22 provide you guidance and procedures for submitting that
23 type of information.

24 Now let me summarize the format and procedures
25 for this meeting. I'll call on each speaker in the order:

1 that they've signed up on the agenda. If I call on a
2 speaker and the speaker is not here, I will go on to the
3 next speaker. Periodically I will go back over the
4 agenda and see if the absent speaker has arrived.

5 Each speaker will then present his or her
6 information at the podium. After each presentation,
7 members of the panel may have some follow up questions.
8 Their questions are intended to clarify or to focus on
9 particular elements or concepts expressed in a
10 presentation and to offer you a further opportunity to
11 elaborate on those areas. Questions are not intended to
12 be a cross-examination. In the event that questions are
13 beyond clarification, I will exercise the prerogative of
14 the Chair and interrupt.

15 Comments, questions or statements made by the
16 panel members are not intended to be and should not be
17 considered a position of the FAA. You're reminded that
18 issues other than those dealing with the Proposed Rule
19 are not under consideration during this meeting. I will
20 terminate all discussions that are not fruitful and we
21 will then move on to the next speaker.

22 If anyone wishes to make additional written
23 comments, either on the Proposed Rule or the draft
24 Regulatory Evaluation, please submit those comments to
25 Docket No. FAA-1999-6673. The docket will remain open

1 for comments until May 4, 2000.

2 At this time, I'd like to go to our agenda of
3 speakers this morning. So far we have three scheduled
4 speakers. They are Mr. Daniel Di Giusto, Mr. Tom Vaider.
5 and Dick Doubrava. I'll call on our first scheduled
6 speaker, Mr. Daniel Di Giusto, with AHL Services.

7 MR. DI GIUSTO: Thank you for the opportunity
8 to address the panel. The understanding, as a supplier,
9 that we have of today's proceedings is that the NPRM is a
10 derivative of the Federal Aviation Reauthorization Act of
11 1996 and the subject that we're going to address today is
12 designed to improve the screening of passengers,
13 property, checked baggage, cargo and to provide standards
14 for consistent high performance and increased screening
15 company accountability.

16 If I could summarize, the purpose of the
17 certification is to enhance the safety and security of
18 people, facilities and equipment. The goal, I believe
19 both today and moving forward, is to establish
20 uniformity, which is the NPRM that we have at hand,
21 clarity, and I'm sure that questions are going to come
22 out of today's meeting, and ultimately, it's going to
23 lead to functional application of the NPRM.

24 From an industry review perspective, I believe
25 that there has been a partnership between the air

1 carriers, the FAA and the service providers. That has
2 been the path that we've taken over the past I believe 26
3 years.

4 The question that I would like to pose today is
5 who owns the certification process. Within 65 FR 506 it
6 indicates that the certification is the purview of the
7 FAA. As we speak, as we're in this room today, various
8 municipalities and airport authorities have and are in
9 the process of enacting local certification processes.

10 As a partner and as a provider, that poses a
11 concern to the process at hand in that as I view the
12 current NPRM, the full implementation date is 1 January
13 of 2002. The concern is how many certification processes
14 at the local level will be in place by that point in
15 **time.** Will we enter a period of administrative focus and
16 the associated administrative burden of multiple
17 certification processes?

18 Viewing this from a big picture partnership
19 perspective, will multiple certifications enhance the
20 partnership that has been established between the FAA,
21 the air carriers and the screening providers? Will
22 multiple certifications enhance uniformity? Will
23 multiple certifications clarify uniformity? Will
24 multiple certifications enhance the actual functional
25 application on a moving forward basis?

1 The concern that I have and the question that I
2 have is what is the interplay between the local
3 initiatives that are already at hand and the NPRM that
4 we're here to consider today. From a partnership
5 standpoint, we believe that it is a confusing situation,
6 and getting back to my opening comments, I believe that
7 we need some clarity on that matter. Thank you.

8 MS. KLEPPER: Thank you, Mr. Di Giusto. Would
9 you wait for a just a moment, please, and let me make
10 sure -- are there questions or comments from --

11 MS. THOMPSON: I would appreciate it if we
12 could be given any information you have on local
13 ordinances that are coming up, either in place or in the
14 works. we only know of a few or I only know of a few.

15 MR. DI GIUSTO: All right.

16 MS. THOMPSON: I'd appreciate that. Thank you.

17 MR. DI GIUSTO: Okay.

18 MR. SHRUM: From what I gather, the essence of
19 your question is whether or not this Rule in and of
20 itself would inherently preempt any state or local
21 requirements?

22 MR. DI GIUSTO: Ultimately, that is my question.

23 MS. THOMPSON: We do have one case, Huntley nut
24 of Alabama, I think it was, where a district judge, a
25 federal district judge, did rule that the State of

1 Alabama could not add additional requirements to the
2 screener requirements imposed by the FAA. Now, that's
3 not legally binding throughout the country, but it does
4 seem to be consistent with the case law on preemption.

5 I'm dancing around this because preemption is a
6 very complicated topic and I'm not going to sit and give
7 a verbal interpretation right here, but I think the case
8 law at this point is in favor of saying that the federal
9 government would preempt all screener certification.

10 MR. DI GIUSTO: I hear what you're saying and
11 typically, the -- I'm not a jurist, so I'm not familiar
12 with all the exact lingo, but typically that has been
13 viewed on a landmark basis. My question, boiling it down
14 to its essence, is if full implementation of the NPRM
15 does not transpire until 1 January 2002 and there has
16 been local initiatives that have been implemented to the
17 full roll-out of the NPRM, to me that is a somewhat
18 inverse situation from what you've described on a
19 landmark basis.

20 MS. THOMPSON: I understand it puts you in a
21 difficult situation. That's why I would like to see
22 these statutes now. It may be that the FAA should do
23 something now in the preemption department, before we
24 actually get to a final Rule.

25 MR. DI GIUSTO: Ultimately, the question is are

1 we going to spend time and manhours focusing on
2 administration and not focusing on the issue at hand,
3 which is the enhanced safety and security of the
4 passengers, facilities and equipment. If that's the
5 goal, I don't know that anyone in this room is going to
6 argue against the ultimate goal.

7 But if we're going to become burdened by
8 administration in the attainment of that goal, will it
9 mitigate our attainment of the goal?

10 MS. THOMPSON: I understand the question, it's
11 a good question. Karl?

12 MR. SHRUM: Maybe I can add another dimension
13 to this in that in terms of statutory requirements to
14 conduct screening responsibility laid upon the air
15 carrier and/or its agent, so on and so forth, I don't see
16 state and local governments dictating the proper
17 procedure for resolving a metal detector alarm.

18 On the other hand, where we have a situation,
19 for example, where the local jurisdiction says that if
20 you are an airport security screener, you're also to be
21 qualified as a security guard under state licensing
22 requirements for example, I think our concern would be
23 that this isn't necessarily a conflict and may well in
24 fact be an enhancement to the security work force.

25 So I think we need to narrow it down to what is

1 within the realm of say equipment and procedures under
2 this Security Rule as opposed to other shall we say
3 ancillary requirements that might be imposed by other
4 jurisdictions.

5 MR. DI GIUSTO: I understand. The area of my
6 concern is primarily focused on the area of training.
7 The NPRM in and of itself doesn't address that
8 confidential materials go into that specifically, but
9 some of the local initiatives are going into training
10 requirements, et cetera, et cetera, et cetera, which in
11 that they've been enacted today, to our perspective, are
12 predicated on current requirements and will actually be
13 outdated. But even though they may be outdated, on 1
14 January 2002 would actually be preexisting the
15 implementation of the NPRM, so that certainly leaves an
16 arena for confusion from an actual application
17 perspective.

