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Report to Congressional Committees

November 2019

AVIATION SECURITY

TSA Coordinates with Stakeholders on Changes to Screening Rules but Could Clarify Its Review Processes and Better Measure Effectiveness

GAO-20-72

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GAO Highlights

Highlights of GAO-20-72, a report to congressional committees

Why GAO Did This Study

On December 25, 2009, while on a flight from Amsterdam to Detroit, a person attempted to detonate explosives hidden in their underwear. This person was not included in the government's consolidated database of known or suspected terrorists at the time. In response, in 2010, TSA began identifying passengers who are not known or suspected terrorists, but who TSA determined should receive enhanced screening. Specifically, TSA identifies passengers for enhanced screening through the application of screening rules, which TSA develops by considering current intelligence and other factors. TSA refers to these rules and lists as Silent Partner and Quiet Skies.

The TSA Modernization Act includes a provision for GAO to review the current oversight mechanisms and effectiveness of Silent Partner and Quiet Skies. This report examines the extent to which TSA has (1) coordinated with relevant DHS and TSA stakeholders to review passenger screening rules; and (2) assessed the effectiveness of these rules. GAO analyzed TSA documents, including standard operating procedures, and interviewed senior DHS and TSA officials involved in managing and overseeing the programs.

What GAO Recommends

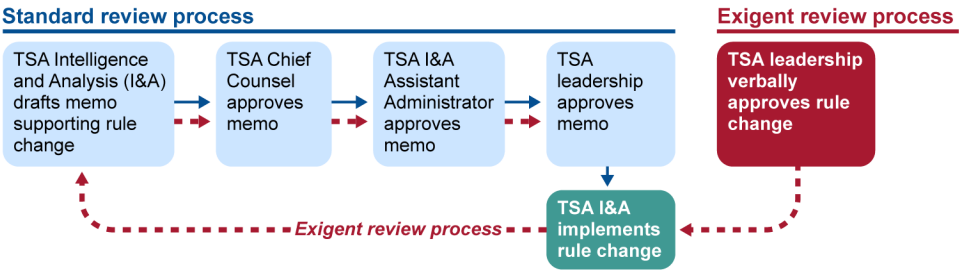
GAO is making three recommendations. DHS should (1) clarify the criteria for exigent and standard rule review procedures; (2) document which review process is used for each new rule or rule change; and (3) explore additional data sources for measuring rule effectiveness. DHS concurred with these recommendations.

View GAO-20-72. For more information, contact William Russell at 202-512-8777 or russellw@gao.gov.

What GAO Found

The Transportation Security Administration (TSA) coordinates reviews of its intelligence-based screening rules known as Silent Partner and Quiet Skies. Specifically, TSA's Intelligence and Analysis office (I&A) coordinates quarterly rule reviews and notifies Department of Homeland Security (DHS) and TSA stakeholders of rule changes. According to stakeholders, these review processes provide a good mechanism for program oversight. TSA has established guidance for rule changes that involve TSA stakeholders reviewing rules in advance of their implementation. In some instances, TSA uses an alternate process, allowed by guidance in exigent circumstances, where rule changes go into effect before some stakeholders review them. However, agency guidance does not define the conditions for using the standard or exigent processes. Further, TSA officials do not document which review process—standard or exigent—they use for each rule change. Clarifying guidance and documenting which review process is used could improve transparency and better ensure screening rule changes are adequately reviewed.

Transportation Security Administration's (TSA) Standard and Exigent Rule Review Processes



Source: GAO Analysis of Transportation Security Administration (TSA) information and interviews with TSA officials. | GAO-20-72

TSA tracks some data on rule implementation, but has not identified a means to comprehensively measure rule effectiveness. TSA officials explained that they had not yet fully assessed the rules' effectiveness because it was difficult to measure. Silent Partner rules identify passengers for enhanced screening on inbound flights to the United States. Quiet Skies rules—a subset of the Silent Partner rules—identify passengers for enhanced screening on subsequent domestic and outbound flights. TSA officials said that the one method they had used to assess effectiveness was to count Quiet Skies passengers who were later added to the government's watchlist of known or suspected terrorists. However, because this analysis was limited to Quiet Skies, it excluded 93 percent of the screening rules, making it difficult to interpret what the results indicate about effectiveness. TSA has access to data, such as the outcomes of enhanced screening of Silent Partner and Quiet Skies passengers, that could be explored to better assess rule effectiveness. Exploring additional data sources could help TSA refine and supplement their existing efforts to measure program effectiveness.

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Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
I&A	TSA Intelligence and Analysis
SOP	standard operating procedures
TSA	Transportation Security Administration

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

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Congressional Committees

On December 25, 2009, while on a flight from Amsterdam to Detroit, a person attempted to detonate explosives hidden in their underwear. This individual was not at the time in the Terrorist Screening Database—in general, the government's consolidated watchlist of known or suspected terrorists.[1] Following the attempted attack, the Transportation Security Administration (TSA) sought new ways to identify and designate passengers for enhanced screening like the person responsible for the 2009 attempted attack. Enhanced screening generally includes a pat-down and an explosives trace detection or physical search of the interior of the passenger's accessible property, electronics, and footwear at the airport security checkpoint.

In 2010, TSA began using risk-based factors to create screening rules to identify potentially higher-risk passengers and designate them for enhanced screening. Based on threat intelligence, TSA may create a rule that, for example, targets passengers in a specific age range, traveling on a flight originating from a particular country. TSA implements these rules through two programs—the Silent Partner program and the Quiet Skies program.

