recipient will be effective unless approved in writing by RUS.

Subpart C—HWWS Loans

■ 3. In § 1776.15, revise paragraph (a)(3) to read as follows:

§ 1776.15 Terms of loans.

(a) * * *

(3) Shall not exceed $11,000 for each household water well system.

* * * * *

Dated: November 10, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–26769 Filed 11–17–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 231

Bureau of Customs and Border Protection

19 CFR Part 122

[CBP Dec. 08–43; Docket No. USCBP–2007–0064]

RIN 1651–AA41

Advance Information on Private Aircraft Arriving and Departing the United States

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule finalizes, with modifications, amendments to U.S. Customs and Border Protection (CBP) regulations pertaining to private aircraft arriving and departing the United States. This final rule requires private aircraft pilots or their designees arriving in the United States from a foreign port or location destined for a U.S. port or location, or departing the United States to a foreign port or location, to transmit electronically to CBP passenger manifest information for each individual traveling onboard the aircraft. This final rule requires private aircraft pilots or their designees to provide additional data elements when submitting a notice of arrival and requires private aircraft pilots or their designees to submit a notice of departure. Private aircraft pilots (or their designees) will be required to submit the notice of arrival and notice of departure information to CBP through an approved electronic data interchange system in the same transmission as the corresponding arrival or departure passenger manifest information. Under this rule, this data must be received by CBP no later than 60 minutes before an arriving private aircraft departs from a foreign location destined for the United States and no later than 60 minutes before a private aircraft departs a U.S. airport or location for a foreign port or place.

This rule also expressly acknowledges CBP's authority to restrict aircraft from landing in the United States based on security and/or risk assessments, or, based on such assessments, to specifically designate and limit the airports where aircraft may land or depart.

DATES: This final rule is effective on December 18, 2008. Compliance Date: Private aircraft pilots (or their designees) must comply with the requirements of this final rule on May 18, 2009.

FOR FURTHER INFORMATION CONTACT: For Operational aspects: Eric Rodriguez, Office of Field Operations, (281) 230–4642; or for Legal aspects: Glen Vereb, Office of International Trade, (202) 352–0030.

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I. Background

A. Background and Authorities

A private aircraft,[1] in contrast to a commercial aircraft,[2] is generally any aircraft engaged in a personal or business flight to or from the United States which is not carrying passengers and/or cargo for commercial purposes. *See* 19 CFR 122.1(h). Pursuant to 19 U.S.C. 1433, 1644 and 1644a, the Secretary of Homeland Security (Secretary) has broad authority respecting all aircraft, including private aircraft, arriving in and departing from the United States. The term ''general aviation'' is commonly used in regard to private aircraft. Specifically, 19 U.S.C. 1433(c) provides that the pilot of any aircraft arriving in the United States or the U.S. Virgin Islands from any foreign location is required to comply with such advance notification, arrival reporting, and landing requirements as regulations may require. Under this authority, CBP can deny aircraft landing rights within the United States based on, among other considerations, security and/or risk assessments. Alternatively, based on such assessments, CBP may specifically designate and limit the airports where aircraft may land. In addition, under 19 U.S.C. 1433(d), an aircraft pilot is required to present or transmit to CBP through an electronic data interchange system such information, data, documents, papers or manifests as the regulations may require. Section 1433(e) provides, among other things, that aircraft after arriving in the United States or U.S. Virgin Islands may depart from the airport of arrival, but only in accordance with regulations prescribed by the Secretary. And, under 19 U.S.C. 1644 and 1644a, the Secretary can designate ports of entry for aircraft and apply vessel entry and clearance laws and regulations to civil aircraft.

Further, 46 U.S.C. 60105 provides that any vessel shall obtain clearance from the Secretary pursuant to regulation, in a manner prescribed by the Secretary, before departing the United States for a

[1] 19 CFR 122.1(h) defines a ''private aircraft'' as any aircraft engaged in a personal or business flight to or from the U.S. which is not: (1) Carrying passengers and/or cargo for commercial purposes; or (2) leaving the United States carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or (3) returning to the United States carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes.

[2] 19 CFR 122.1(d) defines ''commercial aircraft'' as any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered. If either the arrival or departure leg of an aircraft's journey is commercial, then CBP considers both legs of the journey to be commercial.

foreign port or place. Because 19 U.S.C. 1644 and 1644a provide for the extension of the vessel entry and clearance laws and regulations to civil aircraft, the Secretary is authorized to issue regulations for civil aircraft that correspond with the vessel clearance requirements under 46 U.S.C. 60105. The previous ''exception'' from clearance requirements for private aircraft under 19 CFR 122.61 did not reflect a lack of statutory authority to regulate private aircraft. It reflected instead the Secretary's (then the Secretary of the Treasury's) discretion not to impose clearance requirements on that segment of civil aviation pursuant to the implementing regulations.

B. Current Requirements and Vulnerabilities for All Aircraft

1. Advance Notice of Arrival

CBP currently requires aircraft pilots of all aircraft entering the United States from a foreign area, except aircraft of a scheduled airline arriving under a regular schedule, to give advance notice of arrival. *See* 19 CFR 122.31(a). Advance notice of arrival must be furnished by the pilot of the aircraft and is generally given when the aircraft is in the air. As described below, the regulations set forth the general rule for advance notice of arrival for private aircraft and specific requirements for certain aircraft arriving from areas south of the United States, including aircraft from Cuba.

a. Private Aircraft Arriving in the United States

Pursuant to 19 CFR 122.22, private aircraft, except those arriving from areas south of the United States (discussed below), are required to give advance notice of arrival as set forth in 19 CFR 122.31. This notice must be provided to the port director at the place of first landing by radio, telephone, or other method, or through the Federal Aviation Administration (FAA)'s flight notification procedure. *See* 19 CFR 122.31(c). The advance notice must include information about the number of alien passengers and number of U.S. citizen passengers, but the regulation does not require any identifying information for individual passengers onboard to be submitted.[3] Nor does the current regulation provide a specific timeframe for when the notice of arrival shall be given, except that the pilot shall furnish such information far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft. *See* 19 CFR 122.31(e).

b. Private Aircraft Arriving From Areas South of the United States

Private aircraft entering the continental United States from a foreign area in the Western Hemisphere south of the United States are subject to special advance notice of arrival and landing requirements. *See* 19 CFR 122.23–24. These aircraft include all private aircraft and commercial unscheduled aircraft with a seating capacity of 30 passengers or less, or maximum payload capacity of 7,500 pounds or less. Pursuant to 19 CFR 122.23(b), such aircraft are required to give advance notice of arrival to CBP at the nearest designated airport to the border or coastline crossing point listed in 19 CFR 122.24(b). These aircraft must also provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. *See* 19 CFR 122.23(b). The pilot may provide advance notice of arrival for these aircraft by radio, telephone, or other method, or through the FAA flight notification procedure. The advance notice of arrival for such aircraft arriving from areas south of the United States must include the information listed in 19 CFR 122.23(c).[4] Aircraft arriving from areas south of the United States that are subject to the requirements of 19 CFR 122.23 are required to land at designated airports listed in 19 CFR 122.24(b), unless DHS grants an exemption from the special landing requirement.[5]

c. Aircraft Arriving From Cuba

The current regulations require all aircraft entering the United States from Cuba, except for public aircraft,[6] to give advance notice of arrival at least one hour before crossing the U.S. border or coastline. *See* 19 CFR 122.152 and 122.154. This notice must be furnished either directly to the CBP Officer in charge at the relevant airport listed in 19 CFR 122.154(b)(2) or through the FAA flight notification procedure. The advance notice of arrival for aircraft from Cuba must include the information listed in 19 CFR 122.154(c).[7]

2. Permission To Land (Landing Rights)

The current regulations require the owner or operator of any aircraft, including a private aircraft, arriving at a landing rights airport or user fee airport to request permission to land, known as landing rights, from CBP. *See* 19 CFR 122.14(a) and 122.15(a). A ''landing rights airport'' is defined as any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by CBP to land. *See* 19 CFR 122.1(f). A ''user fee airport'' is defined as an airport so designated by CBP and flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. *See* 19 CFR 122.1(m). An informational listing of user fee airports is contained in section 122.15. Permission to land must be secured from the director of the port, or his representative, at the port nearest the first place of landing for both landing rights airports and user fee airports. However, the current regulations do not set forth a precise application procedure or time frame for securing permission to land.