18 MS. THOMPSON: I agree. We're going to have to
19 take a look at that and see if there's something the FAA
20 should be doing right now in that regard. I appreciate
21 you bringing that to our attention.

22 MS. KLEPPER: Okay. Thank you. Our next
23 scheduled speaker is Tom Vaiden with ITS.

24 MR. VAIDEN: Good morning, and we too thank you
25 for the opportunity. Our approach is going to be just a

1 tad different, if we may, and that is that as we have
2 read through this, it is clear to us that there are a
3 number of areas not to be questioned, but a number of
4 areas that we, and we believe the airlines, would need
5 some clarity on just so we know how to build this as we
6 go forward.

7 It is our intention at ITS to offer a rather
8 comprehensive series of questions and thoughts in the
9 written report that we will provide to you and our
10 purpose this morning actually was to do nothing more than
11 maybe offer some thoughts of some specific points, all of
12 which will be included in our written report, but an idea
13 of the types of things that are at this point on our mind
14 as we go forward. I will draw from the report with some
15 specificity as to some technical items that we're
16 concerned about.

17 I would submit to you that the turn over within
18 our industry is significant. It is absolutely
19 overwhelming. We don't always have the good luck of
20 having our employees give us the notice that one might
21 require, rather we find ourselves on a day-to-day basis
22 wondering exactly where we stand, in terms of our
23 staffing in the airports.

24 With that thought in mind, when we do hire, our
25 goal and an absolute mandate to us from the carriers is

1 that we move as quickly as possible to provide the
2 necessary and the required training to these folks. If
3 we interpret the guidelines and the certification process
4 correctly, it seems to indicate to us that going forward
5 it would be necessary that all of the background checks,
6 including the drug screening, et cetera, be completed in
7 totality before we could submit these people for any
8 training.

9 This is a time frame that is absolutely
10 critical to us. We would simply ask that that point be
11 revisited and if there's any relief that can be offered
12 in that category, it would certainly be advantageous to
13 the process from our perspective.

14 Training and testing is paramount to us, in
15 terms of importance. What we have done in the past is we
16 have utilized any portion of a day that is available to
17 us to provide that necessary training. This often
18 includes late night hours. This is out of necessity, in
19 that the airports are at their low point during their
20 night hours.

21 We find reference in the criteria that would
22 suggest that when we test following the training, an
23 airline person must be available. We would ask that that
24 be looked at and our reasoning is that all too often when
25 our testing is being done, there may or may not be

1 airline folks available to us.

2 There's a question of dissemination of
3 information. In the past, the airline has been obviously
4 the responsible party and we have simply been the
5 provider of service, not to excuse us from the
6 liabilities involved, but the airline was the primary.

7 The way the proposal is now constructed, it
8 would seem to indicate that we are equal in that regard
9 and what we would ask the Chair and the committee to do
10 is look at including the provider of service as an equal
11 party in the dissemination of information from the FAA as
12 opposed to the old system of providing it to the carrier,
13 with it then, if you will, downloaded to us.

14 There is a portion of the document that refers
15 to our training program having the need to include
16 training in the disabilities and civil rights area. We
17 would simply ask for clarification on the point and we
18 would also ask for your help and your guidance in
19 providing to us what you now have through the American
20 Disabilities Act, as well as the laws that govern civil
21 rights so that we will have a clear understanding of what
22 is expected of us and I would even be so presumptuous as
23 to ask that if written material now exists on either of
24 those categories, that that be made available to us so
25 that we can use the same language in our training

process.

2 My company, fortunately, is the largest
3 provider of **pre-board** screening in the world. We
4 presently have something in the neighborhood of 13,500
5 people directly related to airport and aviation security.

6 The reason I make that point is to ask you is it your
7 intention for everyone who presently works for us to be
8 subjected to the required training or will we have a
9 caveat that will allow for those who are in employment
10 now to be grandfathered in and the applicable rules and
11 requirements be on a going forward basis.

12 The last two points I would make is one, when
13 we all began to understand what TIP was, I think it was
14 embraced by the carriers, as well as the security
15 companies, as a much needed step forward. I think all of
16 us are firmly in favor of what is being done in this
17 regard. But I would ask that you give us just one point
18 of clarification and that is that in the beginning we
19 perceived TIP as to be a training tool.

20 The idea behind it, we thought, was that
21 continued exposure on the screen by our personnel of
22 items that are not to be carried on an airplane was
23 certainly in the best interest of everyone and we truly
24 viewed it as a training mechanism.

25 As we read through the certification process

1 guidelines, while it is not directly stated, by inference
2 we begin to wonder is TIP to remain a training aid or is
3 TIP to be an enforcement tool? If we could have some
4 clarity on the panel's view of what that process is
5 really coming into play to provide, that would be
6 helpful.

And the last point I will make is I think we
8 would be naive if we didn't all accept the fact that be
9 it the airlines or be it the security companies, cost has
10 got to be a consideration. As we look at this, we are
11 confused and we simply ask again for clarity on the idea
12 of fines being assessed.

13 More specifically, it's probably an
14 inappropriate choice of words, but what we use among
15 ourselves is the term "double jeopardy." In the
16 contracts that exist today between the security companies
17 and the airlines, it is generally considered a pass
18 through; if in fact there is a failure noted by the FAA,
19 the costs associated by that fine are in fact passed
20 through to the provider of service.

21 As we read through these new guidelines, it
22 suggests that we, the provider, will be held accountable
23 from a fine perspective, as will the airline. Assuming
24 we are correct, our concern then would be obvious. We
25 know that we would be responsible for our fine, the

1 question is would we continue to be responsible for the
2 airline's fine and if so, I would ask that you appreciate
3 the fact that that would be a debilitating blow to the
4 providers.

5 So some clarity on that issue -- we have reason
6 to believe that maybe the vendor and the carrier would
7 not be fined at the same time for the same offense. If
8 that is a true statement, we would ask for some
9 specificity in that area.

10 And with that, we thank you very much for your
11 time and look forward to the next session and it is our
12 intent, as stated earlier, to provide you a much more
13 comprehensive list of questions prior to the cut off
14 date. Thank you.

15 MS. KLEPPER: Thank you, Mr. Vaiden. Are there
16 any questions or comments from the panel? Mr. Vaiden,
17 would you come back for just a moment, please? Let me
18 see, I think we've got -- David, do you have a question?

19 MR. TEITELBAUM: Yes.

20 MS. KLEPPER: Okay.

21 MR. TEITELBAUM: Yes, sir. You mentioned at
22 the beginning that you have significant turn over, that
23 you need to move as quickly as possible to get new people
24 in. Have you had a chance to look at the draft
25 Regulatory Evaluation and whether you have or have not, I

1 would very much appreciate any comments on the
2 assumptions that we used in there.

3 Again, this process is we take the best
4 information we have and put it out there. You talked
5 about costs, you talked about 13,500 people in airport
6 and aviation, you talked about training, from an industry
7 point, and since you're the largest of the providers, I
8 would very much appreciate -- the FAA would very much
9 appreciate your looking at the draft Regulatory
10 Evaluation and commenting on the assumptions that are
11 used in there.

12 MR. VAIDEN: Is it fair to say that we would be
13 given the latitude to do as you recommend, but in written
14 form?

15 MR. TEITELBAUM: Well, of course. I'm not
16 expecting you to say anything today.

17 MR. VAIDEN: I really don't want to quote this
18 this morning.

19 MR. TEITELBAUM: No. You have until I believe
20 May 4.

21 MR. VAIDEN: Yes, sir.

22 MR. TEITELBAUM: Between now and then, if you
23 could provide it in writing, your comments.

24 MR. VAIDEN: That is our intent and let me say,
25 and again, I speak only for myself and our company, but

1 this is unique to us, it is unusual to us. The forum
2 that we find ourselves in is one of slightly
3 uncomfortableness.