The Silent Partner rules identify passengers for enhanced screening on inbound flights to the United States. The Quiet Skies rules are a subset of the Silent Partner rules and identify passengers for enhanced screening on subsequent domestic and outbound flights for a limited period of time or number of flights. Passengers who match the rules are, in general, included on a Silent Partner or Quiet Skies List. TSA's passenger prescreening program—Secure Flight—uses the lists to designate the passengers for enhanced screening prior to boarding an aircraft. According to senior officials at TSA's Federal Air Marshal Service, in March 2018 the agency began prioritizing the deployment of air marshals on flights with Quiet Skies List matches to observe the individuals and provide an on-board security presence.

[1]The Terrorist Screening Database is maintained by the Terrorist Screening Center, a multiagency organization administered by the Federal Bureau of Investigation.

The TSA Modernization Act, enacted in October 2018, imposed requirements related to the oversight of the Silent Partner and Quiet Skies programs.[2] Specifically, the Act provides that TSA's Intelligence and Analysis (I&A) office is to identify and review TSA's passenger screening rules, in coordination with other TSA and Department of Homeland Security (DHS) stakeholders, within 60 days of enactment and every 120 days thereafter. It also requires TSA I&A to notify these stakeholders within two days of implementing a new rule or making changes to an existing rule.

The Act includes a provision for GAO to study whether the rules are effective in mitigating potential threats to aviation security; and whether, and if so how, TSA coordinates with DHS regarding any proposed change to a rule.[3] This report examines the extent to which TSA has (1) coordinated with relevant DHS entities to review passenger screening rules and (2) assessed the effectiveness of its passenger screening rules.

To examine the extent to which TSA coordinated with relevant DHS and TSA entities to review passenger screening rules, we reviewed documentation of steps TSA has taken to coordinate reviews of the rules since October 2018. Such documentation included memos signed by the TSA Assistant Administrator of Intelligence and Analysis confirming quarterly reviews conducted in fiscal year 2019, meeting minutes for quarterly rule review meetings in fiscal year 2019, TSA I&A notifications of rule changes for the period October 2018 through May 2019, and a list of Quiet Skies and Silent Partner rules as of August 2019. We also reviewed program standard operating procedures (SOP).[4] To understand the rule review and approval process, we interviewed TSA I&A officials responsible for reviewing and approving Silent Partner and Quiet Skies rules and DHS and TSA officials in each office with a specific role in overseeing the program: TSA's Civil Rights and Liberties, Ombudsman, and Traveler Engagement; DHS's Office for Civil Rights and Civil Liberties; TSA's Chief Counsel; DHS's Office of the General Counsel; TSA's Privacy Office; DHS's Privacy Office; the Federal Air Marshal

[2]See Pub. L. No. 115-254, div. K, tit. I, § 1949(c), 132 Stat. 3186, 3588-89 (2018) (enacted as part of the FAA Reauthorization Act of 2018).

[3]See Pub. L. No. 115-254, div. K, tit. I, § 1949(e), 132 Stat. at 3589.

[4]We reviewed the following TSA I&A standard operating procedures: the Silent Partner Program (2017), the Quiet Skies Program (2017), and the Automated Rules Review Quarterly (2011).

Service, and DHS's Traveler Redress Inquiry Program. We compared documentary and testimonial evidence of the current coordination efforts between TSA I&A and stakeholders to the requirements in the TSA Modernization Act; DHS and TSA SOPs; the Quiet Skies Implementation Plan and action memo; a Standards for Internal Control in the Federal Government principle related to implementing control activities; and characteristics of homeland security risk management described in DHS's Risk Management Framework.[5]

To examine the extent to which TSA has assessed the effectiveness of its passenger screening rules we analyzed documentation of TSA's assessments of the Silent Partner and Quiet Skies rules including TSA I&A's quarterly operational statistics for the first quarter of fiscal year 2019. We interviewed TSA I&A officials who manage the Silent Partner and Quiet Skies programs about any efforts to assess rule effectiveness. We also interviewed DHS and TSA stakeholders mentioned above to obtain their views on the effectiveness of the rules. In addition, we interviewed U.S. Customs and Border Protection (CBP) officials about how that agency has assessed the effectiveness of its rules-based program.[6] Lastly, we compared TSA I&A's efforts to TSA's Quiet Skies Implementation Plan and performance management practices identified in our prior work and OMB guidance.[7]

We conducted this performance audit from April 2019 to November 2019 in accordance with generally accepted government auditing standards.

[5]In April 2012, DHS Secretary Napolitano signed a memo from the TSA Administrator setting forth the priorities for the program and transitioning the initial Quiet Skies pilot to a permanent TSA program. A Quiet Skies Implementation Plan included as an appendix to that memo outlined the rule approval and oversight process for the program. GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014). See also DHS, *Risk Steering Committee: Interim Integrated Risk Management Framework* (Washington, D.C.: January 2009) and updated articulation of these principles in DHS, *Transportation Systems Sector-Specific Plan: An Annex to the National Infrastructure Protection Plan* (Washington, D.C.: 2010), which establishes a national strategic risk management framework for the transportation sector.

[6]CBP's Threshold Targeting Program identifies potentially high risk passengers arriving or departing the United States by using risk-based targeting scenarios and assessments.

[7]GAO, *Managing for Results: Strengthening Regulatory Agencies' Performance Management Practices*, GAO/GGD-00-10 (Washington, D.C.: Oct. 28, 1999). See also GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996); Office of Management and Budget, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 18, 2003).

