

April 4, 2023

U.S. Customs and Border Protection
1300 Pennsylvania Ave., NW
Washington, DC 20229

Via Regulations.gov

RE: Docket No. USCBP-2023-0002; Advance Passenger Information System: Electronic Validation of Travel Documents

The National Business Aviation Association (NBAA) represents the interest of over 11,000 member companies that use aviation to support their business or provide services to business aviation. Members include on-demand commercial operators and international flight planning service providers who help travelers attend to business around the world. It is with these members in mind that NBAA submits the following comments urging the United States Customs and Border Protection (CBP) agency to develop a pathway using Single Syntax Advanced Passenger Information System (APIS) for non-scheduled commercial air carriers to safely, securely and efficiently determine if passengers are clear to cross the nation's borders.

The CBP agency proposes to amend 19 CFR part 122 to incorporate additional commercial carrier requirements that would enable CBP to determine whether each passenger is traveling with valid, authentic travel documents prior to the passenger boarding the aircraft. The proposed regulations would also require commercial air carriers to transmit additional data elements through APIS for all commercial aircraft passengers arriving, or intending to arrive, in the United States in order to support border operations and national security and safety. The proposed regulations include changes to conform existing regulations to current practice. Finally, the proposed regulations would allow commercial carriers to transmit an aircraft's registration number to CBP via APIS.

The CBP specifically requests feedback that addresses (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The following is our feedback on these matters.

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

The CBP states that the proposed rule is intended to increase the security and safety of the international traveling public, the international air carrier industry, and the United States. However, the preamble to the proposed rule fails to specify how additional contact information increases safety or security. The CBP presents this information as though it is inherently true without any evidence to support the premise. The CBP provides an example in which a phone number or email address would help prevent an individual with the same name as his father

from entering the U.S., but fails to consider that such an individual would have access or knowledge of the father's phone number or email address.

Based on the information in the NPRM, NBAA does not believe the additional information will enhance safety or security, nor will it have practical utility.

(b) The accuracy of the agency's estimates of the burden of the collection of information.

The proposed rule would affect all commercial operators, scheduled and non-scheduled carriers alike, which are vastly different in their operations. The key factor in aircraft operators' standard operating procedures and border clearance procedures is not whether they are private non-revenue or commercial, but rather whether they are scheduled or non-scheduled. The non-scheduled segment of the aircraft operations industry is a diverse group of stakeholders that includes private individuals, corporations, government agencies and charter companies. These stakeholders operate a wide range of aircraft, from single-engine piston-powered aircraft to large, turbojet-powered multi-engine aircraft, and their operations are characterized by engrained procedures related to procurement, scheduling, safety and security.

Non-scheduled commercial operators, such as charter aircraft operators, have more in common with non-scheduled private operators (e.g., corporate flight departments) than with any scheduled airlines, regarding standards of procedure, access requirements, safety protocols and CBP processes.

In the NPRM, the CBP acknowledges that two pathways exist for meeting APIS requirements: large, scheduled airlines use an interactive, electronic transmission system, while non-scheduled commercial carriers use a non-interactive electronic transmission system approved by CBP, such as the electronic Advanced Passenger Information System (eAPIS). However, the NPRM mischaracterizes the use of each system. Only 61 scheduled air carriers are certificated under 14 CFR part 121, while over 1,900 non-scheduled air carriers are certificated under 14 CFR part 135. Furthermore, all but three of the non-scheduled air carriers are considered small businesses. The majority of the 1,900 non-scheduled air carriers that conduct international operations are small businesses, as defined by the U.S. Small Business Administration, using eAPIS.

The NPRM explains that pathways exist to participate in the Document Validation Program (DVP) through the interactive electronic transmission system, but it does not address existing or planned pathways to participate in the DVP for the majority of commercial carriers – those using non-interactive systems. As written, the CBP's proposed NPRM seeks to align the pre-flight and operational APIS processes for non-scheduled aircraft operations with those of scheduled airlines. This alignment presents a significant challenge for non-scheduled operators, as the processes and systems utilized by large, scheduled airlines are not currently utilized or available to non-scheduled stakeholders. Non-scheduled commercial operators do not have the same level of automation and resources as scheduled airlines and may not have the necessary technical expertise to comply with the proposed APIS requirements.

Scheduled airlines use several automated systems that do not exist in general aviation, non-scheduled commercial, or private operations, including ticketing/check-in systems, departure control systems, and interactive traveler security processes. These operations lack formal

interactive traveler check-in, boarding messages, check-in kiosks, and flight closeout messages. Additionally, there are currently no connections to CBP's DVP in non-scheduled environments.

Therefore, while the proposed rule seeks to modernize and streamline the APIS and travel document validation process for scheduled airline operations, it may have unintended and harmful consequences for the diverse group of non-scheduled stakeholders. The proposed alignment with airline processes and systems is not feasible or appropriate for non-scheduled operators, and further consideration should be given to their unique requirements and procedures.

The proposed rule may have a disproportionately negative impact on non-scheduled aircraft operators. This misalignment of APIS processes will result in increased costs, reduced efficiency, and diminished safety and security for the small businesses conducting non-scheduled aircraft operations. These inequities are not accounted for in the CBP's NPRM.