4 Having said that, there is a great deal that we
5 would like to share with you. We choose not to be
6 presumptuous, our intent is not to be argumentative. AS
7 I said in the beginning, we're totally supportive of what
8 is going on, but having said that, we are equally
9 confused and we need your help and guidance.

10 So our intent is to probably give you more
11 information and say more than you truly would like to
12 have, in the hopes that we can go away from this with a
13 clear understanding of where we all are. It will be
14 forthcoming, prior to May 4.

15 MS. KLEPPER: Thank you, Mr. Vaiden. Karl, do
16 you have a comment or question?

17 MR. SHRUM: To address TIP to begin with, on
18 Page 567 of *The Federal Register* notice we talk about
19 performance measurements and standards. "For FAA
20 carriers and screening companies to monitor the
21 performance of the screening companies and to track their
22 level of performance, a consistent means of regularly
23 measuring is needed."

24 So our vision of TIP is not merely as a
25 training tool, but as a means to assess individual, check

1 point, system by carrier, system by screening company
2 performance in terms of developing and maintaining
3 certification standards.

4 I will not speak to C&E, I'll leave that to --
5 compliance and enforcement, I'll leave that to the
6 lawyer, but certainly we see this not merely as a
training tool, but an actual measurement of performance
8 and performance to a standard.

9 MR. VAIDEN: And I think we pretty much expected
10 that to be the position and given that, what we would ask
11 then is that the benchmark be provided to us. What is
12 the standard? Will one failure on one person's part via
13 the TIP process in one city constitute a problem large
14 enough for us to begin to wonder about decertification
15 and if not one, what might that number be?

16 And that would trail forward into when we get
17 into, God forbid, the decertification process, how does
18 that work and if it were to be applicable to any company.
19 is there a recertification process and how might that
20 work for us?

21 It goes off into an area again for us, while it
22 may be a clear point, it is one that we would like to
23 have made to us so that we can better understand it.

24 MR. SHRUM: The honest answer to that is before
25 we can answer those questions, we actually have to have

1 TIP deployed and sufficient data to draw conclusions and
2 we're not there yet.

3 MR. VAIDEN: Understood.

4 MS. THOMPSON: That's the science answer and
5 they're still gathering data to answer that. I think of
6 it as a scientific question. The legal side of it, the
7 process side of it is described a bit on Page 568, the
8 second to the third column.

9 After that kind of data is collected in the
10 field, I think the anticipation is that the FAA would
11 propose performance standards through the Security
12 Program Amendment process. We anticipate all the
13 affected carriers and screening companies would have an
14 opportunity to participate in that through the normal
15 notice and comment procedure.

16 The way it's set out in the preamble is that if
17 a carrier or a screening company fell below a certain
18 standard that would be developed by this process, it
19 would be time for corrective action of some sort to try
20 to raise the performance level of that checkpoint or
21 screening company. Eventually, if performance was not
22 increased to an acceptable level, you could talk about
23 certificate action against the company and the process
24 for certificate action is -- well, it's a standard
25 process before the National Transportation Safety Board,

because screening companies will have a certificate, just
2 like pilots and mechanics and air carriers.

3 Any attempt by the FAA to remove that
4 certificate would have to go through the NTSB appeals
5 process where the carrier or the screening company would
6 have the opportunity to have an NTSB law judge hear the
7 case. I could spend a lot of time going through how that
8 works, but there is a full due process available to any
9 company or any certificate holder that's subject to FAA
10 certificate action.

11 But long before we get to that, I think that
12 the first answer is before any of these standards are
13 developed, all the carriers and all the screening
14 companies would have the chance to participate in that
15 process and have a voice in how those standards are set.

16 MR. VAIDEN: We look forward to that.

17 MR. SHRUM: As far as the question regarding
18 grandfathering, we make the implementation of this Rule a
19 two-stage process. Initially, existing screening
20 companies as of the effective date of the Rule or any new
21 applicant after the effective date of the Rule would be
22 issued a provisional certificate, good for up to 12
23 months.

24 During that period, the FAA would be examining
25 that provisional certificate holder to see whether or not

1 it meets all the standards of Rule for what we call a
2 standard certificate, which would be subject to renewal
3 each five years thereafter. So there is a transition
4 process, there is no drop dead date that says you go from
5 the old regime to the new regime overnight.

6 Let me ask you, on the subject of civil rights
7 and disabilities training, are you asking for some kind
8 of standard block of training, for example similar to
9 that which FAA agents might be trained to, to be made
10 available to the screening companies for inclusion in
11 their FAA-approved training?

12 MR. VAIDEN: Well, not being familiar with what
13 is available to FAA, I can only assume that their
14 training would be comprehensive, so I think the answer to
15 your question would be yes. It's either that or we will
16 need to go to the federal government at whatever level to
17 have clear definition of what constitutes full and
18 adequate training in those categories.

19 We have some now and we are blessed that the
20 airlines themselves have training, for example in the
21 area of wheelchair assistance in airports, which is a
22 very important part of what most of the companies that
23 provide pre-board screening also provide.

24 The airlines are very helpful to us in giving
25 us their training as to how the sky caps are to handle

the handicapped, et cetera. It appears to us that the
2 certification process will no longer be a thought or a
3 suggestion or a wouldn't it be nice if you guys were
4 better at this. It will become a mandate and if it is and
5 if it puts our certification in jeopardy should we fail
6 to meet the criteria, all we're asking for is a clear
7 definition of what is the criteria and then if you have
8 training tools that could assist us, we would avail upon
9 you to share them with us.

10 MS. KLEPPER: Is that it? Is there anything
11 else you want to address? Thank you very much. We
12 appreciate it.

13 MR. VAIDEN: Thank you.

14 MS. KLEPPER: Our next scheduled speaker is
15 Dick Doubrava from Air Transport Association.

16 MR. DOUBRAVA: Good morning. I'm Dick
17 Doubrava, Managing Director of Security for the Air
18 Transport Association and on behalf of our members, I'd
19 like to express appreciation to the FAA for having the
20 opportunity to have these series of public meetings. We
21 think it's vital to the knowledge base, especially for
22 the non-regulated parties who are now being considered
23 for regulation to participate to the fullest extent and
24 we think that this is a good opportunity to begin to get
25 some of those issues out there.

1 For reasons of brevity -- obviously, we have a
2 number of questions, but we've kind of distilled these
3 down to maybe four or five that I'd like to have a little
4 feedback from the group regarding.

5 I think most importantly for us, as we looked
6 at the Proposed Rule and clearly, we'll be expanding on
7 this in our submission, our written comments, but I guess
8 we were interested in kind of getting your views on the
9 developmental process which resulted in the FAA's
10 approach of having both the air carriers and the security
11 vending companies equally responsible under the
12 certification process.

13 I think that previously the comment was made in
14 terms of "double jeopardy" and I think the issue is not
15 so much about accountability, but normally under the
16 regulatory process each regulated party has distinct
17 responsibilities which are clearly identified and at
18 least on reviewing the current proposal, what we see is
19 actually a standard being held to two parties and whether
20 that's truly in the best interest of what we're trying to
21 achieve.