3. Vulnerabilities

DHS is working to strengthen general aviation security to further minimize the vulnerability of private aircraft flights being used to deliver illicit materials, transport dangerous individuals or employ the aircraft as a weapon. Today, compared to regularly scheduled commercial airline operations, little or no screening or vetting of the crew, passengers or the aircraft itself is required of private aircraft before entering or departing the United States

[3] 19 CFR 122.31 provides that the contents of advance notice of arrival shall include the following information: (1) Type of aircraft and registration number; (2) Name of aircraft commander; (3) Place of last foreign departure; (4) International airport of intended landing or other place at which landing has been authorized by CBP; (5) Number of alien passengers; (6) Number of citizen passengers; and (7) Estimated time of arrival.

[4] Section 122.23(c) provides that the contents of the advance notice of arrival shall include the following: (1) Aircraft registration number; (2) Name of aircraft commander; (3) Number of U.S. citizen passengers; (4) Number of alien passengers; (5) Place of last departure; (6) Estimated time and location of crossing U.S. border/coastline; (7) Estimated time of arrival; and (8) Name of intended U.S. airport of first landing, as listed in § 122.24, unless an exemption has been granted under § 122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by CBP officers in the U.S. Virgin Islands.

[5] 19 CFR 122.25 sets forth the procedures concerning exemption from special landing requirements—known as an overflight privileges.

[6] 19 CFR 122.1(i) defines ''public aircraft'' as any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the United States from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

[7] 19 CFR 122.154(c) provides that the contents of advance notice of arrival shall state: (1) Type of aircraft and registration number; (2) Name of aircraft commander; (3) Number of U.S. citizen passengers; (4) Number of alien passengers; (5) Place of last foreign departure; (6) Estimated time and location of crossing the U.S. coast or border; and (7) Estimated time of arrival.

at air ports of entry (APOE). Some of these APOEs are located well within U.S. territory and near highly populated areas. DHS has developed this final rule to address these vulnerabilities and to enhance international and domestic general aviation security. This final rule includes the identification and vetting of passengers and crew on private aircraft prior to entering and departing U.S. airspace.

II. Summary of Requirements in the Proposed Rule

On September 18, 2007, CBP published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled ''Advance Information on Private Aircraft Arriving and Departing the United States,'' proposing new requirements for private aircraft arriving to and departing from the United States, as described below. *See* 72 FR 53394.

A. General Requirements for Private Aircraft Arriving in the United States

The NPRM proposed to require the pilot of any private aircraft arriving in the United States from a foreign port or location or departing the United States for a foreign port or location to transmit to CBP an advance electronic manifest comprised of specific information regarding each individual traveling onboard the aircraft pursuant to 19 U.S.C. 1433, 1644 and 1644a.

1. Notice of Arrival

The NPRM proposed adding data elements to the existing notice of arrival requirements and proposed a new notice of departure requirement. In addition, CBP would require pilots to provide the notice of arrival and notice of departure information through the electronic Advance Passenger Information System (eAPIS) [8] Web portal or through another CBP-approved electronic data interchange system in the same transmission as the corresponding arrival or departure manifest information. Under the NPRM, these data are to be received by CBP no later than 60 minutes before an arriving private aircraft departs from a foreign location to a U.S. port or location, and no later than 60 minutes before a private aircraft departs a United States airport or location for a foreign port or place.

The NPRM also proposed a new timeframe for reporting notice of arrival no later than 60 minutes prior to the aircraft's departure to the United States from a foreign port or location, as opposed to 60 minutes before crossing the U.S border, as is the current requirement. Under the proposed rule, notice of arrival and manifest data would be required to be furnished as set forth in 19 CFR 122.22 for private aircraft, which requires submission of such information to CBP via an electronic data interchange system approved by CBP. All other aircraft subject to 19 CFR 122.23 would be required to report notice of arrival as required under that provision.

2. CBP's Authority To Restrict or Deny Aircraft Landing Rights

The NPRM proposed to clarify landing rights procedures and departure clearance procedures, and acknowledge CBP's authority to restrict aircraft from landing in the United States based on security and/or risk assessments, or to specifically designate and limit the United States airports where aircraft may land or depart.

B. Certain Aircraft Arriving From Areas South of the United States

The NPRM proposed to correct a discrepancy between the definition of ''private aircraft'' in 19 CFR 122.23, which encompasses both private aircraft and, in some instances, small, unscheduled commercial aircraft and the general definition provided for ''private aircraft'' in 19 CFR 122.1(h). This correction will properly indicate that section 122.23 encompasses small, commercial aircraft that seat less than 30 passengers, or have a maximum payload capacity of less than 7,500 pounds, carrying people or cargo for hire, which are not currently covered by section 122.23(a)(1)(iii), but which, under section 122.1(d), are considered commercial aircraft.

C. Notice of Arrival for Private Aircraft Arriving From Cuba

The NPRM proposed that private aircraft arriving from Cuba, as provided for in 19 CFR 122.154, be required to provide notice of arrival and manifest data in the same manner as private aircraft that are subject to proposed 19 CFR 122.22. Private aircraft arriving from Cuba would continue to be required to provide notice of arrival information to the specifically designated airports where the aircraft will land: Miami International Airport, Miami, Florida; John F. Kennedy International Airport, Jamaica, New York; or Los Angeles International Airport, Los Angeles, California.

III. Discussion of Comments

The NPRM requested comments to be submitted on or before November 18, 2007, regarding the proposed amendments. CBP extended the comment period to December 4, 2007, by notice published in the **Federal Register** on November 14, 2007. *See* 72 FR 64012. A total of 2,907 comments were received from the general public, including individual pilots and members of various pilot associations. CBP's responses to the comments are provided below.

General Comments

Comment: Several commenters requested that the comment period for the NPRM be extended an additional 60 days to January 18, 2008.

Response: Although CBP did not extend the comment period for an additional 60 days, CBP did extend the comment period by an additional 15 days, until December 4, 2007. *See* 72 FR 64012. CBP believed that the original 60-day comment period in addition to the 15-day extension provided the public with an adequate amount of time to submit comments. Moreover, based on the ample number of comments received by the end of the original comment period, CBP believed that public sentiment was accurately captured. Further extension of the comment period would delay implementing the final rule, which would allow the continued existence of vulnerabilities that threaten the security of the United States.

Comment: Several hundred commenters objected to what was described as proposed user fees and contact fees, but did not specify the nature or source of such fees.

Response: This final rule does not change existing user fees or create new user fees. User fees are not part of this rulemaking.

Comment: Several commenters asked how DHS was going to control the flow of traffic at airports upon implementation of the rule.

Response: This rule requires pilots to provide advance information on aircraft and individuals onboard that aircraft, prior to departure to or from the United States. CBP believes the collection and submission of this information will have a limited impact on the flow of traffic at airports. However, responsibility over the flow of air traffic at airports falls within the purview of the FAA.

Comment: Commenters expressed concerns as to whether they would be required to electronically transmit manifest and notice of arrival information when a flight begins and ends in the same country but the aircraft utilized international airspace for routing purposes.

Response: This rule does not regulate domestic flights as in the case of an

[8] eAPIS is an online transmission system that meets all current APIS data element requirements for all mandated APIS transmission types.

aircraft that takes off and lands within the United States, but utilizes foreign airspace. In addition, this rule does not regulate foreign flights in which a flight originates and terminates in that foreign country, but utilizes U.S. airspace. Therefore, those types of flights are unaffected by this rule.

Comment: One commenter recommended that CBP use FAA future surveillance and make changes involving FAA and Automated Flight Service Stations (AFSS). In their comment, Aircraft Owners and Pilots Association (AOPA) recommended an evaluation of how the FAA's (Flight Service Stations) FSS system could be incorporated in the arrival notification procedures. The commenter asserted that FSS is similar with interfacing between FAA air traffic control facilities and CBP. AOPA also asserted in its comment that in September 2007, the FAA issued a proposed rule that would require all aircraft to be equipped with Automatic Dependent Surveillance—Broadcast (ADS–B) by 2020 in order to fly within Class B and C airspace and above 10,000 feet. ADS–B is a datalink technology that uses satellite-based navigation equipment located on board aircraft and positioning information from Global Positioning System (GPS) satellites to automatically transmit aircraft location and altitude to air traffic controllers and other nearby aircraft.