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

TSA's Secure Flight Program

TSA began implementing its Secure Flight program in 2009 to identify passengers who may pose security risks before boarding an aircraft. The program requires U.S. and foreign commercial aircraft operators traveling to, from, within or overflying the United States, as well as U.S. commercial aircraft operators with international point-to-point flights, to collect information from passengers and transmit it electronically to TSA.[8] This information includes personally identifiable information, such as full name, gender, date of birth, passport information (if available), and certain non-personally identifiable information, such as itinerary information and the unique number associated with a travel record (record number locator).

The Secure Flight program matches the passenger-provided personally identifiable information against federal government watchlists and other information to determine if passengers may pose a security risk and to assign them a risk category. Since January 2009, Secure Flight has matched passengers to two subsets of the Terrorist Screening Database—the No Fly List, composed of individuals who should be precluded from boarding an aircraft or entering the sterile area of a U.S. airport, and the Selectee List, composed of individuals who should receive enhanced screening prior to boarding an aircraft or entering an airport sterile area.[9] The risk categories are not specifically

[8]See Secure Flight Program, 73 Fed. Reg. 64,018 (Oct. 28, 2008) (codified at 49 C.F.R. pt. 1560). For purposes of this report the term "commercial aircraft operators" include U.S. and foreign aircraft operators required to carry out security programs under 49 C.F.R. parts 1544 (U.S.) and 1546 (foreign), as identified in TSA's Secure Flight regulation. See 49 C.F.R. § 1560.3 (defining "covered aircraft operator").

[9]The sterile area of the airport is the area that provides passengers access to boarding aircraft and is an area to which access is generally controlled through the screening of persons and property. See 49 C.F.R. § 1540.5. Another list Secure Flight matches passenger data against—the Centers for Disease Control and Prevention's Do Not Board List—includes individuals who pose a significant health risk to other passengers and are not permitted to board aircraft or entry into the sterile area of an airport.

communicated to the air carriers, but for each passenger Secure Flight provides responses to air carriers commensurate with the risk levels identified (e.g., an air carrier will receive a response of "inhibited" if the passenger was identified as being in the highest-risk category, or the boarding pass printed for a high-risk passenger will identify that passenger as a selectee for enhanced screening at the security checkpoint).

In April 2011, in response to the December 25, 2009 attempted attack, TSA also began matching passengers to a third subset of the Terrorist Screening Database—the Expanded Selectee List—to designate known or suspected terrorists not otherwise included on the No Fly or Selectee Lists as selectees for enhanced screening. The Expanded Selectee List, in general, includes all records in the Terrorist Screening Database with a full name (first name and surname) and full date of birth not otherwise included on the No Fly or Selectee Lists. The Secure Flight system, which also screens passengers against the Silent Partner and Quiet Skies Lists, among others, results in passengers receiving one of four prescreening outcomes:

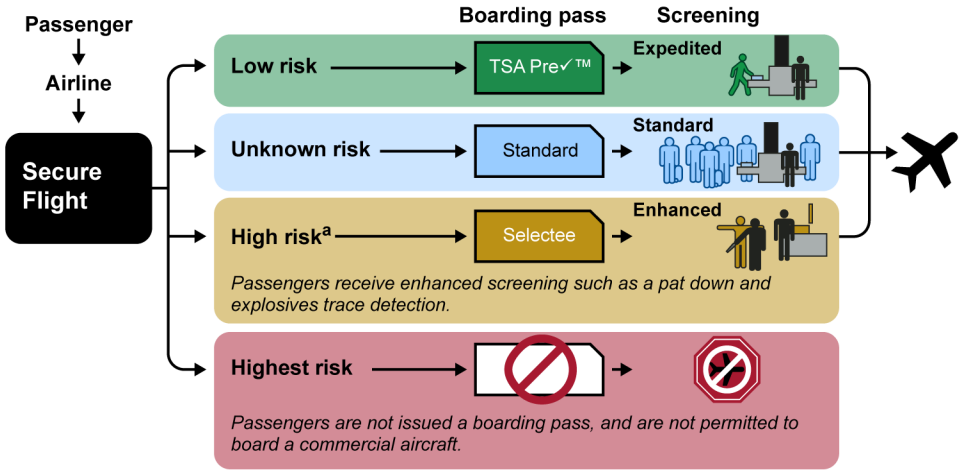
- **Low risk** (expedited screening). Passengers who are eligible for expedited screening, such as those with TSA Pre✓®,[10]
- **Unknown Risk** (standard screening). Passengers who warrant standard screening,[11]

[10]Expedited screening typically includes walk-through metal detector screening and X-ray screening of passengers' accessible property, but unlike in standard screening, passengers do not have to, among other things, remove their belts, shoes, or light outerwear. TSA began providing expedited screening to selected passengers through its TSA Pre✓® program in October 2011. The use of expedited screening procedures is intended to allow TSA to devote more time and resources at the airport to screening the passengers TSA deems higher risk.

[11]"Unknown risk" refers to passengers that, for example, are not participating in TSA Pre✓® but also for whom they have not been identified as presenting a potentially higher risk (referred to by TSA as "cleared" passengers). Standard screening typically includes screening by a walk-through metal detector or Advanced Imaging Technology, which identifies objects or anomalies concealed under clothing, and X-ray screening for the passenger's accessible property. In the event a walk-through metal detector triggers an alarm, the Advanced Imaging Technology identifies an anomaly, or the X-ray machine identifies a suspicious item, additional security measures, such as pat-downs, explosives trace detection searches (which involve a device certified by TSA to detect explosive particles), or additional physical searches may ensue as part of the resolution process.