22 As you know, during the discussion and as we've
23 all been involved in this process through the years, the
24 industry has strongly supported this for a long period of
25 time and had numerous discussions during the Presidential

1 Commission following TWA 800 on this issue and of course
2 the preliminary discussion was primarily about having
3 individual screeners certified and as we moved forward
4 with that process, I think everyone agreed that that
5 would have been very onerous.

6 But can you kind of give us your thoughts on
7 how that process was developed, as to make us actually
8 one entity under the process?

9 MR. SHRUM: Well, to begin with, if you go to
10 the statutory basis for screening, which is 49 USC 44901,
11 it refers to screening of passengers and property by the
12 air carrier or its agent, so that responsibility is
13 vested by law in the air carrier. Agent can -- there's
14 all kind of entities that could be construed as an agent
15 of the air carrier, but as far as this process, we're
16 simply saying that whoever that may be will meet
17 certification standards. The air carrier can do its own
18 screening, it can hire somebody else to do it, however
19 that may be.

20 As far as the certification of individual
21 screeners, you go back, and Mardi perhaps can elaborate
22 on this, if you look at the categories of entities that
23 can be certified by FAA by law, individual persons fall
24 under the category of airmen and we couldn't see by any
25 stretch that we were going to include security screeners

1 as airmen.

2 We also took the position that we feel that by
3 holding the screening company to certification standards,
4 they necessarily will have to have personnel with the
5 qualifications and also that we would make the training
6 record transferrable, which is the next best thing to
7 certification. In other words, I'm a perfectly qualified
8 screener, I was trained by XYZ Services, I now want to
9 work for ABC Services, I produce this training record as
10 indicating that I'm a qualified screener in all respects.

11 So given the legal premise that we started
12 from, we decided that certifying screening companies to
13 be used as agents of the air carrier was the appropriate
14 way to formulate this Rulemaking.

15 MR. DOUBRAVA: But I guess I would ask that you
16 do view our concerns about the issue. That what we seem
17 to have is a process here which holds both entities
18 responsible and which could result in the fact, I guess
19 as you move forward with that process, whereby the air
20 carriers are being held accountable for the performance
21 of a company that's been certified by the FAA and that
22 that could result in what is viewed as double jeopardy;
23 that the exposure to that, the Rule is not very clear in
24 terms of how you plan to approach that and so based on
25 the discussion that was ensued in the Rule, would raise

1 the concern as to how that process is going to work
2 because we clearly need to have some distinct -- I guess
3 guidelines and guideposts for how that process will
4 expose the carriers to performance issues related to the
5 certification of the screening companies and once they're
6 certified, as to how that relationship is going to work.
7 Because clearly if the screening companies are certified
8 parties and performance issues associated with keeping
9 that certification are a requirement, which they will be
10 then of course the concern is that it's made clear in the
11 discussion in the Rule that you also at the same time are
12 going to hold the air carriers responsible for the
13 conduct of the certified party. Is that not
14 correct?

15 MR. SHRUM: I can say generally, and I hesitate
16 to get into specifics because when we talk about
17 enforcement policy, you have to look at the particulars
18 of each case and each violation.

19 But generally, we see the screening company
20 certificate holder as responsible for carrying out
21 screening, the actual processing of passengers, property
22 and so on and so forth. We view the air carrier function
23 as essentially oversight.

24 to give one example that was raised earlier.
25 why an air carrier person when screener testing is

1 carried out, simply to ensure the integrity of the
2 testing process.

3 MR. DOUBRAVA: And you don't view that as an
4 accountability responsibility, in terms of --

5 MR. SHRUM: The air carrier is ultimately
6 accountable by law, regardless. We can't divest air
7 carriers of that responsibility, only Congress can do
8 that. I'm simply saying that if for example we had
9 isolated violations, the screening company certificate
10 holder would be of primary concern. If we had systemic
11 violations, obviously there's a breakdown in the
12 oversight function and we would be addressing this also
13 with the air carrier, which is, as I say, ultimately
14 responsible. But to go through in each and every
15 particular situation and say it's one or the other or
16 both, I simply cannot prejudge a situation.

17 MS. KLEPPER: I would add that this is not a
18 unique or new type of relationship. For a long time, for
19 instance, air carriers have heavily used certificated
20 repair stations to have required maintenance performed
21 and yet, of course, the air carrier does not divest
22 itself of ultimate responsibility for airworthiness.
23 It's required to do certain things to make sure the
24 repair station is qualified and is carrying out the
25 maintenance duties properly.

1 Any suggestions you have on how this should be
2 set out in this Rule we would love to see. Obviously,
3 it's not a cut and dried, black and white situation. We
4 would love to have any suggestions on how to define this.

5 MR. DOUBRAVA: We appreciate that and we'll
6 take good advantage of that offer. Since we've talked a
7 little bit about process, I think that the concern that
8 definitely was raised by the representatives of the
9 security companies this morning, one of the issues that
10 is a little difficult for us to get our arms around, is
11 the approach as to what the regulatory structure is going
12 to be within the FAA.

13 Currently, right now the air carriers report to
14 their principal security inspectors and then for ongoing
15 processes and follow up. How do you kind of see the
16 regulatory side being put together for the screening
17 certification process? Are we going to have a new group
18 of entities within that group to oversee the screener
19 company performance and the regulatory process in terms
20 of letters of investigation and the administration and
21 adjudication process? How do you kind of see that?

22 MR. SHRUM: The process would be very similar
23 to the relationship between the PSI and the air carrier.
24 The screening company certificate holder would also have
25 its PSI. We requested positions in the 2001

1 Reauthorization for what amounts to a certificate
2 management staff very comparable to the PSI air carrier
3 division we have now.

4 MR. DOUBRAVA: And so will those people be
5 primarily -- do you see those entities being based here
6 in Headquarters or will they be in the field? How are
7 you planning to -- in terms of testing and those types of
8 approaches? Because clearly, the concern that we have is
9 that, let's be honest, the more entities you get involved
10 in any process, it can sometimes become counterproductive
11 to the goal.

12 So clearly, if we're creating another layer of
13 reporting and paperwork and communication, both
14 internally within FAA and then having the air carriers
15 and the screening companies have to create another entity
16 to deal with those issues for communication, that gives
17 us some pause.

18 MR. SHRUM: When you say "another entity to
19 deal with communication," between which parties?

20 MR. DOUBRAVA: Well, for instance if -- let's
21 hypothetically say that if there was an issue in terms of
22 performance and the FAA, this new group, whatever we're
23 going to call it, the PSI group for the screening
24 companies, is dealing with specific issues at a location,
25 how are they going to communicate that information

internally to the PSI group in terms of their involvement
2 with the air carriers and number two, the logical
3 conclusion would be that we'd have to have some kind of
4 process created individually by the air carriers to try
5 to make sure that this process is done in a timely
6 manner, so if you have specific issues and specific
7 locations where you may have failures or you may have
8 issues associated with performance, that everyone is
3 responsive in a quick manner to address those issues

10 MR. SHRUM: What I'm trying to do is --
11 internal FAA operational procedure is outside the scope
12 of this Rule, so if you're talking about communication
13 between the FAA and the screening company certificate
14 holder and coordinating with the air carrier, how that
15 triangle is kept closed, that would be within the scope
16 of this Rule and you could propose changes to that Rule.
17 But as far as FAA gets its act together, I don't think
18 that's really on the table here.

19 MR. DOUBRAVA: Okay. I just would say that we
20 think it's important as the thought process goes forward
21 to consider how that structure is going to be completed
22 because it is very important to the ultimate goals of
23 performance and accountability.