Response: The technology referenced by the commenters is helpful to the FAA in monitoring airborne aircraft. However, the goal of this final rule is to obtain information on passengers and aircraft prior to take-off, not after an aircraft is airborne. CBP deems it more effective to identify potential risks to aviation and border security before an aircraft gains access to United States airspace.

Comment: Several commenters expressed concern about names that are very common and continuously appearing on the ''Watch List'' which would either restrict or delay their arrival or departure.

Response: CBP appreciates the concerns that members of the public have expressed regarding shared and/or similar names to those that appear on the consolidated U.S. government watchlist and the potential for misidentification. Maintenance of the watchlist is beyond the scope of this rule. For more information on the watchlist and how to seek redress, please refer to the U.S. Department of Homeland Security's Travel Redress Inquiry Program (DHSTRIP) by going to the Department of Homeland Security Web site, *http://www.dhs.gov* or by cutting and pasting the following web address into a web browser for information on how to address such issues: *http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm.*

Comment: Several hundred commenters requested that CBP meet with their association to discuss the proposed rule.

Response: CBP did not hold public meetings on this proposed rule and did not meet with any individuals or associations to discuss the proposed rule. The 75-day comment period and the large number of comments received during the NPRM's comment period were sufficient for CBP to accurately determine public sentiment.

Comment: One commenter alleged that the public had been disenfranchised of their right to comment on this NPRM because no comments were posted on 22 separate days during the comment period.

Response: CBP works diligently to keep the public apprised of its current public policies, and takes steps in the form of published notices, notices of proposed rulemakings, final rules and other actions allowing for public comment. The commenter is correct that no comments were *posted* on *http://www.regulations.gov* on the days referenced during the comment period. However, there is a difference between comments being *posted* and comments being *submitted* and *received.* Depending on the method of submission (*e.g.*, U.S. mail or online), the process of posting comments varies slightly, but it is never immediate. On the days referenced by the commenter, comments actually were *submitted* (and *received*) for each day. However, comments are not posted immediately when submitted because prior to being posted, all comments must be initially reviewed for various reasons, such as verifying the comments received in the mail are not duplicated in the electronic docket, use of inappropriate language or locating missing attachments. After this initial review, comments are then posted. All of the days referenced by the commenter were weekend days or holidays, with one exception (the Friday following Thanksgiving). Comments were not posted on those days because personnel were not available to perform the tasks referenced above.

Comment: Some commenters expressed concern regarding how they could expect the transition from current methods of operation for international arrivals and departures by private aircraft at the various ports around the country to the newly required use of eAPIS to occur.

Response: When these regulations become effective, there will be a transitional period during which the current manual process of requesting landing rights will gradually be replaced by this automated procedure (i.e., eAPIS). During this transitional period, pilots flying into locations that currently require advance arrangements with the CBP port to ensure the availability of CBP officers to process the aircraft should continue to follow those local procedures for requesting landing rights until instructed otherwise.

Implementation—Privacy Issues

Comment: Several hundred commenters expressed concern that, as U.S. citizens, they should not be required to ''request permission'' to enter or leave their own country. Two commenters noted the proposed rule is an effort to increase surveillance and information gathering on U.S. citizens under the guise of security.

Response: DHS is working to strengthen aviation security to further minimize the vulnerability of private aircraft flights being used to deliver illicit materials, transport dangerous individuals or employ the aircraft as a weapon. Today, compared to regularly scheduled commercial airline operations, little or no screening or vetting of the crew, passengers or the aircraft itself is required of private aircraft before entering or departing the United States at air ports of entry (APOE). Some of these APOEs are located well within U.S. territory and near highly populated areas. To address this vulnerability and further strengthen U.S. borders, DHS has developed this rule.

The requirements under the final rule include the identification and vetting of individuals on private aircraft, prior to entering and departing U.S. airspace. Submission of information for all travelers, including U.S. citizens, on board a private aircraft arriving in the United States, is already authorized under 19 U.S.C. 1433(d), as implemented in 19 CFR 122.31 and 19 CFR 122.23. This final rule changes the timing of the arrival submission (60 minutes prior to departure) and the method of submission (through eAPIS or another CBP-approved data transmission method). It also requires transmission of departure manifest information for private aircraft—something CBP does not collect currently. CBP expects that early receipt of departure manifest data for private aircraft exiting the United States will allow CBP to assess the threat presented by the aircraft and persons onboard prior to takeoff, and thus aid CBP in

preventing terrorists or terrorist weapons from gaining access to an airborne aircraft.

Furthermore, pursuant to 19 U.S.C. 1433(d) and (e), 1644 and 1644a, the Secretary has the authority to regulate the departure of aircraft, both commercial and private, including requiring passenger manifest information. Further authority may be found in 46 U.S.C. 60105, providing that any vessel shall obtain clearance from the Secretary, in a manner prescribed by the Secretary, before departing the United States for a foreign port or place; this authority is extended to the departure of aircraft pursuant to the provisions of 19 U.S.C. 1644 and 1644a.

Comment: Several commenters stated that the information required for the arrival and departure manifests goes beyond what is required for international commercial air passengers.

Response: Under the current Advance Passenger Information System (APIS) requirements for commercial aviation, information is collected regarding passengers, crew and non-crew. *See* 19 CFR 4.64, 122.49a, 122.49b, 122.49c, 122.75a and 122.75b. CBP is working to process arriving passengers on private aircraft in a similar manner. For private aircraft, CBP has determined that information regarding all individuals onboard the aircraft, as well as the aircraft, is relevant for purposes of law enforcement and threat assessment. Much of the information that CBP has determined necessary for collection regarding the individuals onboard departing and arriving private aircraft is comparable to the information that commercial air carriers are currently required to submit in electronic arrival and departure manifests for passengers and crew-members. Collecting this information prior to a private aircraft's arrival or departure will allow CBP to perform advance screening to identify any individuals who may pose a risk to aviation security prior to take off and access to U.S. airspace.

With this final rule, electronic manifest information will be required for all aircraft, except public aircraft as defined in part 122, arriving in or departing from the United States. Private aircraft will be covered by the provisions outlined in this rule and commercial aircraft will be covered by the provisions outlined in the other APIS regulations. See 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b.

Comment: Several commenters expressed concern that submitting data through the eAPIS system will lead to increased identity theft. One commenter stated that hackers could steal a pilot's clearance.

Response: CBP has a multi-layer approach to security of its databases, including software firewalls to prevent hackers from compromising its database and a secured log-in when one signs into eAPIS. CBP is very sensitive to the privacy issues associated with the use of eAPIS. For further information, CBP has published a Privacy Impact Statement (PIA) that outlines in detail what records are kept, how they are kept, and for how long they are kept. *See http://dhs.gov/xinfoshare/publications/editorial_0511.shtm.*

Implementation—Modes of Transportation

Comment: A few commenters wanted to know if hot air balloons constituted aircraft subject to the proposed rulemaking.

Response: Pursuant to 19 CFR 122.1(a), ''aircraft'' is defined as ''any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include ''hovercraft,'' which is a vehicle that hydroplanes on a thin layer of air just above the surface of water or land. Because hot air balloons are designed and used for flight in the air, they meet the definition of an ''aircraft'' set forth in 19 CFR 122.1(a). Thus, hot air balloons are considered aircraft under CBP regulations and are subject to this final rule.

Comment: Many comments stated that if other modes of transportation, such as passenger vehicles, buses, trucks, and boats are not subject to the presentation requirement for arrival and departure manifests, private aircraft should not be either.

Response: CBP disagrees. Submission of notice of arrival information indicating the number of citizen passengers and alien passengers arriving by air in the United States is already required under 19 CFR 122.31 and 19 CFR 122.23. Additionally, pursuant to 19 U.S.C. 1433(d), (e), 1644 and 1644a, the Secretary has the authority to prescribe regulations regarding the departure of aircraft, both commercial and private. Further authority exists in 46 U.S.C. 60105, which provides that any vessel shall obtain clearance from the Secretary, in a manner prescribed by the Secretary, before departing the United States for a foreign port or place. This authority is extended to aircraft pursuant to the provisions of 19 U.S.C. 1644 and 1644a.

