
CBP PROCEDURES FOR US PRIVATE FLIGHTS

By Rick Gardner

This November it will have been 14 years since the Advanced Passenger Information System (APIS) was implemented for General Aviation flights to/from the United States and foreign countries. Along the way, we have had the tremendous opportunity to build a close working relationship with the leadership within US Customs and Border Protection (CBP) to review and collaborate on General Aviation issues. There has been a lot of effort and hard work going on behind the scenes by CBP Headquarters to improve procedures for General Aviation. The following are some of the most common topics that private aircraft operators need to be aware of.

South: CBP differentiates between aircraft arriving from places “south” of the United States versus other countries. Basically, every country in the Western Hemisphere, with the exception of Canada and Bermuda, is considered “south”. When arriving from one of these countries “south” of the USA we must make our first landing at a CBP “Designated” airport closest to our point of border or coastline crossing unless we have obtained a Border Overflight Exemption (BOE). (More on BOEs in a moment.) Please note that there is a specific list of 32 “Designated” airports in the regulations and that NOT ALL CBP airports in Florida or along the Gulf of Mexico coastline nor the USA-Mexico border are “Designated” airports. Again, we MUST make our FIRST landing at the Designated Airport closest to where we cross the USA-Mexico border or the USA coastline. However, there are a few exceptions that exist that pilots should also be aware of.

Marathon, FL. While not on the list of Designated Airports, Marathon, FL (KMTH) is a CBP port and can be used in lieu of a Designated Airport. Be sure to contact CBP at the airport to obtain Permission to Land. (More on Permission to Land in a moment.)

Tucson, AZ (KTUS), San Antonio, TX (KSAT), Midland, TX (KMAF): While these airports are Designated Airports, you cannot get to them without overflying another Designated airport. Nonetheless, if you are granted Permission to Land, you may use those airports as your closest airport to the border.

Miami Field Office: The CBP Miami Field Office (MFO) has established that “Flights which are required to land at a nearest designated airport to the border or coastline crossing point may proceed directly to any of the eight designated airports in the MFO Area Of Responsibility (AOR) without an overflight exemption, even if the airport of intended landing is not the one closest to the U.S. coastline crossing point.” The Designated airports in the MFO’s AOR are: KEYW, KTMB, KMIA, KOPF, KFXE, KFLL, KPBI and KFPR. So, if you were returning to the USA from Cancun, Mexico, you could overfly Key West and continue up the east Florida coastline all the way to Fort Pierce and you would be in compliance. What you CANNOT do when returning from The Bahamas is to overfly any of these MFO airports and land in Tampa, FL (KTPA) even though Tampa is one of the 32 Designated airports.

Border Overflight Exemptions (BOE): One way to avoid having to deal with Designated Airports is to obtain a BOE from CBP. One of the great things that CBP Headquarters has accomplished is to get rid of the old Forms 442 and 442A and to centralize the BOE approval process. In addition, they have eliminated the previous requirements of having to list all aircraft, foreign ports, crew and passengers that would be authorized under the BOE. Today, all you have to do is identify the operator to whom the BOE will be issued and any aircraft, crew, passengers and foreign ports are all systematically vetted through APIS when the manifest is transmitted. A BOE holder has to ensure that the Operator specified in the APIS manifest MUST be the Operator to whom the BOE was issued. In addition, to legally utilize a BOE, the flight must be under IFR, fly above 12,500 feet and not make any intermediate stops. Per CBP regulations, BOE's can take up to 30 days to process, so don't waste time. A BOE is a privilege obtained by demonstrating a history of compliance. If you are subject to an enforcement action, the pilot can lose their BOE privileges for 6 months and repeated violations can result in the Operator losing their BOE privilege also.