24 MR. SHRUM: The folks in the Operations Office
25 surely are thinking about that.

1 MR. DOUBRAVA : You know, since it's vital to
2 our industry that any process that puts us on regulatory
3 burdens not negatively our -- I think the most important
4 thing for us is, in the kind of business that we're in,
5 the three or four most important issues to us any time,
6 we're talking about additional regulatory or financial
7 burdens, is really the impact on the operational needs of
8 the air carrier, clearly the impact on customer service
9 and the affects that that could have, both from a
10 competitive standpoint and also from a political
11 standpoint, and also the financial burdens that may grow
12 out of any regulation or requirement.

13 Could you kind of address how the FAA attempted
14 to measure the impact that this new Rule might impose,
15 especially given the concerns about what kind of ultimate
16 impact this Rule may have on screening companies?

17 As you know, the concern of any business is
18 operating it on a profit basis and the concern that we
19 have is that ultimately what this process may do, if it
20 becomes overly burdensome or economically troublesome to
21 the companies, is force them out of the business.
22 Ultimately what you could see is the smaller screening
23 companies disappear, what we refer to as the Mom and Pop
24 operations where clearly you have smaller entities
25 conducting screening in certain locations. That's

1 especially true in the inner Mountain West and Alaska and
2 other locations, places in Florida, so the concern is
3 that this Rule might result in their rethinking whether
4 they want to provide this type of service, given their
5 exposure and the type of regulatory burdens that it may
6 impose on them, in terms of finding additional support
7 internally to conduct this process.

8 And then number two, that the larger companies
9 may decide at some point in time that this is not a
10 service they want to provide to the carriers. So
11 ultimately, at the end of the day, it could have a huge
12 impact on not only the security process, but also on the
13 -- the impact that it would have on the operation of the
14 air carriers.

15 Could you kind of give us a little thought
16 about how the economic approach was made on this?

17 MR. SHRUM: Let me just make a general
18 statement before I turn it over to Dave. One of the
19 reasons we're having these listening sessions is
20 precisely to reach out to the folks and assess just what
21 that impact may be, because we do not have complete data.

22 MR. TEITELBAUM: In the Regulatory Evaluation,
23 in the appendix, on Tables A-5 through A-9, I break down
24 the costs for each of the part numbers between the
25 screening companies, direct air carriers, indirect air

1 carriers, the foreign air carriers and the FAA. We've
2 got in effect 21 proposed sections, broken down for the
3 five areas.

4 I tried to be pretty specific as to which costs
5 apply to screening companies, which apply to direct air
6 carriers in the section-by-section write up.

7 In addition, as required by the Office of
8 Management & Budget and the Small Business
9 Administration, we tried to take a look at the impact on
10 both small screening companies and small direct air
11 carriers. We've very sensitive to the possibility that
12 this Rule could impact them adversely and we looked at it
13 from a number of points of view: how will it affect their
14 bottom line, how will it affect their liquidity, do they
15 have the money to do this, . are they currently in an
16 economic position to be able to do this, will it force
17 any of them out of business.

18 In Appendices B and C I look at a number of
19 measures for the small air carriers, I think there's
20 about 41 small air carriers that would be affected and 33
21 screening companies.

22 The problem was, as Karl alluded to, we did not
23 good data in many cases to really discern whether or not
24 there will be a major impact. Time and again I asked for
25 comments with clear documentation. We were stymied. We

checked Standard & Poore's records, we checked a number
2 of -- information from the Bureau of Transportation
3 Statistics.

4 The more data that we have, the better we will
5 be able to address these concerns. We clearly do not
6 want to put anyone out of business or jeopardize their
7 bottom line. As an economist, I'm acutely aware of the
8 importance of profitability and I know that a number of
9 the smaller screening companies and smaller air carriers
10 may be and have been in the '90s in precarious
11 situations.

12 I also look at several alternatives, divesting
13 small air carriers or small screening companies of some
14 of the requirements and I look at what the cost impact
15 would be.

16 What I ask in return, you're asking us to look
17 at a number of things, is to help us get better data.
18 There have been a number of times in this process that
19 I've been able to go back to the team and say we can't do
20 it this way because it is too costly, we need to come out
21 with a better -- either a better way of doing it,
22 stretching it out over a number of years or just not
23 doing something.

24 Outside of calling for you, your member
25 organizations and particularly the small companies to go

1 through what is admittedly a very complicated document
2 and then providing us information, I don't know what else
3 I can do.

4 MR. DOUBRAVA: I certainly understand that. I
5 think that that's a matter of concern to all of us.
6 First of all, I think what is pretty clear from the
7 cautious approach that parties who have not been involved
8 in the regulatory process naturally have and then when
9 you move that down and even look at some of the larger
10 companies that are represented here today, which clearly
11 have a broad scope of opportunities within their own
12 companies to provide them with some support or they have
13 the resources to go out and get it, but I think that
14 that's what concerns us. When you get further out there
15 and I think that's why these field hearings are extremely
16 important and that's why we proposed them in our letter
17 to you with the Regional Airline Association was that we
18 just think that -- we're very concerned that it's going
19 to be very difficult for them to determine what that
20 exposure is going to be, especially given the fact that
21 for someone to sit down and go through a Rule like that,
22 in many instances they're just not going to have the
23 ability to understand the concepts and that's clearly not
24 meant as a criticism, because we support this process,
25 but it concerns us greatly and we would in turn ask you

1 to be very aggressive in your outreach program, to the
2 best of your ability, to have those discussions with
3 these smaller operations during the next few weeks.

4 MS. KLEPPER: Thank you. We do appreciate that
5 and we do expect to do some outreach with the extension
6 of the comment period and the additional meetings that
we're going to have.

8 I would say for anyone that has not seen a copy
9 of the complete economic evaluation, I believe we do have
10 some copies of the complete economic evaluation at the
11 registration table. If you'd like to ask for one, you
12 can get it and go through it and then once again, please
13 give us additional information.

14 MR. DOUBRAVA: Right. Real quickly, since we
15 talked a little bit about it and some of the questions
16 came up in the previous presentations, we've got a number
17 of questions in terms of the approach that you're going
18 to take on the actual certification and decertification
19 and recertification process.

20 A number of these questions have come up in
21 discussions among our members, the concern about the
22 process. If a screening company was denied certification
23 at a location because of -- let's talk about extreme
24 issues, performance issues, not just one or two issues
25 that may come up, would that company be prevented from

1 conducting screening at other locations? What, in terms
2 of your approach to this, would be a triggering issue
3 that would put the conduct of the screening company at
4 risk, in terms of their services to the air carrier?

5 MS. THOMPSON: I can take that one on, Karl.

6 MR. SHRUM: Okay.

MS. THOMPSON: We tried to write this Rule to
8 take into account what we've learned, that it's possible,
9 especially for a large screening company, to be overall,
10 nationwide competent, but have a serious problem at one
11 station. So the Rule is written that if we think the
12 company overall, nationwide is qualified to hold a
13 certificate, we could withdraw their authority to operate
14 at one station, if that station was the only unqualified
15 element of the company.

16 The idea being that we could take immediate
17 corrective action as necessary locally without disturbing
18 the entire company. That concept is written in.

19 MR. SHRUM: Also understand that
20 decertification isn't the only recourse. We still have
21 compliance and enforcement action, civil penalties,
22 possibly remedial action, change in procedures at the
23 checkpoint. It's not necessarily either you're certified
24 or you're decertified.

25 MR. DOUBRAVA: No, but I think you can

1 understand that we always have to -- we have to do all of
2 our planning in our operations, taking the worst case
3 scenario, and what do you do in the event that you have a
4 serious disruption, how we plan for that and how we work
5 with both the FAA and the screening companies for that.