Although the timing of the submission, the method of submission, and the data elements required are being modified, CBP does not anticipate this final rule to negatively affect private aircraft outside the United States because notice of arrival requirements are already in place and do not cause severe economic hardship. Additionally, other modes of transportation besides aircraft and vessels, specifically trucks and trains, are subject to manifest requirements. The statutory basis for requiring a manifest from a ''vehicle'' (which includes trucks and trains) is found in 19 U.S.C. 1431(b). The regulatory provisions implementing this statute are spread throughout 19 CFR Part 123 (*see, e.g.*, sections 123.3, 123.4, 123.5, 123.91, 123.92, etc.). Vehicles required to submit a manifest would do so through presentation of CBP Form 7533 Inward Cargo Manifest for Vessel Under Five Tons, Ferry, Train, Car, Vehicle, etc., which requires the following information be submitted: name or number and description of importing conveyance, name of master or person in charge, name and address of owner, foreign port of lading, U.S. port of destination, port of arrival, date of arrival, bill of lading or marks & numbers of consignee on package, car number and initials, number and gross weight (in kilos or pounds) of packages and description of goods, and name of consignee. As indicated by the aforementioned data elements for vehicles, many elements are similar to those that will be required for private aircraft under this final rule.

CBP does not require manifests from passenger vehicles unless they are carrying commercial goods. Non-commercial pleasure boats are exempt from the entry/manifest requirements under 19 CFR 4.94. Private aircraft, unlike other modes of transportation, present a unique threat because they are not inspected at the physical border and will travel over U.S. territory before CBP has the opportunity to inspect them.

Implementation—General

Comment: One commenter expressed concern that a terrorist could use the eAPIS system to verify whether certain names are on the ''No-Fly'' list.

Response: CBP has taken into consideration potential threats and intentional misuse of the eAPIS system in the development of system access and security. If an individual on the ''No-Fly'' list is identified on the manifest, DHS will conduct a risk-based analysis to determine whether to grant, restrict or deny landing rights. If landing rights are restricted or denied, the pilot will be provided with appropriate instructions and contact information.

Comment: Several hundred commenters stated that the requirement for clearance to leave the United States should be deleted because the U.S.

government should not care if ''terrorists'' are leaving the country. Three commenters questioned how CBP would be able to apprehend terrorist suspects if we did not allow them to enter the United States.

Response: CBP disagrees. CBP believes that the outbound passenger manifest information allows CBP and other law enforcement officials to better identify individuals who may be on the ''No-Fly'' watch list when either arriving in or leaving from the United States. Additionally, outbound information is necessary because any airborne aircraft can be used to transport a dangerous device and gain access to U.S. airspace. CBP's main concern is to keep individuals who are on the ''No-Fly'' list from traveling by air, whether outgoing or incoming to prevent threats to our homeland security. As a result, CBP is able to conduct better risk assessments which can lead to higher rates of detection of individuals who are on the ''No-Fly'' list. In addition, CBP has authority under 8 U.S.C. 1185 to regulate the entry and exit of individuals from the United States.

Comment: Several hundred commenters stated that the rule does nothing to increase security for private aircraft operators because passengers aboard private aircraft generally have an established relationship with the pilot.

Response: CBP disagrees. The purpose of this rule is to increase U.S. national security as well as that of private aircraft operators. As such, it is entirely possible that the family members, friends, acquaintances and employers who may travel as passengers on private aircraft are in fact on the ''No-Fly'' list unbeknownst to the pilot, which will affect whether CBP grants, denies, or restricts landing rights to the aircraft. Because the advance screening will allow for the identification of individuals on the ''No-Fly'' list and as such will prevent these individuals from gaining access to U.S. airspace, the rule will in fact increase security for private aircraft operators. As previously stated, CBP believes that the passenger manifest information allows CBP and other law enforcement officials to better identify the travel plans of individuals on the ''No-Fly'' list. The final rule addresses the threat to national security presented by private aircraft or any of its occupants, whether or not the operator of the aircraft has a personal relationship with any or all passengers.

Comment: Several commenters suggested that DHS should allow private aircraft pilots to submit passenger manifest data for both departure from the United States and return to the United States prior to leaving the United States to accommodate situations where communications equipment may not be available or reliable outside the United States.

Response: CBP agrees. Under the final rule, as well as proposed in the NPRM, pilots may submit passenger manifest data via the eAPIS portal for both departure and arrival manifests (that is, the outbound and the return flight inbound manifests) prior to departure from the United States. As proposed in the NPRM, such advance submission of arrival and departure manifests is permitted under this final rule, inasmuch as only a minimum time frame for submission of the arrival and/or departure manifest was indicated. This final rule in no way restricts pilots from submitting manifests in advance of their departure from the United States to a foreign port or location. In fact, such early submissions are encouraged and, in cases where pre-clearance services are made available abroad, the early submission (from the United States or the originating foreign country) could help expedite the processing of the flight at the pre-clearance site.

Comment: Several hundred commenters stated that this rule will negatively affect humanitarian and tourist visits from U.S. citizens to other countries. One commenter stated that this rule would adversely affect business travel.

Response: CBP disagrees. Submission of notice of arrival information for U.S. citizens entering the United States is already required for commercial flights in 19 CFR 122.31 and 19 CFR 122.23. Although the timing of the submission, the method of submission, and the data elements required are being modified, this final rule is not anticipated to negatively affect trips outside the United States because notice of arrival requirements are already in place and do not cause severe economic hardship.

Comment: Several hundred commenters stated that current systems and procedures are adequate and new requirements are not necessary.

Response: CBP disagrees. The purpose of this rule is to provide CBP and other law enforcement officials with advance electronic information regarding pilots and passengers traveling via private aircraft to allow DHS to conduct timely risk and threat assessments. The pre-screening of passenger names against the ''No-Fly'' list prior to departure from or to the United States will allow DHS to conduct threat assessments allowing the advance identification of individuals on the ''No-Fly'' list prior to take off and access to U.S. airspace.

Comment: Several commenters stated that approval should be given annually and not on a per-flight basis. Two commenters recommended approval every five years. One commenter recommended a NEXUS type program for private aircraft.

Response: CBP disagrees. Every flight that takes off for departure and/or arrival in the United States poses a possible threat by allowing access to United States airspace by every individual onboard the aircraft. For risk assessment purposes, this arrival and departure manifest information is necessary for each flight arriving in and departing from the United States. This is so because it will allow CBP to use the most up-to-date intelligence to properly react to any persons or aircraft that pose a threat to aviation and national security. CBP notes, however, that arrival and departure manifest information for a particular flight may be submitted even months in advance of arrival or departure, but no later than 60 minutes prior to departure of the private aircraft to or from the United States.

Comment: Several hundred commenters indicated that the rule is unnecessary because small private aircraft cannot cause significant damage or threat.

Response: CBP disagrees. Any size aircraft (large or small) may meet the definition of a private aircraft under CBP regulations. Furthermore, even though large aircraft may inflict more damage if flown into infrastructure, both large and small aircraft present a threat because they may be used to transport terrorists or terrorist weapons. Creating an exemption for private aircraft would provide a loophole that could compromise our national security. Furthermore, the purpose of the rule is not only to provide CBP with advance aircraft information, but to also provide CBP with advance information regarding pilots and passengers traveling via private aircraft. This will allow DHS to conduct threat assessments and reduce the probability of a terrorist attack by allowing for the advance identification of individuals on the ''No-Fly'' list prior to their gaining access to U.S. airspace via an airborne aircraft, and granting, denying or restricting landing rights accordingly. This information is needed for each flight by private aircraft arriving in and departing from the United States, regardless of the size or weight.

Comment: Thirteen commenters suggested that if one of the passengers is not approved to come into the United States, the flight may be unexpectedly grounded abroad for an extended period of time until the issue is resolved. One commenter stated that pilots should not be responsible for law enforcement

duties. Another commenter wanted to know his liability if one of his passengers shows up on the ''No-Fly'' list.

Response: DHS will resolve any delays as quickly as possible and estimates that the frequency of such occurrences should be very low.