- **High Risk** (enhanced screening). Passengers who receive enhanced screening such as a pat down and explosives trace detection, because they have been identified as matches to government watchlists, including the Selectee, Expanded Selectee, Silent Partner and Quiet Skies Lists, or [12]
- **Highest Risk** (denied boarding). Passengers who are not permitted to board a commercial aircraft, such as passengers who are on the No Fly List or the Centers for Disease Control and Prevention Do Not Board List (see fig. 1).

Figure 1: Transportation Security Administration (TSA) Passenger Screening Process



Source: GAO analysis of Transportation Security Administration (TSA) documents. | GAO-20-72

[a]Secure Flight also randomly identifies passengers for enhanced screening. Although subject to the same screening measures as high risk passengers, they have not been determined to be high risk. Similarly, individuals included on the Silent Partner and Quiet Skies Lists have not been determined to be of high risk, but rather have been identified using rules based on current intelligence and other factors that may indicate an elevated risk.

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The Silent Partner List

TSA leverages CBP information and targeting capabilities to create the Silent Partner List. Specifically, TSA leverages (1) data CBP collects regarding passengers traveling internationally (such as citizenship, passport country of issuance, and address information), and (2) CBP's Automated Targeting System. CBP uses the Automated Targeting System to identify potentially high risk passengers arriving or departing the United States by comparing passenger information with law enforcement, intelligence, and other enforcement data using risk-based targeting scenarios and assessments.[13]

Analysts within TSA I&A's Threat Analysis Division review intelligence to identify factors that may indicate elevated passenger risk. TSA works with CBP to create Silent Partner and Quiet Skies rules in the Automated Targeting System based on these factors. The system returns information on passengers who match with the rules and are scheduled to fly on U.S.-bound flights. TSA then omits any individuals on the Silent Partner cleared list (i.e. travelers exempted from further enhanced screening based on a specific rule) before placing the remaining passengers on the Silent Partner List.[14] The Secure Flight program designates passengers who are on the Silent Partner List as selectees for enhanced screening for a particular international flight.[15]

[13]CBP's Automated Targeting System compares information on travelers who are traveling to or from the United States against law enforcement and intelligence databases to identify individuals who may require additional scrutiny.

[14]TSA adds passengers to the Silent Partner cleared list after they have received enhanced screening on an inbound flight to the United States. They are exempted from further enhanced screening for a designated period of time based on the specific rule that had identified them for enhanced screening. Passengers may continue to receive enhanced screening if, as a result of their travels, they are identified as a match because of a different Silent Partner rule.

[15]When TSA began using the Silent Partner List in April 2010, it screened passengers on all international flights (inbound to or outbound from the United States) against the list; however, starting in May 2012, TSA limited the use of the list to screen only those passengers on flights bound for the United States.

The Quiet Skies List

In April 2012, TSA's Quiet Skies List became fully operational. The Quiet Skies List is a subset of passengers on the Silent Partner List.[16] Specifically, TSA identifies certain Silent Partner rules that warrant continued enhanced screening for passengers' subsequent domestic or outbound travel after arriving in the United States. Passengers identified via these rules—the Quiet Skies rules—comprise the Quiet Skies List. Passengers matched to the Quiet Skies List are designated as selectees and receive enhanced screening on any subsequent domestic flights for a designated period of time, or for a designated number of flights, whichever comes first. After the designated time period has elapsed (or number of flights is flown), passengers' names and identifying information are moved to a cleared list.

TSA Modernization Act Requirements

Pursuant to the TSA Modernization Act, TSA I&A is to identify and review its Silent Partner and Quiet Skies screening rules, in coordination with DHS and TSA stakeholders, every 120 days and provide notification to these stakeholders no later than two days after making a change to a rule.[17] Table 1 lists the DHS and TSA stakeholders TSA I&A must coordinate with under the Act.

[16]Secure Flight began screening against the Quiet Skies List as a pilot in August 2011.

[17]See Pub. L. No. 115-254, div. K, tit. I, § 1949(c)(1)-(2), 132 Stat. at 3588-89.

Table 1: Department of Homeland Security (DHS) and Transportation Security Administration (TSA) Offices Involved in Overseeing TSA's Silent Partner and Quiet Skies Programs

Oversight Office	Responsibility
TSA Civil Rights and Liberties, Ombudsman, and Traveler Engagement	Ensures that TSA employees and the traveling public are treated in a fair and lawful manner, consistent with federal laws and regulations protecting privacy and individuals' rights.
TSA Chief Counsel	Advises senior TSA officials on all legal matters relating to protection of the nation's transportation systems.
TSA Privacy Office	Ensures compliance with policy and applicable legal authorities, and assesses privacy impacts.
DHS Office for Civil Rights and Civil Liberties	Supports the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law.
DHS Office of the General Counsel	Responsible for all of the Department's legal determinations, managing the rulemaking program, and ensuring that all DHS regulatory actions comply with relevant statutes and executive orders.
DHS Privacy Office	Responsible for evaluating DHS programs, systems, and initiatives for potential privacy impacts, and providing mitigation strategies to reduce the privacy impact.
DHS Traveler Redress Inquiry Program	Point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs or crossing U.S. borders.
Federal Air Marshal Service	Deploys federal air marshals on selected flights to provide an on-board security presence.