6 MR. SHRUM: Which also argues for air carrier
7 oversight, so you don't get into these situations where
8 somebody just announces in the middle of the night that
9 oh, by the way, this checkpoint is going down.

10 MR. DOUBRAVA: Well, but the other side of that
11 is that's also going to be incumbent on the agency, to
12 have good communication in terms of what their perception
13 and views are as to what's going on there, so it doesn't
14 get to that point.

15 MS. THOMPSON: We concur with that. I think
16 there's procedures written in. For instance that the FAA
17 would send copies of enforcement actions to the affected
18 carriers to help them keep an eye on what the screening
19 companies are doing and the fervent hope is that the air
20 carriers would get deeply involved with the screening
21 company long before it got to a decertification issue
22 In an ideal world, we would never decertify anyone, we
23 would initiate corrective action before that, but this is
24 not an ideal world.

25 MR. DOUBRAVA: Sure. And I guess as a follow

1 up to that, in a transition mode where you may have a
2 screening company where either the FAA is taking action
3 under the proposal to deal with issues at a location,
4 let's take the case that all of a sudden we have a
5 company that is being decertified at a location because
6 of performance issues.

7 Under the current process, as you know,
8 oftentimes we have entities that have been conducting
9 those services at a location may, for whatever reason,
10 either at the decision of the air carrier, a business
11 decision about a different direction they want to go, or
12 as a result of business decisions made by the companies
13 that provide those services, we have a company exit a
14 location.

15 In the current environment, oftentimes what
16 happens, because clearly you want to maintain your
17 continuity to the greatest extent possible, it's usually
18 standard procedure for those companies then to go out,
19 take a look at the records and try to capture as many of
20 those employees as possible, because clearly you don't
21 want to lose them from your resource pool.

22 How do you see that transition, in terms of if
23 we got to a situation where we were -- meaning the
24 screening companies and the air carriers had locations
25 where we had an entity that was in trouble, in terms of

1 performance issues, and were going through a process of
2 having to be replaced? Do you see that process
3 continuing where the new entity would have the
4 flexibility to capture those resources or would you view
5 that as an issue in terms of what has gone on at that
6 location previously?

7 MR. SHRUM: I think what you're getting at is
8 ABC Company fails to meet standards. All the same
9 personnel, all the same equipment are now operated the
10 next day by XYZ Company.

11 MR. DOUBRAVA: Right.

12 MR. SHRUM: If we still have performance
13 issues, we still have certifications, we haven't met the
14 intent of this Rule. Obviously, the baseline working
15 group, the White House Commission and the Congress did
16 not recommend the status quo. They wanted real and
17 significant improvements in screening.

18 MR. DOUBRAVA: Nor did we. The industry did
19 not. But those are obviously concerns to us because you
20 can have your operation shut down as a result of issues
21 that may be outside the scope. There may be times when
22 issues are outside the scope of either the screening
23 company management or the air carriers. That's not to
24 excuse it, but we have seen situations like that in the
25 past and I think it's important as we go forward with

1 this that clearly a lot of the concerns that both the
2 screening companies and the air carriers have in this
3 process is that the devil is always in the details. But
4 unfortunately, when you run an airline operation, you
5 have to plan for these and I think that that is a natural
6 apprehension on our part as to how these details will
7 work.

8 Clearly we have suggestions and we'll be making
9 those under the guidelines of the Rulemaking.

10 MR. SHRUM: By all means. For the purpose of
11 the comment period, you can pose the question what would
12 FAA do, but I think it's more significant if you tell us
13 what FAA should do, in your view, to deal with these
14 situations.

15 **And** I would point out that it's not like there
16 aren't analogous situations where for example, situations
17 look pretty good at this airport, on the other hand we
18 find that say a fueling service has falsified all their
19 **background investigations.** Therefore, they go down until
20 they get everything back to snuff again.

21 But again, it would depend on the specific
22 circumstances. Attitude is certainly a factor, can we
23 work with these people or is the situation hopeless. You
24 have to rely on human judgment and hopefully, you can
25 handle a situation before it gets to that all else has

1 failed, we have no choice but to take them down.

2 MR. DOUBRAVA: Okay. We'll be looking to
3 provide you some comments in that area.

4 Another issue that is a little unclear is the
5 recertification process, in terms of you have an entity
6 that's been decertified. Could you kind of give us a
7 general approach as to how you see that recertification
8 process occurring for companies or entities that want to
9 be recertified?

10 MR. SHRUM: The whole company or some
11 particular checkpoint?

12 MR. DOUBRAVA: Well, let's talk about either
13 one. I mean, quite frankly, anything that's either been
14 removed -- you know, anything that no longer is permitted
15 to continue under the regulatory process, in terms of you
16 could have a location or you could have an entity that is
17 removed from screening. How do you see that
18 recertification process going about, in terms of the
19 actual what FAA will do in order to move that process
20 forward for recertification?

21 We talk a lot about the initial certification,
22 but we don't -- the proposed Rule doesn't really address
23 in very great detail what happens when you have a
24 certified party that's been decertified, either at a
25 location or as an entity, to provide those services.

1 What basically is your view as to how that
2 recertification process will work for them to come back
3 to the table and become a certified party again?

4 MR. SHRUM: It's no different from starting
5 over.

6 MS. THOMPSON: Well, I think there really are
two different questions here. When you're talking about
8 where a company still holds its certificate, but its
3 authority to screen at a given location has been
10 withdrawn, that's a completely different process than if
11 their certificate has been revoked. Let me talk about
12 the first one.

13 The way the process would work in the first
14 instance is the FAA would amend -- I think it's the
15 operations specifications,, it's been a while since I've
16 actually read through what we finally ended up writing.
17 The FAA would amend the operations specifications of the
18 screening company to withdraw its authority to screen at
19 Checkpoint X.

20 At that point, the process to renew that
21 authority would simply be an amendment of the -- the
22 legal process would be amending the operations
23 specifications to add that checkpoint back in. The FAA
24 would only do that once it became convinced that the
25 company had regained its qualification, its ability to

1 properly operate that screening checkpoint. That's
2 relatively simple, from a legal standpoint.

3 In the case of a company whose certificate has
4 been revoked, it's in here someplace that the screening
5 company would not be permitted to apply for a new
6 certificate for a year, unless otherwise authorized by
7 the Administrator. Aside from that, recertification
8 would be identical to getting an original certificate,
9 the same process.

10 MR. DOUBRAVA: Could you -- I guess the one
11 thing that was of some interest too as we were going
12 through that is could you kind of give us just on an
13 anecdotal part of why the five-year period, a certificate
14 is good for five years, why it's either not permanent --
15 I mean, as long as there's a process when there's not
16 compliance, what was the thought process for giving a
17 five-term for the certification?

18 I mean, as long as the entity is in compliance,
19 it's just kind of interesting that we have an arbitrary
20 five-year period put on that and I was just wondering
21 what the thought process might have been behind that.

22 MS. THOMPSON: Karl, are you going to do that
23 one?

24 MS. KLEPPER: Karl was looking for another
25 cite, I'm sure on something else.

1 MS. THOMPSON: I'm sorry, Karl.

2 MR. DOUBRAVA: I guess it kind of begs the
3 question that if you have a process out there where an
4 entity has been certified, what would lead to the five-
5 year period, that somehow they would have to either have
6 a renewal or recertification process or whatever it would
be?

8 MR. SHRUM: The intent of a periodic expiration
9 would be to force a reexamination across the board of
10 that certificate holder's compliance posture. Now, you
11 can argue for two years, five years, ten years. The
12 point is we need a threshold someplace to initiate that
13 process. If you think it should be longer or shorter, by
14 all means say so and why, but five years seemed
15 reasonable, given the resources involved.