CBP does not expect the pilot to be responsible for law enforcement duties. The pilot is best situated to review passenger documents and to verify that the passengers he will be flying appear to match the travel documents presented. Yet, although the pilot bears responsibility for the accuracy of the data submitted, DHS is responsible for any necessary enforcement that flows from that data.

If an individual on the ''No-Fly'' watch list is identified on the manifest, DHS will conduct a risk-based analysis and make a determination whether to grant, restrict or deny landing rights. If landing rights are restricted or denied, the pilot will be provided with appropriate instructions and contact information. Provided the pilot, in accordance with his/her legal obligations under this rule, correctly transmits the manifest information and follows the instructions provided by CBP and/or TSA regarding the boarding or non-boarding of particular passengers, he should have no liability.

Comment: Several commenters stated that there was no basis in existing law for the Secretary to exercise departure clearance authority over private aircraft.

Response: CBP disagrees. As previously stated, pursuant to 19 U.S.C. 1433(e), 1644 and 1644a, the Secretary has the authority to prescribe regulations regarding the departure of aircraft to and from the United States, both commercial and private. Further authority may be found in 46 U.S.C. 60105, providing that any vessel shall obtain clearance from the Secretary, in a manner prescribed by the Secretary, before departing the U.S. for a foreign port or place; and that authority is extended to civil aircraft under 19 U.S.C. 1644 and 1644a. The ''exception'' previously provided for private aircraft under 19 CFR 122.61 was not the result of a lack of statutory authority to regulate private aircraft. Instead, the Secretary (then, the Secretary of the Treasury), exercised his discretion at the time not to impose clearance requirements on that segment of civil aviation. With this new rule, the Secretary has determined that, after September 11, 2001, the clearance requirements in this rule are necessary and appropriate.

Comment: One commenter stated that the passenger manifest requirement for departure is extremely cumbersome as private flights require flexibility in terms of passengers actually onboard at departure.

Response: The rule provides that, if a departure manifest is submitted to CBP before all individuals arrive for transport, the pilot is required to submit any changes to traveler information, and receive a new clearance from CBP. If the changes are submitted less than 60 minutes prior to departure, the pilot is only required to receive a new clearance from CBP prior to departing, he does not necessarily need to wait an additional 60 minutes. By not requiring that the pilot wait a full 60 minutes, CBP believes that the rule provides sufficient flexibility and promotes efficiency.

Comment: One commenter stated that CBP should no longer require CBP Form 178 (Private Aircraft Enforcement System Arrival Report) as the included information will be electronically transmitted to CBP one hour prior to departure.

Response: CBP agrees. CBP Form 178 was created as an internal Customs form for the use by Customs inspectors. Because the information on the CBP Form 178 is now electronically available to CBP officers through eAPIS, CBP will no longer require the form.

Implementation—Enforcement

Comment: Two commenters raised concerns whether the proposed rule was in compliance with unspecified international transportation and customs treaty agreements. One of the two commenters was concerned that CBP had not communicated with the international branch of the U.S. Department of Transportation regarding the proposed rule's impact upon international obligations.

Response: CBP believes that the rule is in compliance with all applicable international agreements. International law recognizes a State's right to regulate aircraft entering into, within or departing from its territory. International treaties, such as the Chicago Convention, contain provisions requiring aircraft in U.S. territory to comply with a broad array of U.S. laws and regulations. For example, Article 11 of the Chicago Convention requires compliance with ''the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory.'' Similarly, Article 13 requires compliance with a State's laws and regulations ''as to the admission to or departure from its territory of passengers, crew or cargo of aircraft * * * upon entrance into or departure from, or while within the territory of that State.'' The tenets of the Chicago Convention obligations are followed in this final rule.

Comment: Several hundred commenters questioned CBP's ability to receive and process private aircraft APIS transmissions in a timely manner. One commenter stated that if CBP cannot provide a response within five minutes, approval should be assumed to be granted. One commenter indicated that this rule has very little chance of being implemented with the limited staff that CBP has available. One commenter asked what assurance the pilot will have that the eAPIS transmission was received.

Response: CBP anticipates handling the volume of private aircraft submissions through the enhanced capabilities of the eAPIS portal and other CBP-approved submission methods. CBP is capable of receiving and processing tens of thousands of private aircraft manifest submissions daily. Additionally, small commercial carriers currently use eAPIS successfully to make timely submissions of passenger manifest data. A pilot may not depart without receiving a ''cleared'' message from CBP and following all other instructions provided by DHS in the response to the eAPIS submission. Pilots will know that the eAPIS transmission has been received, based upon CBP's response to the transmission. Clearance for a flight to or from the United States should never be assumed regardless of the amount of time that has elapsed; only the pilot's receipt of a cleared response from CBP ensures that the agency has received the arrival and/or departure manifest submission.

Comment: Many commenters questioned the necessity of the proposed rule since the manifest information submitted via eAPIS cannot and/or will not be physically verified by CBP.

Response: CBP appreciates this concern. Because CBP officers do meet private aircraft upon arrival, it is imperative that the electronic manifest be available for CBP verification prior to the aircraft's arrival in the United States. Additionally, electronic departure manifests will be available for verification by CBP officers prior to the aircraft's departure from the United States.

Comment: Many commenters stated that Puerto Rico should not be considered a foreign location, and flights from Puerto Rico to the continental United States should not be subject to the requirements of the rule.

Response: CBP agrees. CBP would like to clarify that as proposed in the NPRM and as finalized in this rule, under 19 CFR 122.22(a) ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam and the Commonwealth of Northern Mariana Islands. Accordingly, flights between Puerto Rico and other locations in the United States would not be subject to the requirements of this rule.

Comment: Several commenters inquired as to what penalties would be imposed if a pilot fails to file an arrival or departure manifest and obtain the required clearance for landing before taking off for the United States from a foreign port or place or departing the United States for a foreign destination.

Response: Pilots of aircraft departing the United States, or departing a foreign place for the United States, who fail to comply with the terms of this rule are subject to a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation as prescribed in 19 U.S.C. 1436(b) and 19 CFR 122.166(a)(c)(1). The pilot may also be subject to criminal penalties for violations under 19 U.S.C. 1436(c). In addition, the U.S. government has established protocols and procedures to defend and protect its airspace against potential threats if it is unable to identify the intention of any aircraft.

Comment: One commenter pointed out that 8 CFR 231.3 which provides exemptions for private vessels and aircraft from manifest requirements, exempts private aircraft and, therefore, contradicts the requirements proposed by the NPRM. The commenter suggested that it be amended to conform to the requirements proposed by the NPRM.

Response: Although CBP does not believe any real conflict exists to the extent this final rule is under Title 19, rather than Title 8, CBP agrees that clarification regarding exemptions for private aircraft noted in title 8 of the Code of Federal Regulations is appropriate to avoid any confusion. Section 231.3 of title 8 of the Code of Federal Regulations will be amended to reference the requirements for arrival and departure manifest presentation of 19 CFR 122.22.

Implementation—60 Minute Requirement

Comment: Several hundred commenters asked if CBP could guarantee that aircraft operators will receive a response within 45 minutes of transmitting the arrival information and manifest data so that they can proceed to the aircraft, taxi and takeoff 60 minutes after they submit the information. Two commenters stated that waiting for permission from DHS to depart is a terrible burden that will lead to delays.

Response: In most cases, an automated analysis will create a rapid response well within the 60 minute time period. In other cases, additional review may be necessary, requiring additional time. DHS will strive to process each request within 60 minutes of receipt or as quickly as possible to avoid delays.

Comment: Many commenters expressed concerns that a pilot would have to resubmit new arrival times to FAA and wait additional time if CBP's response to arrival and/or departure manifests occurred 10 minutes after the pilot's stated departure time submitted in FAA flight plans.

Response: CBP wishes to clarify that once pilots have submitted their completed passenger manifest data and have received electronic clearance to depart regarding the transmission from CBP, they are free to depart. Absent changes to the information previously transmitted, an additional submission is not necessary unless otherwise indicated by CBP. Pilots may contact the intended port of arrival telephonically or by radio with expected time of arrival updates. The 60-minute requirement is designed to give CBP an adequate amount of time to respond to the eAPIS transmission so that pilots will be able to make their scheduled departure time, as reported to FAA. Pilots also have the option of submitting an arrival/departure manifest to CBP earlier than 60 minutes prior to take off if that is their preference.