Advanced Passenger Information System (APIS): Since November of 2008, operators of private flights are required to file a DEPARTURE APIS manifest using the Electronic Advanced Passenger Information System (eAPIS) portal when departing the USA for a foreign country and an ARRIVAL APIS manifest when returning to the USA from a foreign country. DEPARTURE and ARRIVAL APIS manifests must be filed and authorization from the Department of Homeland Security (DHS) must be received NO LATER than 1 hour prior to departure from the USA or foreign country. This DHS authorization comes in the form of a receipt email which contains a summary of the date, time, departure and arrival airports. Double check that the information in the DHS receipt email is accurate. Failing to get the receipt email from DHS means you have not received authorization to depart so you definitely should not depart. Sometimes failing to receive a DHS receipt email may be due to issues with the CBP systems or typos in your email address. Check your SPAM folder to make sure that the email was not sent there. If you share the eAPIS account you are using with someone else, check to see if they changed the email address and ask them to forward the authorization to you. One

last resort is to contact CBP at the port and ask if they can determine if the authorization was issued, write down the officer's name or initials in the event that there is ever a question about whether you received authorization. As there is no limitation on how early an APIS manifest may be submitted, I recommend that you submit it as soon as possible once your itinerary and crew/passenger information is established. CBP always advises, "Transmitting for next week is fine if your plans have firmed up but next Christmas is too far away." Leaving things to the last minute just invites Murphy's law.

The rules also require that if you add/remove/substitute crew and/or passengers or if you make a change to the travel calendar date in either a DEPARTURE or ARRIVAL manifest then you MUST resubmit a new manifest to CBP. Any authorizations related to the originally submitted manifest(s) are no longer valid and you must wait for a new authorization from DHS. Changes to departure time, arrival time or arrival location may be made telephonically.

You should NEVER be asked to provide Personally Identifiable Information (PII) such as DOB, passport number, SSN, etc. via FAX or email. If you do get such a request, ask for the supervisor, contact CBP headquarters or contact us at +1 786 206 6147.

Departing the USA: You DO NOT need to depart the USA from an airport where CBP is present, you can depart from any airport in the USA. In your APIS DEPARTURE manifest you should enter the airport code of the nearest CBP airport to the departure site and then in the "Actual Departure Location Description" field, describe the actual place from which the aircraft will depart. This is an optional field which should be used only when the location of actual departure differs from the airport listed in the "CBP Airport" field. The "City" field should be the actual city from which the aircraft is departing. When you submit an APIS DEPARTURE manifest to CBP and you receive DHS authorization to depart, the authorization is based on the information that you have submitted, *including the departure time.*

On occasion, CBP conducts random departure inspections on aircraft departing from the USA (it has happened to me) and officers will be dispatched to your departure airport location. If they arrive and you have departed before the time you specified or if you are nowhere to be found and then depart after the time specified, you could be subject to enforcement action. Always update departure times with CBP.

Returning to the USA: In addition to submitting an ARRIVAL APIS manifest and getting the receipt email from DHS, the regulations specifically require us to also contact CBP at the arrival airport and obtain Permission to Land (sometimes referred to as, "Landing Rights"). Historically, different CBP ports have implemented varied procedures for requesting and granting Permission to Land, however that is now becoming more standardized through the efforts of CBP headquarters. One significant change is that CBP will no longer grant Permission to Land unless you have successfully submitted your APIS ARRIVAL manifest first. When you are granted Permission to Land by CBP at the arrival port, you should receive an email from CBP (in addition to the one sent by DHS) confirming that Permission to Land has been granted and any specific instructions that CBP may have. If you are denied Permission to Land, you will also receive an email from the port confirming that Permission to Land was denied. Failing to receive the email confirming Permission to Land is an indication that either the port has not yet adopted the new procedure or that Permission to Land was not properly issued by the CBP officer who responded to your request and a follow up request would be advisable. Be prepared to prove who gave you permission to land, the receipt email from DHS alone DOES NOT grant you Permission to Land.