16 MS. THOMPSON: The model was certainly repair
17 station certificates and pilot school certificates.

18 MR. SHRUM: Anyway, to get back to your
19 previous point on individual checkpoints and Mardi
20 mentioned the operations specifications, if you look at
21 the reg language in 111.113, Paragraph V-1, your Op Specs
22 must include "Locations at which the Administrator has
23 authorized the company to conduct screening required
24 under this Part 108, 109 and 129."

25 The corresponding discussion in the preamble is

1 on Page 574 of *The Federal Register* in that left-hand
2 column. Right about the middle of that column, "FAA
3 could amend a company's operations specifications or
4 remove a company's authority to operate in one location.

5 If the company later comes into compliance at that
6 location, the operations specifications could be amended
7 to restore its authority to screen there" and so on and
8 so forth.

9 MR. DOUBRAVA: Okay. Just as a -- and we'll
10 obviously be providing expanded comments on the one area.

11 One of the things that clearly concerns us in terms of
12 from the air carrier side is the -- kind of the -- I
13 guess the involvement of the ACSSP requirements and the
14 SSSP requirements.

15 It's our considered view that it would probably
16 be in the best interest perhaps of putting those
17 requirements, the SSSP requirements in the ACSSP as part
18 of the operating requirements for the air *carriers*,
19 because what clearly concerns us is that there could be a
20 process or an occasion whereby changes are made in that,
21 dealing specifically with screening requirements and the
22 certified parties, the screening companies and the air
23 carriers, that it might not be in the best interest
24 ultimately of the security program to have two different
25 documents that you're working from. For clarity and for

1 administrative purposes, it might be better to have them
2 merged into one document.

3 I know that you haven't had a chance to
4 consider that, but I think that that's an issue that
5 clearly we want to have further discussion with you about
6 and why we think that that process would be improved by
7 making that a more clear cut approach.

8 MR. SHRUM: Could you give me an example of how
9 the two documents might get out of joint?

10 MR. DOUBRAVA: Well, I think the example would
11 be that we could see situations whereby the FAA
12 determines they want to make changes in the screening
13 requirements and so they would move to make those changes
14 in the SSSP, which could -- we're not saying it would,
15 but it could result in the fact that processes are being
16 undertaken without full involvement of the air carriers.

17 Because if you're dealing primarily with the
18 requirements of the screening and the screening
19 obligations, which are clearly going to be a big process
20 for the screening companies, what concerns us that is
21 that you could ultimately end up with a process that is
22 not in the best interest of both parties.

23 MR. SHRUM: I think what you're driving at is
24 whether or not proposed changes to the Standard Screening
25 Security Program would also be provided notice and

comment to the air carrier, even though that air carrier
2 may not be a Part 111 certificate holder.

3 MR. DOUBRAVA: Right.

4 MR. SHRUM: Again, the air carrier retains
5 ultimately responsibility. I don't see why they wouldn't
6 be included in the process.

7 MR. DOUBRAVA: Well, that's what concerns us.
8 We'll have the ultimate responsibility, but we may not be
9 a full partner in that process and clearly, these are
10 issues that we want to expand in writing could -- I'm
11 kind of catching you all cold on this and clearly, Karl,
12 you probably have more involvement with that end of it
13 than the other members of the panel at times, but we do
14 have some concerns about that and just want to raise
15 that only as a flag to you that we will be wanting to
16 address that issue specifically as well in our written
17 comments because we do have concerns because in the past
18 we have been -- the industry has been vocal about our
19 concerns as to how the ACSSP -- how the security program
20 is managed outside the ACSSP, so we have natural concerns
21 that we don't want to see an expansion of the process
22 which may move us further away from what we feel is the
23 required process of amending the ACSSP.

24 MS. THOMPSON: There was quite a bit of
25 discussion within the FAA as to how to handle this and

1 from a legal standpoint, because the security companies
2 will now hold certificates, we are going to have to give
3 them a direct opportunity to comment on any changes we
4 make to what they will have to be doing to carry out
5 their duties as certificate holders, so the question is
6 how do you have a security program that both the
7 screening companies and the air carriers have a voice in
8 and then are required to carry out.

9 There's a lot of different ways to do it. This
10 was the one we proposed and again, your comments from
11 both the air carrier side and the screening company side
12 are going to be very valuable to us in determining how
13 this should come out in the final Rule.

14 MR. TEITELBAUM: I was looking through my
15 Regulatory Evaluation, under 111.107, which is Security
16 Program Approval and Amendments, and I have here
17 "Screening companies would be required to include in the
18 amendment package a statement that all carriers for which
19 they screen have been advised of the proposed amendments
20 and have no objection to it. Because carriers retain
21 primary responsibility for screening, it would be
22 essential that they concur with any changes requested by
23 those who screen on their behalf." I think that we have
24 -- your concerns I think are reflected in how we've
25 crafted this **and costed it out.**

1 MR. SHRUM: I just might point out on Page 567
2 of the notice in The *Federal Register*, left-hand column,
3 it explains our rationale for creating an SSSP and also
4 invites comments on doing so.

5 MR. DOUBRAVA: Thanks. Just as a matter of
6 interest, the discussion in the preamble talked about
7 compensation levels for screeners under the current
8 environment. Could you give us a little information as
9 to the number that was used in that particular preamble,
10 referring to the \$5.75 an hour salaries?

11 MR. TEITELBAUM: That was information that was
12 provided to me by our Security Operations Office. I
13 believe that they went to a number of the larger airports
14 and spoke with some of the major screening companies to
15 get -- find out what the salaries were for screeners and
16 for screeners in charge and for checkpoint security
17 screeners and I took a weighted average, so it was just
18 basically information gathered from the field.

19 One thing I did say is because there is such a
20 high turnover -- and again, if you have better
21 information on the turnover numbers that I used in here,
22 some of the -- let me back up.

23 Normally when I look at someone's salary I've
24 got to add a number of what are called "fringe benefits,"
25 such as health insurance, annual leave, sick leave on tcp

1 of the normal social security, Medicare, unemployment
2 that everyone has to pay.

3 Given the high turnover, I made the explicit
4 assumption that for the screeners and the checkpoint
5 security screeners that their fringe benefits were much
6 lower, that there **was** such a rapid turnover that some of
7 these fringe benefits were not being funded. I've made
8 this assumption in a couple of other Rules. If in fact
9 I'm wrong, I'd love to know it.

10 But again, basically this is information that
11 our Operations people got from the field.

12 MR. DOUBRAVA: Have you made any further
13 efforts to validate that information such that time? I
14 mean, in terms of now that you're having direct contact
15 with the screening companies on some of these issues.

16 MR. TEITELBAUM: There was a previous Rule that
17 dealt with screeners, the name of it escapes me at the
18 moment -- oh, yeah, the Background History Checks that we
19 came out with, I think last year, also dealt with
20 screening companies. We had numbers for that Rule and
21 then it was updated for this one and I think I had
22 numbers from three different samples, so I looked at what
23 -- I think it looked at the five largest companies and
24 another way, it looked at the primary -- the largest 15
25 or 20 airports, and there was a third check.

1 So looking at the numbers from all three ways,
2 that's how I came up with those numbers. I have not gone
3 back and looked anymore. When the comment period is
4 closed and we start looking at the final Rule, I will
5 once again ask the Operations people to give me the most
6 up-to-date data.