Communications—Equipment Concerns

Comment: Several hundred commenters stated that the equipment required to submit APIS information is not available in all general aviation airports.

Response: CBP recognizes that not all private aircraft departure locations are equipped to submit APIS data in the timeframe required. Under this final rule, CBP is allowing private aircraft pilots a great deal of flexibility in how and when they submit passenger manifest data to CBP. A pilot may submit complete, correct, and accurate passenger manifest data any time in advance, but no later than 60 minutes prior to departure to or from the United States, allowing the flexibility to provide data prior to travel to or from a remote location. As one alternative, a pilot may also have a third-party agent submit the data. Additionally, in response to the comments received from the NPRM, certain elements of a previously submitted arrival and/or departure manifest (i.e., flight cancellation, expected time of arrival and changes in arrival location) may now be amended via telephone, radio or by existing processes and procedures if access to the Internet is unavailable.

Original arrival and departure manifests generally must be submitted via eAPIS or another CBP-approved data interchange system. However, on a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart. CBP will strive to process such manual submissions as quickly as possible; however, the processing of these non-electronic manifests may significantly delay clearance.

Finally, when there is a change in the expected time of arrival due to unforeseen conditions such as weather changes, the pilot is permitted to contact the intended port of arrival with the new expected time of arrival telephonically, by radio, or via the FAA automated flight service stations (AFSS) and/or flight services.

Comment: Several hundred commenters noted that few private aircraft have the necessary equipment on board to transmit an arrival manifest should they need to divert to a U.S. airport in the case of emergency. Two commenters stated that the requirement to provide a 30-minute arrival notice places an undue burden on the pilot. One commenter stated weather can play a part in causing a diversion while already in flight.

Response: With respect to an aircraft arriving at a U.S. port, ''emergency'' means an urgent situation due to a mechanical, medical, or security problem affecting the flight, or an urgent situation affecting the non-U.S. port of destination that necessitates a detour to a U.S. port. CBP's policy on emergency landings remains unchanged and permission continues to be granted on a case-by-case basis. CBP will take into consideration the nature of the emergency prior to issuing any penalties and as a mitigating factor when any penalties issued by the agency are considered in the administrative petition process.

Comment: Several hundred commenters asked if facsimile, telephone, use of Flight Service Station and/or email transmissions would be

acceptable alternatives in addition to transmissions through eAPIS. Five commenters inquired as to whether the additional passenger information required by CBP could be added to the flight plan notification that they already file with the FAA.

Response: Although CBP will allow the submission of arrival manifests well in advance of the actual arrival of the aircraft and approve the passengers and aircraft depending upon the outcome of the screening process, the pilot may still be required, per any instructions received from CBP, to contact CBP at the arrival airport to confirm CBP officer availability at that port for the expected time and date of arrival indicated in the manifest. Under this final rule, facsimile, email transmissions, or submission via another agency such as the (FAA) of arrival and departure manifest data are not acceptable methods of original submission. Methods such as facsimile, email and telephone can lead to inaccuracies, tend to be inefficient and do not promote the uniformity that submission via one standard method allows. That said, on a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. CBP also may review and approve alternative methods for electronically transmitting the required data to CBP. For example, a pilot may authorize a third-party to submit the original arrival and/or departure manifest data on the pilot's behalf.

Certain elements of a previously submitted arrival and/or departure manifest may be *amended* or *supplemented* via telephone or radio if access to the Internet is unavailable. Also, when there is a change in the expected time of arrival due to unforeseen conditions such as weather changes, the pilot is permitted to contact the intended port of arrival with the new expected time of arrival telephonically, by radio, or via the FAA automated flight service station (AFSS) and/or flight services.

Comment: One commenter had concerns about backup procedures should eAPIS not be available due to CBP/DHS system outages.

Response: In the event that eAPIS is unavailable, authorized users will need to contact CBP at the intended U.S. airport of arrival/departure for instructions on how to proceed in submitting required information. Each outage presents unique circumstances that will be dealt with on a case-by-case basis per the port's instructions.

Communications—General

Comment: Several commenters stated that the requirement to provide a 24-hour point of contact is difficult because private aircraft operators do not normally have 24-hour operation centers.

Response: The data element ''24-hour point of contact'' in § 122.22, paragraphs (b)(4)(xx) and (c)(4)(xviii) will be changed to ''24-hour Emergency Point of Contact'' to clarify that the named entity or individual provided for in this element is available for contact by CBP should an emergency arise (as opposed to day to day operations) and CBP needs information about the flight as a result of communication equipment failure or pilot unavailability.

Comment: Several commenters stated that submitting the transponder/beacon code and/or decal number in eAPIS was not possible because it was not available 60 minutes prior to takeoff. One commenter was concerned about supplying the CBP decal number as the decal may be purchased upon arrival in the United States.

Response: CBP agrees and is amending 19 CFR 122.22 (b)(4)(xviii) and (c)(4)(xix) so that the transponder code will no longer be listed as a required data element and the decal number will be required to be submitted if available.

Comment: Several commenters stated eAPIS does not accept aircraft registration numbers and airports that are not identified with an ICAO airport code.

Response: CBP developed a new module within eAPIS for private aircraft use to capture the data elements required by this regulation.

Regulatory Analyses—E.O. 12866

Comment: Several commenters stated that the Regulatory Analysis is deficient because it does not address the costs that pilots would incur to fly to another airport with adequate facilities. Three commenters stated that the costs for Internet access were not considered. One commenter stated that the costs for eAPIS on-line training and registration were not considered. One commenter stated the time for programming changes to eAPIS by DHS were not considered. One commenter stated that the Regulatory Assessment did not consider the ''ripple effects'' beyond those to private pilots and their passengers.

Response: The commenters are correct that the analysis for the NPRM did not account for all of these costs. The Regulatory Analysis for this final rule takes into account the costs for flying to facilities with Internet capabilities (see below). Costs for online training for eAPIS are not considered because eAPIS is designed to be a user-friendly system and will require users to spend little time familiarizing themselves with the web interface. Finally, as noted in the analysis for the NPRM, ''ripple effects'' beyond those entities not directly regulated are not considered because they do not represent losses in consumer surplus but are rather transfers within the economy.

Comment: A few commenters stated that the Regulatory Analysis incorrectly estimated that pilots and passengers would have to arrive 15 minutes prior to takeoff.

Response: The commenters are incorrect. CBP assumed that all pilots would have to arrive at the airport in time to submit their APIS data in a timely fashion. CBP assumed that for a portion of the pilots affected, arriving at least 60 minutes prior to takeoff would represent a departure from their normal flying practices. For this portion of the population, CBP assumed that they would arrive 15 minutes earlier than customary. CBP acknowledges that pilots could avoid arriving at the airport early by using a third party to submit required information. However, CBP believes that it is unlikely that pilots of private aircraft would hire a third party to submit required data. Also, hiring third parties to submit required data would not obviate the time costs of arriving to the airport early, as hiring third parties would create other costs.

Comment: A few commenters stated that CBP's estimate that it would take 8 hours to resolve a security incident is too low. One commenter stated that the CBP estimate of one hour to resolve a ''No-Fly'' designation has no support.

Response: This estimate was intended to represent an average time to resolve a security incident. Some incidents could take less time and others could take more time.

Comment: One commenter stated that CBP's estimate for a Value of a Statistical Life (VSL) is too high because pilots would not be willing to pay anything to reduce the risk of dying in a terrorist attack because they know the passengers they are carrying.

Response: CBP interprets this commenter's point to be that because the pilot knows the passengers he is carrying, there is no risk and the pilot would not be willing to pay to reduce a risk that does not exist. CBP disagrees that a risk does not exist for private aircraft. A terrorist incident can be caused by persons in a private aircraft. CBP presents two VSLs that are intended to capture an individual's

willingness to pay to avoid an incident. These values are used in multiple economic evaluations across the U.S. government. These values were reviewed by the Office of Management and Budget (OMB) during the proposed and final rule stages.

Comment: A few commenters stated that the risk scenarios presented in the Regulatory Analysis were not realistic for the vast majority of general aviation aircraft. One commenter stated that potential terrorist risks on small aircraft are miniscule.