Source: Pub. L. No. 115-254, div. K, tit. I, § 1949(c)(3), 132 Stat. 3186, 3589 (2018), and GAO analysis of Department of Homeland Security (DHS) and Transportation Security Administration (TSA) documentation. | GAO-20-72

TSA Coordinates with Stakeholders as Required, but TSA Guidance Is Not Clear About Criteria for Review of Rule Changes

TSA I&A Coordinates Quarterly Rule Reviews and Notifies Oversight Offices of Rule Changes

According to DHS and TSA officials, TSA has coordinated quarterly rule review meetings with DHS and TSA stakeholders since the inception of the Silent Partner and Quiet Skies programs. We reviewed documentation of the reviews that occurred from December 2018 through March 2019. The quarterly review meetings are called for in DHS's Automated Rule Review SOP and its Quiet Skies Implementation Plan.

Pursuant to the TSA Modernization Act, TSA I&A is to identify and review its screening rules in coordination with DHS and TSA stakeholders every 120 days—or at least three times a year. TSA I&A officials stated that they plan to continue convening four times a year because, given the difficulty of scheduling these large meetings, it will help them ensure they meet the 120 day requirement. Since October 2018, TSA I&A has also included representatives of DHS's Traveler Redress Inquiry Program and the Federal Air Marshal Service in these quarterly review meetings, as required by the Act. Officials from these offices told us in August 2019 that they are still determining their role in the rule review process, but expect the coordination to be beneficial.

DHS and TSA SOPs set forth the process for the quarterly review meetings. TSA I&A and stakeholder officials stated that the process generally happens as described in the SOP. Two weeks prior to the meeting, TSA I&A sends out materials including a list of new rules, rule changes, archived (discontinued) rules, and the rationale and links to the underlying intelligence supporting each rule change. According to TSA officials, TSA and DHS stakeholders review the rules from their particular areas of expertise. For example, TSA Chief Counsel officials reported that they review rules and the supporting intelligence to ensure that the rules meet legal sufficiency standards. A TSA Privacy official stated that they review rules and the supporting intelligence to ensure rules do not violate passengers' rights. All stakeholders review the rules to ensure they are based on current intelligence that identify specific threats.[18] If a stakeholder finds that there is insufficient current intelligence to support the rule, TSA I&A officials stated that they would modify it to ensure it is tailored to current intelligence or archive a rule when the intelligence-based threat is no longer relevant. For example, during the March 2019 quarterly review meeting TSA I&A officials discussed archiving a Silent Partner rule due to insufficient current intelligence to support it. According to TSA I&A officials, the rule was archived in April 2019.

TSA I&A officials and stakeholders generally agreed that the quarterly reviews provide a good mechanism for oversight of both programs. Stakeholders told us these meetings provide a forum to discuss the scope of the rules and whether or not they were supported by current intelligence or if they are sufficiently specific. For example, a TSA

[18]TSA I&A officials report that it is their intention to support all Silent Partner and Quiet Skies rules with current intelligence, meaning intelligence that is one year old or less.

stakeholder questioned the basis for a rule that identified a particular travel pattern as a high risk factor. As a result, TSA I&A officials reviewed the intelligence and revised the rule.

TSA I&A officials stated that since enactment of the TSA Modernization Act in October 2018, they have also notified DHS and TSA stakeholders within two days of making changes to a rule. We reviewed the eight notifications that TSA I&A sent to stakeholders regarding rule changes during the period from October 2018 through May 2019. These notifications detailed changes to rules, new rules, and rules that were archived. DHS and TSA stakeholders we spoke with said that the two day notifications are helpful in keeping them informed in between quarterly meetings. In addition, stakeholders said it allowed them to proactively reach out to TSA I&A to ask questions and share more timely feedback about rule changes. TSA I&A has implemented the two day notifications and other steps required in the TSA Modernization Act, but TSA I&A's Standard Operating Procedures have not yet been updated to reflect these changes. TSA I&A officials stated that they have plans to do so in fall 2019.

TSA Has a Standard and Expedited Rule Review Process, but TSA Guidance Is Unclear about Criteria for Each Process

TSA I&A's standard operating procedures establish two situation-dependent processes for reviewing and approving rule changes, as shown in figure 2.[19] First, under standard circumstances, TSA I&A's standard operating procedures detail a four-part vetting process by which TSA I&A drafts support for the rule change and it is subsequently approved by TSA Chief Counsel, the TSA I&A Assistant Administrator, and ultimately TSA senior leadership.[20] TSA procedures specify that in standard circumstances, all rule changes are to be supported and approved in writing prior to implementation. Specifically, TSA I&A is to draft a memo with the nature of the threat and how all components of the rule address the concerns from intelligence reporting. The memo, along with all pertinent intelligence sources, is then required to be routed through TSA Chief Counsel and TSA leadership for intelligence, legal, and policy review. TSA's April 2012 Quiet Skies Implementation Plan