7 MR. DOUBRAVA: I think that would be helpful,
8 only because of the anecdotal affect of that number. We
9 want to make sure that it accurately reflects what's out
10 there in the marketplace because that number is used, as
11 you know, and repeated many times in many different
12 variations and locations and it's just important and we
13 want that to be as valid as possible.

14 MR. TEITELBAUM: I'm honored that my number has
15 gained such currency. Seriously, I used a different
16 number in the Background Screening -- Background Criminal
17 History, I'm sorry, and then I used one here.

18 What I like to tell every time we have a public
19 hearing is this is our best guess and the reason for the
20 comment period and particularly public hearings is if
21 we're wrong, let us know so that we can come up with much
22 better numbers. I would hate that a best guess number --
23 and I'm using "best guess" in terms of this is the best
24 information I have, ,I don't have a computer that will
25 spit out the definitive answer -- I'm sorry that such a

1 number is quoted as the definitive FAA or the definitive
2 government number and clearly, if people have got better
3 information, by all means, we do want it so that we can
4 reflect things better.

5 MR. DOUBRAVA: Okay. We appreciate that. The
6 other thing is just to reiterate kind of the situation as
we move forward with this process and the TIP, moving
8 forward with getting the TIP product out there.

9 notice in the comments that were made, you
10 were kind of indicating as we go through this process
11 that, clearly on a parallel track, the deployment and use
12 of TIP as a standard process out there is very important
13 to the ultimate goal that we all share, in terms of
14 improving performance out there.

15 Can you kind of expound a little bit about how
16 you tie those two together, given the fact that we don't
17 have a TIP product that's in widespread use, in terms
18 of --

19 MR. SHRUM: Tie what together exactly?

20 MR. DOUBRAVA: Well, in the discussion that
21 occurred previously, the comment was made that as this
22 process goes forward, clearly you're going to have to tie
23 it to the TIP product that's out there in order to
24 measure, for good measurement, that one of the goals was
25 to have a product out there that could measure

1 performance issues and do it on a regular, consistent
2 basis rather than the current approach, as you know, that
3 are subject to all kinds of questions, in terms of how
4 the tests are applied and how the performance is
5 measured.

6 I guess the only issue that we have as we move
7 forward through this process is that we may not have a
8 TRIP product that's widespread out there, so for
9 measurement purposes and testing and performance issues,
10 that could have an impact.

11 MR. SHRUM: I think your concern is that the
12 technology deployment may not keep pace with the
13 Rulemaking process?

14 MR. DOUBRAVA: Correct.

15 MR. SHRUM: And that I can't predict. We're
16 certainly doing the best we can.

17 MS. KLEPPER: Mr. Doubrava, at this point let
18 me ask you about how much longer you think you've got for
19 comments or questions.

20 MR. DOUBRAVA: I think that's about it.

21 MS. KLEPPER: If we need to take a break for a
22 few minutes or --

23 MR. DOUBRAVA: I think that that kind of
24 summarizes at least our initial discussions and certainly
25 we'll look for an opportunity to participate in further

meetings and also clearly, as the process moves forward
2 in the Rulemaking, to make sure that we have those
3 comments in. I appreciate the time made available to us
4 for that purpose.

5 MS. KLEPPER: Thank you. Any questions from
6 the panel to Mr. Doubrava?

7 MR. SHRUM: Thanks.

8 MS. KLEPPER: Okay. And with that, Your Honor,
9 Mr. Doubrava is the last person that I have on the formal
10 agenda from the time we started, so at this point I'd
11 like to ask if there's anyone else that would like to
12 have an opportunity to make a presentation or make some
13 comments at this time. Any hands? Anyone? No? Karl
14 would like to make a comment.

15 MR. SHRUM: Before we close out the session
16 here, I'd just like to -- I see many familiar faces in
17 this room and I see many unfamiliar faces that may not be
18 familiar with this process, certainly the newly regulated
19 screening companies.

20 I simply ask please don't be inhibited by the
21 formality of a Public Rulemaking and stand up and the
22 court recorder and so on and so forth. Even though you
23 may not have detailed, prepared remarks, we would
24 appreciate any feedback, even to the extent that this
25 Rule is right on, it's dead wrong or I can't make heads

1 or tails of it to give us some idea of how to best
2 utilize the upcoming two listening sessions we have.

3 MS. KLEPPER: So with that, I'll ask again, is
4 there anyone that -- yes, sir, would you like to come up?
5 If you would, please come up to the podium and introduce
6 yourself.

7 MR. NELIGAN: Your last comment is probably
8 directed straight at me. I'm not used to these processes
9 at all. Norm Neligan from Qantas and screening is not my
10 usual area of responsibility within the company, but
11 given that I was over here in Washington on other
12 business, I thought I'd pop along to this meeting.

13 The only question I have for clarification and
14 I hope it hasn't been answered too comprehensively in the
15 documentation, I don't want to look too silly, is where
16 we have a shared screening point with the responsibility
17 of the carrier to provide some oversight of the operation
18 of the screening point and the level of training under
19 the certification process. Presumably you don't expect
20 all carriers to be there at the same time when the
21 training is being assessed, will that be on a rotational
22 basis?

23 MS. THOMPSON: I presume something like that
24 would be worked out, yes. That's what I'm presuming.

25 MR. SHRUM: Are you talking from the standpoint

1 of oversight responsibility or from the standpoint of who
2 is liable for enforcement actions and penalties?

3 MR. NELIGAN: No, the point was made earlier by
4 one of the previous speakers when they're going through
5 the training certification process at odd hours at the
6 airports, when they indicated there may be a problem in
7 having airport staff available. That's not directly
8 related to my question, but what it is is given that we
9 may have a screening point that's shared by five or six
10 carriers in a large airport, when the requirement is
11 there for an airline representative to oversee any of
12 this process, presumably you wouldn't expect six airline
13 representatives to toddle down to the area to oversee it
14 at once.

15 MR. SHRUM: no. We have many similar
16 provisions for observing a checkpoint, for example by the
17 GSA of an air carrier, as opposed to each and every air
18 carrier or evaluation of screening personnel and
19 supervisors, one can be shared with the other.

20 Obviously, if you have a situation and I'll use
21 say the Bradley Terminal. LAX, which is used by 40 or 45
22 air carriers, we don't expect 40 or 45 air carrier
23 representatives to show up to monitor the training.

24 MR. NELIGAN: We didn't expect that was the
25 case, but I just wanted to clarify it. Thank you.

MS. KLEPPER: Thank you. Is there anyone else
2 that has a comment that they'd like to make at this time?
3 No?

4 Well, seeing no hands, I'd like to remind
5 everyone that written comments are welcome and please
6 submit those comments. I'll give you once again the
7 address to submit the written comments.

8 It is U.S. Department of Transportation
9 Dockets, Docket No. FAA-1999-6673, that's at 400 Seventh
10 Street, S.W., Room Plaza 401. That's Washington, D.C.
11 20590.

12 You can also submit comments electronically to
13 that docket. The electronic address is
14 <http://dms.dot.gov>.

15 Again, we do expect to be having two more
16 public meetings, one on April 4 in San Francisco and one
17 in Fort Worth on April 6. The docket will be remaining
18 open now until May 4.

19 I'd like to remind everyone also that there
20 will be a verbatim transcript of the public meeting that
21 will be put in the docket and there is also ordering
22 information available at the registration table if you'd
23 like that.

24 Once again, I'd like to thank everyone for
25 coming this morning and for your participation.

1 According to my clock, it's now 10:30 and we're
2 adjourned. Thank you all for coming.

3 (Off the record at 10:30 a.m.)

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Official Reporter

Dated: MARCH 10, 2000