Response: CBP agrees that some of the risk scenarios are more likely than others and noted this in the NPRM and in this document. These scenarios were intended to capture a range of possible outcomes given the lack of specific data on terrorist attacks involving private aircraft.

Comment: One commenter stated that the macroeconomic costs of a terrorist incident were not addressed in the Regulatory Analysis.

Response: CBP agrees that the larger economic impacts stemming from a terrorist incident are potentially significant. However, CBP does not present secondary impacts of the rule because CBP does not know the extent to which these losses are transfers versus real economic losses. In the analysis of costs, benefits, and risk reduction that would be required in order for this rule to be cost-effective [see section ''Executive Order 12866 (Regulatory Planning and Review)'' below] CBP has compared direct costs to direct benefits. The ''ripple'' effects, while important to recognize as potentially large, are not direct costs or benefits.

IV. Summary of Changes Made to NPRM

After further review of the NPRM, the analysis of the comments received from the public, and in light of CBP's desire to provide clear policy and procedural guidance to the public, CBP has made certain changes to the proposed regulatory text in this final rule. The changes are summarized below.

(1) The NPRM proposed that the redress number be a required data element for arrival and departure manifests if available. A redress number is a number assigned to a passenger who has requested redress respecting a screening concern. CBP is now encouraging, but not requiring, that pilots include in their eAPIS manifest transmissions, any redress numbers issued by TSA (or any other unique passenger number approved by DHS for the same purpose) to facilitate screening and clearance of passengers. CBP will not require a redress number as a data element for the arrival and departure manifests because a passenger may not have this number readily available for the pilot's use on the arrival or departure manifest. As such, the data element ''redress number'' in proposed § 122.22, paragraphs (b)(4)(xiii) and (c)(4)(xiii) has been removed and will not be required as an element of an arrival or departure manifest submission to CBP. Pilots are encouraged but not required to submit the redress number in their eAPIS transmissions, if available.

(2) While the NPRM did not include in the proposed regulatory text the requirement that the pilot must 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 that the traveler is the person to whom the travel document was issued, this concept was included in the background section of the NPRM (see 72 FR 53397). As such, language has been added to § 122.22, paragraphs (b)(8) and (c)(7), which will reflect this obligation. CBP is adding this requirement to the regulatory text for § 122.22 to avoid any confusion regarding this specific responsibility of pilots to examine the travel documents as well as the traveler to mitigate the security vulnerabilities of private air travel.

(3) The NPRM did not contain a proposed amendment to 8 CFR 231.3, which currently makes clear that private aircraft are exempt from having to file an arrival or departure manifest which is otherwise required for commercial aircraft under title 8. In this final rule, appropriate conforming changes have been made to 8 CFR 231.3 to clarify that that electronic arrival and departure manifest requirements for individuals traveling onboard private aircraft are now found in 19 CFR 122.22.

(4) Proposed §§ 122.26 and 122.61 are now clarified to reflect that ''United States'' as used in those sections, is as defined in § 122.22.

(5) The data element ''transponder code'' (also known as beacon code) in proposed § 122.22, paragraphs (b)(4)(xviii) and (c)(4)(xix) has been removed and will not be required as an element of an arrival or departure manifest submission to CBP, since this information is not available until after the aircraft is airborne and, thus, is unavailable for submission on an arrival and/or departure manifest 60 minutes prior to departure.

(6) The data element ''decal number'' in proposed § 122.22, paragraphs (b)(4)(iv) and (c)(4)(iv) will be optional and have ''(if available)'' added to indicate that this data element will not be required as an element of an arrival or departure manifest submission to CBP, since not all aircraft possess a decal number.

(7) The data element ''24-hour point of contact'' in proposed § 122.22, paragraphs (b)(4)(xx) and (c)(4)(xviii) will be changed to ''24-hour Emergency point of contact'' in order to clarify that the named entity or individual provided for this element is available for contact by CBP in an emergency, in case CBP needs immediate information about the flight as a result of communication equipment or pilot unavailability, rather than for contact regarding day to day operational issues.

(8) Language has been added to § 122.22 paragraphs (b)(2)(i) and (c)(2) clarifying that arrival and departure manifests may be submitted anytime prior to the departure of the aircraft, but no later than 60 minutes prior to departure of the aircraft.

(9) Language has been added to § 122.22 paragraphs (b)(6) and (c)(5) clarifying that once DHS has approved departure from the United States and/or landing within the United States, and the pilot has complied with all instructions issued by DHS, the aircraft is free to depart or land.

(10) Language has been added to § 122.22, paragraphs (b)(7) and (c)(6) indicating that changes to an already transmitted manifest regarding flight cancellation, expected time of arrival and arrival location, can be submitted telephonically, by radio or through existing processes and procedures. Additionally, language has been added to these paragraphs clarifying that changes to passenger or aircraft information must be resubmitted to CBP via eAPIS or other CBP-approved data interchange system, invalidating any CBP approval given regarding the originally submitted manifest, and requiring the pilot to await CBP approval to depart based on the amended manifest containing the added passenger information and/or changes to information regarding the aircraft.

(11) The definition of the United States in § 122.22 has been changed to include the territory of the Commonwealth of the Northern Mariana Islands (CNMI) due to subsequent legislation (section 702 of the Consolidated Natural Resources Act of 2008; Public Law 110–229 (May 8, 2008) which extends the United States immigration laws to the CNMI.

(12) Section 122.0 (scope) has been amended by deleting the last two sentences of paragraph (a) which specifically identified geographic areas where the regulations under part 122 did and did not apply. Since each section within part 122 specifies the geographic areas where they apply, these sentences have been deleted for clarification.

V. Conclusion

After careful consideration of the comments received in response to the NPRM and further review of the proposed rule, CBP is adopting as final, with the modifications discussed above, the proposed amendments published in the **Federal Register** on September 18, 2007. This final rule will help safeguard the traveling public, and aid CBP in accurately assessing the threat risk of private aircraft and those individuals traveling via private aircraft.

VI. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review)

This rule is not an ''economically significant'' rulemaking action under Executive Order 12866 because it will not result in the expenditure of more than $100 million in any one year. This rule, however, is a significant regulatory action under Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Currently, pilots of private aircraft must submit information regarding themselves, their aircraft, and any passengers prior to arrival into the United States from a foreign airport. Depending on the location of the foreign airport, the pilot provides the arrival information one hour prior to crossing the U.S. coastline or border (areas south of the United States) or during the flight (other areas). The information that would be required by this rule is already collected pursuant to sections 122.31 and 122.23 for notice of arrival. The newly required data elements that must be electronically submitted pursuant to the requirements of this final rule include the information that pilots must currently provide for notice of arrival; the required information would need to be submitted earlier (60 minutes prior to departure). No notice of departure information is currently required for private aircraft departing the United States for a foreign airport.

CBP estimates that 138,559 private aircraft landed in the United States in 2006 based on current notice of arrival data. These aircraft collectively carried 455,324 passengers; including the 138,559 pilots of the aircraft, this totals 593,883 individuals arriving in the United States aboard private aircraft. CBP notes that this statistic reflects the unique and actual instances of landings by private aircraft. CBP estimates that approximately two-thirds are U.S. citizens and the remaining one-third is comprised of non-U.S. citizens.

Table 1 summarizes the 2006 arrival information for the top airports in the United States that receive private aircraft from foreign airports. Fort Lauderdale received the most arrivals, with nearly 10 percent of the U.S. private aircraft arrivals. The top 18 airports received approximately 60 percent of the total. As shown, the average number of passengers per arrival varies by port; JFK has the highest passengers per arrival (4.7) while Bellingham, Washington, has the lowest (1.4). Nationwide, the average number of passengers carried per arrival is 3.3.