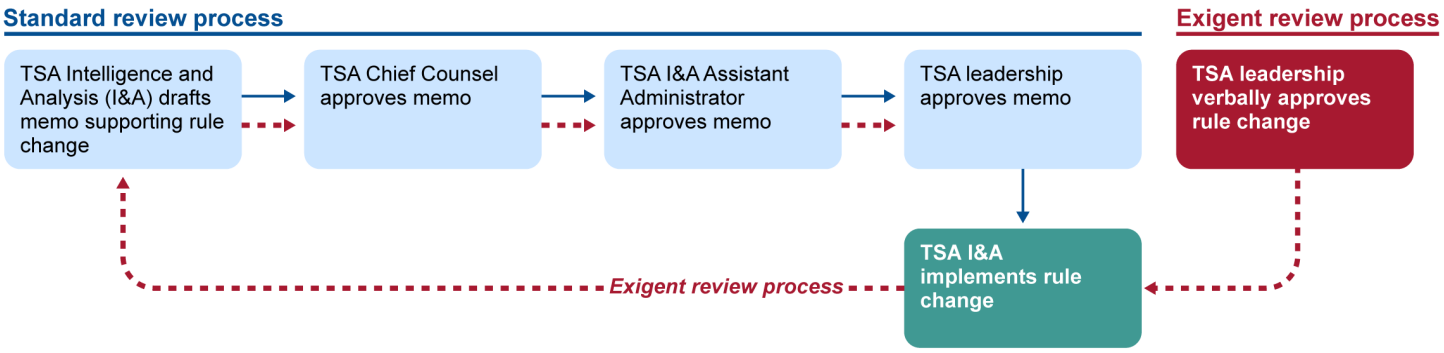
[19]The Quiet Skies List is a subset of the Silent Partner List and the review and approval process for rules in the Silent Partner SOP also apply to Quiet Skies rules. However, Quiet Skies and Silent Partner approvers are different. The Silent Partner Program SOP describes the review processes for both programs.

[20]In the case of both Silent Partner and Quiet Skies the first round of review is from TSA's Chief Counsel's office and the TSA I&A Assistant Administrator or his or her designee.

specified that the Chief Counsel's review is to ensure that the proposed rule targets the threat presented in the assessment, the assessment properly documents the reasons for the recommendation, and the recommendation is in compliance with relevant legal authorities, regulations, and DHS policies. Upon approval, the memo is referred to TSA senior leadership—the TSA Administrator or TSA Deputy Administrator—for final written approval.[21] Following this, the rule change can be implemented.

A second process, called exigent, is also briefly described in the SOPs. In exigent circumstances—circumstances requiring immediate action—the TSA I&A Assistant Administrator or his or her designee may direct that the rule be implemented immediately without a signed decision memo. The signed memo is still required, but can be drafted, reviewed, and approved after the change is implemented. TSA I&A officials stated that the exigent process entails verbal direction to implement a rule.

Figure 2: The Transportation Security Administration's (TSA) Standard and Exigent Rule Review Processes



Source: GAO Analysis of Transportation Security Administration (TSA) information and interviews with TSA officials. | GAO-20-72

[21]In the case of Silent Partner final rule approval comes from the TSA Administrator or his or her designee. TSA officials report that the TSA Administrator has delegated this authority to the TSA I&A Assistant Administrator. In the case of Quiet Skies, TSA's SOP provides that final approval is to come from the TSA Chief Operating Officer who is not permitted to delegate approval authority. However, TSA officials report that since the Chief Operating Officer position no longer exists, they obtain approval from the TSA Deputy Administrator. TSA officials report that as of August 2019, they are considering revising the process to have the TSA Executive Assistant Administrator approve Quiet Skies rule changes.

It is unclear if TSA I&A has followed the exigent rule review process in standard circumstances because the SOP is unclear on the criteria for each process. TSA's SOP states that the exigent review process may be used "if TSA determines that exigent circumstances require immediate implementation of a Silent Partner rule." However, the SOP does not clarify who or which office within TSA makes this determination or what types of circumstances would be appropriately characterized as exigent.

TSA I&A officials told us that exigent circumstances were very rare. They estimated that in the last 3 years exigent circumstances had occurred once. Yet, the same officials also estimated that they implemented approximately 90 percent of the rule changes following verbal approval from either TSA or I&A leadership and drafted the required memos after the fact. This indicates that TSA I&A officials have not followed the standard review process when implementing rule changes in circumstances they regard as standard, and the process followed appears to be closer to what would occur in exigent circumstances. These TSA I&A officials explained that drafting and processing the approval memo after they implement a rule change allows them to more quickly respond to changing intelligence. TSA's SOP provides flexibility for this in exigent circumstances. However, given the absence of clarity in the SOP about when the exigent process is to be used and who is to make that decision, it is unclear whether or not TSA I&A used the exigent review process—a process which is not, initially, contingent upon TSA's legal review or I&A's written support—in circumstances that DHS and TSA leadership who oversee the program would regard as standard.

According to Standards for Internal Control in the Federal Government, management should implement control activities through policies by, for example, documenting responsibilities in policies and periodically reviewing policies and procedures for continued relevance and effectiveness. As TSA I&A updates its Silent Partner and Quiet Skies SOPs in fall 2019, clarifying the criteria for standard and exigent rule review procedures would provide greater assurance that screening rule changes are reviewed as intended.

TSA I&A officials further told us that they do not document or otherwise have a way of determining what proportion of rule changes have been reviewed in accordance with the standard process versus the exigent process because they had not identified a need to do so. According to the 2012 TSA memo establishing Quiet Skies as a permanent program, at the program's outset a working group of DHS and TSA stakeholders identified the need for transparency as the first of seven key areas of

consensus.[22] Further, DHS's Integrated Risk Management Framework establishes transparency and documentation as important characteristics of homeland security risk management.[23] Documenting which review process TSA I&A uses for each rule change could improve transparency.

