



**NATIONAL  
BUSINESS AVIATION  
ASSOCIATION, INC.**

1200 EIGHTEENTH STREET NW, SUITE 400  
WASHINGTON, DC 20036-2527  
Tel: (202) 783-9000 • Fax: (202) 331-8364  
E-mail: info@nbaa.org • Web: www.nbaa.org

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Border Security Regulations Branch  
Office of International Trade  
U.S Customs and Border Protection  
1300 Pennsylvania Avenue, NW. (Mint Annex)  
Washington, DC 20229

**Re: Docket USCBP-2007-0064, Advance Information on Private Aircraft Arriving  
and Departing the United States; Proposed Rule**

The National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. The Association represents more than 8,000 companies either with aircraft or involved with business aviation. We appreciate the opportunity to provide comments on the Bureau's proposal to amend requirements for international private aircraft operations.

In September, 2007, the Bureau released a newly updated Guide for Private Flyers. NBAA contributed extensive input to the development process for the new guide. We believe this new guide provides much more thorough information to private aircraft operators in a user-friendly format that will help operators comply with U.S. entry requirements. We believe that our partnership with the Bureau on this effort resulted in a consolidated source of valuable and useful guidance. NBAA would appreciate future opportunities to partner with the Bureau on products and policies affecting business aviation.

NBAA appreciates the Bureau's granting of additional time to permit the development of a comprehensive response to the proposal. However, after a complete review of the available information, we believe that the Bureau's proposal to substantially change how international private aircraft interact with Federal authorities has raised some significant issues that if left unaddressed could cause substantial harm to users of private aircraft.

**Broad Concerns**

Broadly, it appears that the Bureau did not consider the full complexity and scope private aircraft operations outside of the United States when proposing *how* aircraft operators should submit manifest information. The U.S. often takes for granted the wide availability of a reliable connection to the Internet. In most parts of the world, Internet availability is a scarce resource and difficult to secure. Private aircraft often travel to these parts of the globe seeking new business opportunity and development. Private aircraft provide the only reliable means of transportation to some remote parts of the planet.

Other means of communication, such as a telephone or ship-to-shore operator, have much broader coverage and availability. We believe that limiting an aircraft operator's method of communicating mandatory information to a single path, such as an internet portal, and requiring aircraft to land at a station where Internet communication is available in order to comply with this mandate raises significant operational and aircraft safety concerns that the Bureau has not addressed.

For decades, aviation safety experts within the Federal Aviation Administration (FAA) have avoided policies and regulations that simply, for the sake of "documentation" or other actual non-safety related measures, require an additional operation (a take-off or landing). As you may know, the majority of aviation accidents occur during the take-off, approach and landing phases of flight. Exposing private aircraft operators to additional risk by mandating aircraft operators to land at a facility with adequate internet availability simply for the purpose of submitting manifest information is not in the best interest of aviation safety policy.

NBAA appreciates that the Bureau has considered authorizing other parties to submit required information on behalf of the pilot-in-command. For many operators, this may prove to be the best solution. We strongly believe, however, that no rule should effectively mandate the use of a third party service because of lack of flexibility built into the rule. A private aircraft operator should have the opportunity to comply with this rule without extraordinary means and without the involvement of another party. By proposing to mandate the exclusive use of an Internet-based manifest submission, the Bureau has essentially justified, through Federal rulemaking, a higher cost third-party involvement.

We strongly believe that the Bureau must consider providing additional communication methods for these operations. Failing to develop alternative methods, such as telephone communication, will not only add to the cost of compliance for this rule, which the Bureau has not considered, and expose private aircraft operators to an unacceptable additional safety risk by mandating an additional aircraft operation due to the lack of communication methods.

Our analysis of the Bureau's proposal also reveals gaps in the Bureau's understanding of private aircraft operations related to passengers. The Bureau proposes to mandate a complete manifest submission at least one hour prior to departure. For many private aircraft operators using larger aircraft, the passenger manifest can change frequently, even within one hour of departure. Additionally, the flexibility provided by private aircraft means that the aircraft departs when the passengers arrive, minimizing any time "waiting around" for unknown reasons.

Business aviation has a long and demonstrated history of security for private aircraft operations. Access procedures for these aircraft rival those in place for the nation's commercial airlines. Private aircraft operators using larger aircraft simply do not allow unknown passengers or cargo on board their planes. This allows known passengers to arrive shortly before departure to maximize their productive time. Mandating that the aircraft operator

submit a manifest at least one hour prior to departure will, in addition to the lack of communication methods, further hamper the utility provided by these business tools.