The email granting Permission to Land will have several attachments. The first attachment is called "CBP Private Aircraft Arrival Information" which contains an overview of what the operator of a private aircraft is expected to do in order to comply with CBP regulations. In addition, you may also find attached a "General Aviation Airport Fact Sheet" which contains detailed information on what you need to know about the CBP requirements for the specific airport you are landing at.

Not only do these two documents clarify what is expected of you, they serve as proof to a CBP officer that you have followed procedures correctly. Lastly, there is a third document called "Tip of the month" which is a review of important topics that pilots should be aware of and this document is updated monthly. Of the 392 airports where CBP is present, approximately 250 have published Airport Fact Sheets.

The Permission to Land email messages and Port Fact Sheets grant permission based on what you have transmitted in APIS and also include port-specific time tolerances; a +/- time allowance based on port operations. If you need to ARRIVE in the USA at a time significantly different from that submitted in your ARRIVAL manifest, you need to contact CBP to re-secure Permission to Land for your new arrival time. Many aircraft land at Designated Airports and CBP must ensure that they have the space and manpower to receive and process inbound aircraft.

When arriving in the USA, there is no regulatory basis requiring pilots and travelers to remain onboard an arriving aircraft awaiting formal or direct permission to deplane. CBP officers at some ports may not come out to meet the aircraft and may wait inside the building until the crew/PAX come inside. Other ports may have signs with instructions, follow them. However, any traveler movement outside the immediate aircraft area or interactions with other individuals, is not permitted without specific and direct CBP authorization. In all cases, especially where health and safety concerns present or exist, CBP always emphasizes to exercise reasonable and responsible judgement. If your aircraft Auxiliary Power Unit (APU) exhaust is 8 feet or higher above the ground, you do not have to power it down. However, CBP can require you to shut down the APU, though, in cases of enforcement actions.

Canceling or postponing a flight: You are required to advise CBP if you are going to cancel your flight or postpone it to another date (which will require that you file a new manifest). This is important because CBP plans their workload and staffing

based on manifests that they can see in the system. It is unfair and wasteful to have officers assigned to work overtime or for another pilot to be denied an arrival time because CBP was expecting your non-existent flight. Under CBP's updated procedures, when you cancel an APIS manifest, you will also receive an email confirming that your APIS manifest has been canceled. If you transmitted multiple APIS manifests for the same date, the CBP port may cancel the unnecessary manifests which can trigger an email saying that the "APIS was cancelled". Remember that each submitted APIS manifest has a unique eAPIS number as does the DHS receipt email and CBP cancellation email so you can match them. If you are ever in doubt, you should contact the port to confirm.

Transporting currency: Another important point that operators need to be aware of is that you MUST always report if you are taking into, or out of, a country more than \$10,000.00 USD in monetary instruments. It is not illegal to transport more than \$10,000.00 USD but failing to report it is illegal. When you transport, attempt to transport, or cause to be transported (including by mail or other means) currency or other monetary instruments in an aggregate amount exceeding \$10,000 or its foreign equivalent) at one time from the United States to any foreign country, or into the United States from any foreign country, you must file a report with U.S. Customs and Border Protection. This report is called the Report of International Transportation of Currency or Monetary Instruments, FinCEN Form 105. This form can be obtained at all U.S. ports of entry and departure or on the Web at [FinCEN Form 105 \(Rev. 7-2003\)](#). Alternatively, the report can be filed electronically, an eCMIR, at the following website: <https://fincen105.cbp.dhs.gov>. Travelers will be able to enter information into an eCMIR up to three days prior to travel, creating a provisional document on the CBP.gov website. Foreign countries will also have their own documents and procedures. Failing to report can result in seizure of the monetary instruments, fines, or worse.

CBP officer says it's OK: One topic that comes up repeatedly is that a CBP officer "buddy" says its OK to land without a BOE or approves some other deviation from

the rules. CBP headquarters has made it very clear that NO CBP officer has the authority to override US law. Doing so could get both you and the officer into trouble. Don't succumb to the temptation of listening to what you want to hear versus what you need to know. Enforcement actions can cost you money, ruin your reputation with CBP and cause you to lose BOE privileges.