TSA Tracks Some Data on Rule Implementation, but Has Not Comprehensively Assessed Effectiveness

TSA Has Monitored List Size and Number of Rule Matches, but Has Not Identified a Means to Comprehensively Measure Rule Effectiveness

TSA I&A monitors some operational data on its passenger screening rules. For example, TSA I&A officials track the number of individuals on the Silent Partner and Quiet Skies Lists, and the number of Silent Partner and Quiet Skies rules triggered by the passengers' travel.[24] TSA I&A officials stated that rule matches and list size are helpful for oversight purposes because they allow TSA I&A to monitor for Secure Flight system errors. Officials identified one example in which a Secure Flight software update created a system error that prevented 808 passengers from being moved to the Quiet Skies cleared list after a designated

[22]TSA convened the Quiet Skies working group in January 2012, and included the DHS Office of the General Counsel, DHS Privacy, DHS Civil Rights and Civil Liberties, the DHS Office of the Counterterrorism Coordinator, and the DHS Office of Intelligence and Analysis.

[23]See DHS, *Risk Steering Committee: Interim Integrated Risk Management Framework* (Washington, D.C.: January 2009) and updated articulation of these principles in DHS, Transportation Systems Sector-Specific Plan: An Annex to the National Infrastructure Protection Plan (Washington, D.C.: 2010), which establishes a national strategic risk management framework for the transportation sector.

[24]According to TSA I&A officials, list size is the number of passengers matching one or multiple rules. Further, one individual passenger may match multiple rules for a single flight, so the number of times a rule is triggered does not equal the number of passengers identified for enhanced screening by the rules.

number of flights.[25] According to the officials, monitoring list size and the number of rules triggered by passengers' travel allowed them to identify and correct this error within 10 days of identifying the system error.[26]

TSA I&A has not identified a means to comprehensively measure rule effectiveness. TSA I&A officials explained that they would find it helpful to demonstrate the effectiveness of the program, but had not yet done so because it was difficult to measure. TSA I&A officials reported that the approach they have used was to count the number of Quiet Skies passengers who were later identified as a known or suspected terrorist and added to the Terrorist Screening Database. TSA I&A officials reported that in January 2019 they reviewed all Quiet Skies passengers from January 2014 through July 2018 to determine how many were subsequently added to the Terrorist Screening Database. However, because it included Quiet Skies only, this analysis excluded about 93 percent of the rules. TSA officials reported that it is not feasible to do a similar analysis for Silent Partner rules because of the higher numbers of rules and matches and the difficulty matching Silent Partner rules to data in the Terrorist Screening Database. Further, TSA officials noted that without comparable information on the rate that non-Quiet Skies passengers were added to the Terrorist Screening Database during that time period, it is difficult to interpret what the results indicate about rule effectiveness.

TSA's April 2012 Quiet Skies Implementation Plan established that TSA would continually evaluate the performance of the rules in the Silent Partner and Quiet Skies programs. Further, GAO and the Office of Management and Budget have previously identified useful practices to enhance performance management and measurement processes.[27] GAO has previously reported that measuring performance allows organizations to track the progress they are making toward their goals and gives managers critical information on which to base decisions for improving their progress. Office of Management and Budget guidance has also

[25]After a period of time or a finite number of flights, Silent Partner and Quiet Skies passengers are moved to a cleared list, exempting them from further enhanced screening as a result of the rule for which they were listed at that time.

[26]Before TSA corrected the system error, individuals remained on the Quiet Skies List and continued to receive enhanced screening despite meeting program standards for removal.

[27]GAO/GGD-00-10 and GAO/GGD-96-118; Office of Management and Budget, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 18, 2003).

focused specifically on common challenges associated with measuring effectiveness, including data availability and identifying measurable outcomes for a program. This guidance suggests using a variety of approaches such as outlining short-term milestones, identifying target outcomes, and using proxy measures to assess these programs.

Assessing the effectiveness of Silent Partner and Quiet Skies rules may be difficult, but I&A could explore using other data sources to assess program effectiveness in addition to further developing their consideration of Terrorist Screening Database additions. For example, TSA I&A could consider analyzing TSA data on the outcomes of the enhanced screening of Silent Partner and Quiet Skies passengers at passenger security checkpoints. CBP officials said that they review secondary inspection results to help them assess CBP's rules-based program.[28] TSA I&A officials noted that they were considering this measure and would need to determine what comparison group would make sense, and if they want to focus on specific screening outcomes versus all outcomes.

TSA I&A could also consider using the results of air marshals' monitoring of Quiet Skies passengers. According to senior Federal Air Marshal Service officials, the service—with a budget of approximately $780 million for fiscal year 2019—began deploying air marshals on as many flights as possible with Quiet Skies passengers in March 2018.[29] According to TSA's Privacy Impact Assessment for Silent Partner and Quiet Skies and a Federal Air Marshal Service official, after air marshals complete a flight with a Quiet Skies List match, they file a report saying either "nothing to

[28]A CBP analyst reviews inspection results daily to help them assess whether or not their rules are identifying high risk travelers who are traveling to or from the United States and they have used this information to refine their risk based rules. CBP's authorities and interaction with travelers identified as needing additional scrutiny differ from TSA's authorities and interaction with passengers identified for enhanced screening at the airport. TSA officials also noted that their ability to use outcomes of enhanced screening for Silent Partner passengers is limited because Silent Partner screening is conducted abroad by non-TSA personnel who do not have the same reporting standards and requirements as TSA personnel. However, TSA could explore what information from passenger screening abroad is available and whether it could be used by TSA I&A to help assess program effectiveness.