NBAA recommends that the Bureau consider a requirement that simply requires an approval prior to departure, regardless of when the operator submits the manifest. Since most international private aircraft operations involve the same crew and the same passengers, it is unlikely that repeated manifest submissions and checks against government watch lists will reveal additional useful threat information. If the system proposed for checking manifest submission actually provides a rapid response (less than 5 minutes), we believe that many operators could support a measure that requires an approval prior to departure.

While these two issues highlight the largest areas of concern with the proposal, we have identified several additional specific issues that we believe the Bureau must address prior to releasing a final rule.

### **Specific Issues**

#### Transponder Code as Part of Manifest Submissions

As part of the proposed manifest submission, the Bureau proposes to require, in §122.22(b)(4)(xviii) and §122.22(c)(4)(xix), a transponder code. In practice, air traffic control services do not issue a transponder code to a private aircraft operation until shortly before take-off. That means, the passengers and baggage are loaded, the aircraft is closed and secured, engines are running and the aircraft is taxiing to the runway. It is impractical for an operator to wait until the aircraft is in motion to then submit a manifest that includes this information. In addition, air traffic control will routinely change transponder codes in flight. It is rare for an international flight to arrive at its destination with same transponder code issued at its departure.

NBAA recommends that the Bureau eliminate this requirement from the manifest submission as it provides no security value and it is also difficult, if not impossible, for the aircraft operator to know this code until just prior to take off. Retaining this requirement will cause undue confusion and could strain international air traffic services.

#### Owner Information from Existing Government Databases

As part of the Bureau's proposal, §122.22(b)(3)(x) and (xii) would require an airplane operator to submit the aircraft owner's name and address. The FAA's aircraft registry system in Oklahoma City manages aircraft owner information for all U.S. registered aircraft. The aircraft registry database is available for use by government agencies to identify aircraft owner information. Since registry information contains all types of owner information, both individuals and companies, it should cover the broad spectrum of aircraft owners conducting international operations.

NBAA believes that requiring a private aircraft operator to submit information on its manifest that government officials already have the ability to access creates a duplicative reporting requirement with no added security value. Since the FAA prohibits a U.S. registered aircraft from leaving the U.S. until the owner receives a permanent registration, information contained within the FAA aircraft registry for private aircraft traveling internationally should be accurate and up-to-date. NBAA recommends that the Bureau eliminate this duplicative reporting requirement since the information is already available to government officials in existing, reliable databases.

#### Pilot Notification of Positive Matches

The Bureau seeks comments on whether to inform the pilot, in the event that CBP denies or restricts landing rights for the plane, which passenger(s) has been identified by DHS on the selectee or no-fly lists so that the pilot may better understand potential threats to the security of the aircraft. NBAA believes that CBP should provide specific passenger information to the pilot of the aircraft so that the aircraft operator can take appropriate actions. Simply denying landing rights to a private aircraft with no further explanation and without the ability to modify a proposed manifest does not enhance security and will create frustration and confusion for those operators denied landing rights by CBP.

#### Pilot Involvement in Manifest Preparation

As part of the preamble accompanying this proposal, the Bureau indicates that

*“The pilot collecting the manifest information would be required to compare the manifest information with the information on the DHS-approved travel document presented by each individual attempting to travel onboard the aircraft to ensure that the manifest information is correct, that the travel document appears to be valid for travel to the United States, and the traveler is the person to whom the travel document was issued.”*

Operators of private aircraft utilize a variety of means and personnel to collect and verify passenger manifest information. Often, personnel other than the pilot collect and verify passenger travel documents and identification. The Bureau’s proposal would mandate significant changes to how an airplane operator collects passenger information with no increase in security.

NBAA recommends that the Bureau modify its proposal to allow others involved with the operation of the aircraft to conduct the required comparisons and validations. Since CBP has broad authority to impose substantial penalties on operators who submit incomplete or inaccurate manifest information, holding only the pilot responsible for information that in many cases is validated by others will remove many of the effective security processes in place today.

### Cost-Benefit Analysis

NBAA does not believe that the cost-benefit analysis conducted by the Bureau accurately represents the true costs of this rule for the business aviation community. The cost analysis assumes that 50% of passengers would arrive 15 minutes earlier. For business aviation, nearly 100% of passengers would have to arrive 45 minutes earlier. Additionally, the time required for a pilot to inspect, validate and complete a passenger manifest is inaccurate because the passenger identification will likely not contain other required manifest information such as addresses.

### **Conclusions**

NBAA appreciates the opportunity to submit these comments on the Bureau's proposal. While this proposal may offer the opportunity to streamline and consolidate some current reporting practices, many of the proposed requirements will create a substantial regulatory burden.

Please contact us if you require any additional information or data.

Sincerely,

A handwritten signature in black ink that reads "Douglas Carr". The signature is written in a cursive style with a large, prominent 'D' and 'C'.

Douglas Carr  
Vice President  
Safety, Security and Regulation