Visa Waiver / ESTA: Part of the joy of having a private aircraft is to share the experience with family and friends. However, if any of those are citizens of Visa Waiver countries and they do not have a US Visa, then they cannot fly into the USA on a private aircraft unless you are a signatory carrier or under some very isolated and specific circumstances. Contact CBP before you attempt to do so to avoid unpleasant surprises. If there is any chance that you may transport citizens from Visa Waiver countries, submit your request to become a signatory carrier now, while there is time.

PIC Responsibility: As PIC you are ultimately responsible for compliance with all regulations in the USA and foreign countries. In the case of CBP, the PIC is responsible for ensuring that valid passports are brought aboard the aircraft that match the APIS manifest information submitted to CBP and that authorizations to depart are properly received. You cannot blame your spouse or the "person in the office" for any errors or omissions, the buck squarely stops with the PIC. If you ever do face an enforcement action, be honest and forthright. CBP is not out to get us, what they want is compliance and have repeatedly demonstrated a willingness to work with General Aviation to achieve it. Work with them and they will work with you. This is not a guarantee that CBP will not take enforcement action, those determinations are made on a case-by-case basis and much depends on the nature and circumstances of the violation as well as the way you handle it. Violations are usually the result of either an oversight or willful intent, you don't want to give CBP the reason to believe that you are part of the latter if that isn't the case.

Illegal Charters: Unless you have a burning desire to find out more about both the US and foreign legal systems, do not misrepresent yourself as a private aircraft flight when in fact you are operating as a commercial aircraft operator, as defined by CBP (19 CFR 122.1(d)): “A “commercial aircraft” is any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered”. Note that CBP’s definition of private and commercial are different from those used by the FAA so don’t try to walk a fine line with Part 91 definitions as that could land you in serious hot water with both CBP as well as with the civil aviation authorities of foreign countries resulting in serious fines, seizure of aircraft and possibly jail in foreign countries.

Puerto Rico and US Virgin Islands (USVI): Flights between the continental USA and Puerto Rico are considered domestic flights as long as the flight is conducted under IFR, the flight is above 12,500 feet and there are no intermediate stops. Flights from Puerto Rico to the USA do require a USDA inspection in Puerto Rico prior to departure. Flights from the USA and Puerto Rico to the USVI are considered domestic flights BUT flights from the USVI to the USA and Puerto Rico are treated as international flights. When departing the US Virgin Islands (USVI) for the USA, always go through the pre-clearance process with CBP in the USVI before departing. APIS must be transmitted as an ARRIVAL into the United States.

Common Gotchas:

PICs are urged to verify that the documents that were used for the submission of the APIS manifest are on board the aircraft. This can be awkward or uncomfortable

for the crew but it is the PIC’s reputation with CBP, a possible enforcement action and loss of BOE privileges that are at stake. Some of the more common issues that arise are:

Missing passport, the passenger forgot to bring it

Bringing a different passport form the one use in the APIS manifest, passenger has 2 passports

Bringing spouse’s or child’s passport by mistake

Bringing a passport card instead of a passport, passport cards are not valid for use on an aircraft

Remember, an APIS manifest needs to contain verified and accurate information, the PIC must validate that what they have submitted is correct. CBP has told us repeatedly that transmitting bad data is always grounds for enforcement action.

Another common gotcha is trying to reenter the USA with firearms after a hunting trip. You should present firearms and/or any other high value item such as camera/video equipment, jewelry, etc. to CBP along with CBP Form 4457 BEFORE leaving the USA.

CBP is working on other projects which will continue to simplify international operations for both private and commercial General Aviation operators. We will continue to work with CBP to support these efforts and to communicate them to the General Aviation community as they come to fruition.

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