NBAA recommends expanding the Single Syntax APIS utilizing XML Schema, currently used in the Non-Scheduled Private Non-Revenue environment, as the appropriate next step for non-scheduled commercial operators.

(c) Ways to enhance the quality, utility and clarity of the information to be collected.

CBP's eAPIS system, located at www.eapis.cbp.dhs.gov, is not commonly used by the majority of non-scheduled operations. Instead, these operations typically rely on authorized third-party transmitters who have developed a non-interactive system-to-system data exchange to complete transmissions of APIS-required data elements in line with varying CBP port lead times. These lead times vary between 24 to 96 hours in advance of landing, and are operators are required to transmit complete APIS data in order to be granted permission to land.

In the non-interactive environment, non-scheduled aircraft operators partner with CBP to validate APIS traveler documentation, aircraft and operator information while securing permission to land at a CBP port. Permission to land occurs at non-standard times across the 400+ CBP Airport of Entry (AOE) ports, and there is no advanced ticketing system for individual travelers to interact with or submit data prior to the operator's engagement. Document validation in the unscheduled environment is completed via a one-on-one transaction with a CBP officer to obtain permission to land after non-interactive APIS data is transmitted.

In contrast, scheduled airlines receive permission to land in a bulk quantity that is not associated with actual travelers, or tail numbers, of the specific aircraft and/or crew that will conduct the operation. Scheduled airlines rely on ticketing/check-in/boarding systems to validate travelers individually, with check-in serving as quality control for ticketing, security serving as quality control for check-in, and boarding serving as quality control for security. However, standardized control systems do not exist to support these processes in the non-scheduled commercial operation environment.

Therefore, requiring non-scheduled aircraft operators to use the same APIS systems and processes as airlines is neither reasonable, nor responsible. The proposed NPRM would impose a significant burden on non-scheduled operators, who lack the resources to comply with airline-like APIS requirements.

Instead, CBP should consider alternative approaches that take into account the unique procedures and requirements of non-scheduled commercial operations.

- (d) Ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology.

The Single-Syntax APIS solution for General Aviation aligns all non-scheduled operators for CBP. By utilizing the XML Schema for Private APIS, CBP is able to receive much more detailed and holistic information about the operation and its travelers than what UNEDIFACT is currently capable of providing. The development and implementation of Single Syntax APIS has been ongoing for several years, with stakeholders in the non-scheduled environment dedicating significant time, money and resources to developing an enhanced APIS solution that fits both CBP and General Aviation's needs.

For example, a large non-scheduled operator and management company, has been actively participating in a CBP pilot program utilizing Single Syntax successfully since December 2019. This successful implementation is a testament to the potential benefits of this approach for the non-scheduled aircraft operations industry.

Therefore, based on the success of Single Syntax APIS and the significant resources invested in its development, we strongly encourage its immediate expansion to all non-scheduled operators to improve the APIS process for this segment. Key industry stakeholders are ready to implement Single Syntax immediately, improving the accuracy, efficiency and security of the APIS process for non-scheduled operators.

Single Syntax APIS utilizing XML Schema, currently used in the Non-Scheduled Private Non-Revenue environment, is the appropriate technology to minimize the burden for non-scheduled commercial operators.

- (e) The annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs).

The cost of implementing and executing the proposed APIS changes would be extremely challenging financially for the non-scheduled commercial segment. Many general aviation operators who would be considered small businesses by U.S. government standards have limited infrastructure and personnel to support the required changes. This is in stark contrast to Part-121 airlines, of which there are only 61 active carriers in the United States. On the other hand, there are over 1,900 Part-135 certificate holders who make up the non-scheduled commercial segment. Therefore, forcing the non-scheduled segment to align with airline-like APIS requirements would be unfair due to the change and associated cost required.

The extensive cost for added infrastructure and personnel to install and operate a ticketing/check-in system would be significant for the non-scheduled commercial segment. This includes additional technology, systems integrations, and training for implementation and execution. Of the 1,907 on-demand air carriers in operation, the overwhelming majority are small businesses by Small Business Administration standards, and such added costs could be prohibitive for these businesses. This would hinder legitimate trade and travel, as non-scheduled operators play an essential role in supporting industries and communities across the country.

Developing an alternative pathway to compliance for non-scheduled commercial carriers that use non-interactive transmission systems would reduce costs and burden on small businesses. Specifically, expanding Single Syntax APIS utilizing XML Schema, currently used in the Non-Scheduled Private Non-Revenue environment, is the appropriate next step for non-scheduled commercial operators.

NBAA appreciates the opportunity to comment on the CBP's proposed rule to require all commercial air carriers to participate in the Document Validation Program. While NBAA appreciates the CBP's effort to establish secure borders, just as not all air carriers are the same, a one-size-fits-all solution is not appropriate for the sector. Single Syntax is the best pathway for non-scheduled commercial air carriers to safely, securely and efficiently determine if passengers are clear to cross the nation's borders. If NBAA can address further questions, please contact bkoester@nbaa.org or 202-783-9000.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Koester", with a long horizontal flourish extending to the right.

Brian Koester, CAM
Director, Flight Operations and Regulations
National Business Aviation Association