[29]TSA is authorized to deploy federal air marshals on every passenger flight of a U.S. air carrier and is required to deploy federal air marshals on every such flight determined by the Secretary of Homeland Security to present high security risks, with nonstop, long-distance flights, such as those targeted on September 11, 2001, considered a priority. See 49 U.S.C. § 44917(a)(1)-(2),(b). In general, the Federal Air Marshal Service attempts to deploy air marshals on all flights on which a high-risk passenger is traveling, to the extent permitted by available resources.

report" or, if they observe that the individual was involved in a security incident or suspicious activity, they will describe this in an after-action report.[30] TSA I&A officials told us that while they have seen individual after-action reports, they do not review them regularly. These after-action reports are another source of information TSA I&A could consider using to gauge program effectiveness.

Given the TSA resources being devoted to the enhanced screening and in-flight monitoring of many passengers matching the Silent Partner and Quiet Skies Lists, and the burden on the traveling public, it is important that TSA understand the value of its screening rules programs. Exploring additional data sources—such as checkpoint screening results and Federal Air Marshal Service after-action reports—could help TSA refine and supplement their existing efforts to measure program effectiveness.

Conclusions

The attempted attack of December 25, 2009, highlighted the unknown threats to U.S. civil aviation. TSA has created the Silent Partner and Quiet Skies Lists to help address these unknown threats by ensuring that certain potentially higher risk passengers receive enhanced screening when traveling to, from, or within the United States. TSA created an oversight process that was further bolstered by the TSA Modernization Act, and DHS and TSA officials we met with generally regard the process as effective. However, TSA SOPs are not clear about when it is appropriate for TSA to use an expedited review process and they do not document which review process they used. The lack of clear SOPs inhibits program oversight. By establishing clear criteria for and documentation of each review process, TSA could increase transparency and ensure rule changes are reviewed as intended. Moreover, TSA has not identified a means to comprehensively measure the effectiveness of its Silent Partner and Quiet Skies rules. Exploring additional data sources—such as checkpoint screening results and Federal Air Marshal Service after-action reports—could help TSA refine and supplement their existing efforts to measure program effectiveness.

[30]See DHS/TSA/PIA-018(i) (Apr. 19, 2019).

Recommendations for Executive Action

We are making the following three recommendations to TSA:

The Administrator of TSA should clarify the criteria for exigent circumstances and standard rule review procedures; (Recommendation 1)

The Administrator of TSA should document which rule review process TSA I&A uses (exigent or standard) for each new rule or rule change; (Recommendation 2)

The Administrator of TSA should explore additional data sources measuring the effectiveness of Silent Partner and Quiet Skies rules. (Recommendation 3)

Agency Comments

We provided a draft of our report to DHS for comment. In written comments, which are included in appendix I, DHS concurred with our three recommendations and described steps they plan to take to address them. DHS also provided technical comments, which we have incorporated, as appropriate.

We are sending copies of this report to the appropriate congressional committees and to the Acting Secretary of Homeland Security. In addition, this report is available at no charge on the GAO website at http://gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777 or russellw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in Appendix II.

W. William Russell, Director,
Homeland Security and Justice

List of Congressional Committees

The Honorable Roger Wicker
Chairman
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Committee on Commerce, Science, and Transportation
United States Senate

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Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Bennie G. Thompson
Chairman
The Honorable Mike Rogers
Ranking Member
Committee on Homeland Security
United States House of Representatives

Appendix I: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

November 8, 2019

W. William Russell
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

RE: Management Response to Draft Report GAO-20-72, "AVIATION SECURITY: TSA Coordinates with Stakeholders on Changes to Screening Rules but Could Clarify Its Review Processes and Better Measure Effectiveness"

Dear Mr. Russell:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Transportation Security Administration's (TSA) use of risk-based factors to create screening rules that identify potentially higher-risk passengers and designate them for enhanced screening is an important element of mitigating potential threats to aviation safety. DHS remains committed to reviewing passenger screening rules implemented by the Silent Partner and Quiet Skies programs, in accordance with the TSA Modernization Act enacted in October 2018, and ensuring that potentially higher risk passengers receive enhanced screening when traveling to, from, or within the U.S.

The draft report contained three recommendations, with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments under a separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

2

Attachment: Management Response to Recommendations Contained in GAO-20-72

GAO recommended that the TSA Administrator:

Recommendation 1: Clarify the criteria for exigent circumstances and standard rule review procedures.

Response: Concur. TSA Intelligence and Analysis (I&A) will update the Silent Partner and Quiet Skies Standard Operating Procedures to reflect the distinction between both processes. Estimated Completion Date (ECD): January 31, 2020.

Recommendation 2: Document which rule review process TSA I&A uses (exigent or standard) for each new rule or rule change.

Response: Concur. TSA I&A will document which review process is used in the rules memoranda and during quarterly reviews. ECD: January 31, 2020.

Recommendation 3: Explore additional data sources measuring the effectiveness of Silent Partner and Quiet Skies rules.

Response: Concur. TSA I&A is reviewing potential data sources to determine (1) their value in assessing Silent Partner and Quiet Skies rule effectiveness, and (2) the feasibility of implementing routine reviews of these data sources to measure effectiveness on an ongoing basis. TSA will also incorporate reviews of additional data sources into its procedures. Once evaluated, TSA will utilize these sources to measure the effectiveness of Silent Partner and Quiet Skies, as appropriate. ECD: December 31, 2020.

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Appendix II: GAO Contacts and Staff Acknowledgments

GAO Contact

William Russell, (202) 512-8777 or russellw@gao.gov.

Staff Acknowledgments

In addition to the contact named above Claudia Becker, Assistant Director; Imoni Hampton, Analyst-in-Charge; Melissa Greenaway, John De Ferrari, Michele Fejfar, Eric Hauswirth, Tom Lombardi, and Kevin Reeves made key contributions to this work.

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Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548