TABLE 1—SUMMARY OF ARRIVALS AND PASSENGERS ABOARD PRIVATE AIRCRAFT (2006)

Airport	Aircraft/pilot arrivals	Percent of total aircraft	Passenger arrivals	Percent of total passengers	Average passengers per arrival
Ft. Lauderdale Intl. Airport, FL	12,831	9	37,848	8	2.9
West Palm Beach, FL	9,031	7	25,109	6	2.8
New York-Newark, Newark, NJ	6,464	5	29,779	7	4.6
Miami Airport, FL	5,676	4	17,596	4	3.1
Fort Pierce, FL	5,216	4	11,376	2	2.2
Otay Mesa, CA	4,944	4	18,216	4	3.7
San Juan, PR	4,090	3	10,821	2	2.6
Hidalgo, TX	3,827	3	8,647	2	2.3
Calexico, CA	3,597	3	7,963	2	2.2
JFK Airport, NY	3,497	3	16,492	4	4.7
Laredo, TX	3,280	2	10,974	2	3.3
Tucson, AZ	3,013	2	9,059	2	3.0
El Paso, TX	2,548	2	9,544	2	3.7
Houston/Galveston, TX	2,534	2	10,850	2	4.3
Seattle, WA	2,529	2	6,238	1	2.5
Brownsville, TX	2,303	2	7,027	2	3.1
San Antonio, TX	2,185	2	8,520	2	3.9
Bellingham, WA	2,160	2	3,106	1	1.4
Remaining 223 airports	58,834	42	206,159	45	3.5
Total	138,559	100	455,324	100	3.3

CBP does not currently compile data for departures, as there are currently no requirements for private aircraft departing the United States. For this analysis, we assume that the number of departures is the same as the number of arrivals.

Thus, we estimate that 140,000 private aircraft arrivals and 140,000 departures will be affected annually as a result of the rule. Although the current data elements for pilots are very similar to the requirements in this rule, the data elements for passengers are more extensive. Based on the current information collected and accounting for proposed changes in the data elements, CBP estimates that one submission, which includes the arrival information and the passenger manifest data, will require 15 minutes of time (0.25 hours) for the pilot to complete. Additionally, CBP estimates that it will require each of the 460,000 passengers 1 minute (0.017 hours) to provide the required data to the pilot. These data are all contained on a passenger's passport

or alien registration card and are thus simple to provide to the pilot.

Currently, arrival information is submitted by radio, telephone, or other method, or through the FAA's flight notification procedure. Under this rule, pilots must submit the arrival and passenger data through the eAPIS web portal, electronic EDIFACT transmissions, or an approved alternative transmission medium. For this analysis, we assume that pilots will use the eAPIS system, as it is a user-friendly and costless method to submit the required data elements to CBP and the pilot need only have access to a computer with web capabilities to access the system. We also assume that pilots will have access to a computer and the Internet to make the electronic submission. This analysis in no way precludes a private aircraft operator from implementing another approved method of transmission; however, we believe that most pilots, particularly those not traveling for business, will choose to submit the required data through the least-cost option: eAPIS.

Currently, private aircraft arriving from areas south of the United States must provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. There are no such timing requirements for other areas. Thus, some pilots and their passengers may decide that to comply with the new requirements, including submitting information through eAPIS and waiting for a response from CBP, they must convene at the airport earlier than they customarily would. We do not have any information on how many, if any, pilots or passengers would need to change their practices. For this analysis, we assume that 50 percent of the pilots and passengers would need to arrive 15 minutes (0.25 hours) earlier than customary. This would result in 70,000 affected pilots (140,000 arrivals * 0.5) and 231,000 affected passengers (70,000 arrivals * 3.3 passengers per arrival) for a total of 301,000 individuals affected.

To estimate the costs associated with the time required to input data into eAPIS, we use the value of an hour of time as reported in the FAA's document on critical values, $37.20.[9] This represents a weighted cost for business and leisure private aircraft travelers. CBP believes this is a reasonable approximation of the average value of a pilot's and traveler's time.

The cost to submit advance notice of arrival data through eAPIS would be approximately $1.3 million (140,000 arrivals * 0.25 hours * $37.20 per hour). Similarly, costs to submit advance notice of departure data would be $1.3 million, for a total cost for pilots to submit the required data elements of $2.6 million annually. The cost for passengers to provide the data to the pilot to be entered into eAPIS would be approximately $570,000 (920,000 arrivals and departures * 0.017 hours * $37.20 per hour). Total costs for the eAPIS submissions would be $3.2 million annually.

To estimate the costs of arriving earlier than customary, we again use the value of time of $37.20 per hour. As noted previously, we assume that 301,000 pilots and passengers may choose to arrive 0.25 hours earlier than customary. This would result in a cost of approximately $2.8 million for arrivals and $2.8 million for departures, a total of $5.6 million annually (301,000 individuals * 0.25 hours * $37.20 per hour * 2).

Additionally, CBP estimates the potential costs to resolve issues with passengers that have been designated as ''No-Fly'' based on the screening process. Although a law enforcement response is not required under this rule, CBP estimates the costs for such a response to avoid underestimating the costs of this rule. For the purposes of this analysis, CBP estimates that on two occasions annually, a private aircraft flight will have a passenger that is designated ''No-Fly'' but through the resolution process is downgraded from ''No-Fly'' and the entire traveling party continues on their flight. CBP assumes that four individuals (the pilot plus three passengers) would be affected by a one-hour delay to resolve the ''No-Fly'' designation. CBP also assumes the resolution process will require 1 hour of law enforcement time at a TSA-estimated cost of $62.43 per hour. The total annual costs for these incidents would be approximately $422 [(four individuals * $37.20 * 1 hour + 1 individual * $62.43 * 1 hour) * two incidents].

CBP also estimates the potential costs for pilots and passengers who may be denied landing rights as a result of their eAPIS manifest submission. For the purposes of this analysis, CBP estimates that once per year, a private aircraft flight is denied landing rights. CBP again assumes that four individuals (the pilot plus three passengers) will be affected, and the delay will be eight hours to coordinate a law enforcement response. CBP assumes that four law enforcement personnel will be involved in the investigation. The total annual costs for this incident would be approximately $3,188 [(four individuals * $37.20 * 8 hours + 4 individuals * $62.43 * 8 hours) * one incident].

In response to comments received during the public comment period, CBP also addressed costs pilots may incur to fly to another airport with adequate facilities to access eAPIS. CBP believes that this will be an uncommon occurrence, as considerable flexibility has been provided in this final rule to allow pilots to submit APIS data while they are in the United States (or other locations where facilities are available) or to have a third party submit information through eAPIS on the pilots' behalf. To not underestimate costs, CBP estimates that 1 percent of the affected pilots will have to travel to another location with Internet access to submit their APIS data. Assuming that 140,000 private aircraft are affected by this rule, CBP estimates the following costs.

As noted previously, the time cost per hour for a traveler onboard a private aircraft is $37.20, and we assume 4.29 travelers aboard an aircraft (1 pilot plus the 3.29 passengers). Per the FAA critical values document, total operation costs for a general aviation aircraft are $1,090 per hour. The sum of time costs and capital costs per aircraft each hour are therefore $1,127.20. CBP assumes that the extra travel time for each affected aircraft is 4 hours, and the total undiscounted costs to fly to another airport with adequate facilities are approximately $6,997,693 [($1,090 operation costs * 1,400 flights + $37.20 * 1,400 pilots + $37.20 * 4,606 passengers) * 4 hours].

The total annual cost of the rule is expected to be $22.1 million. Over 10 years, this would total a present value cost of $155.1 million at a 7 percent discount rate ($188.1 million at a 3 percent discount rate).

The primary impetus of this rule is the security benefit afforded by a more timely submission of APIS information. Ideally, the quantification and monetization of the beneficial security effects of this regulation would involve two steps. First, we would estimate the reduction in the probability of a terrorist attack resulting from implementation of the regulation and the consequences of the avoided event (collectively, the risk associated with a potential terrorist attack). Then we would identify individuals' willingness to pay for this incremental risk reduction and multiply it by the population experiencing the benefit. Both of these steps, however, rely on key data that are not available for this rule.

[9] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide*. Prepared by GRA, Inc. July 3, 2007. Table ES–1. Per the instructions of this guidance document (see pages 1–1 and 1–3), this estimate has not been adjusted for inflation.

In light of these limitations, we conduct a ''breakeven'' analysis to determine what change in the reduction of risk would be necessary for the benefits of the rule to exceed the costs. Because the types of attack that could be prevented vary widely in their intensity and effects, we present a range of potential losses that are driven by casualty estimates and asset destruction. For example, the average private aircraft is 3,384 pounds and carries an average of a little over four people (1 pilot and 3 passengers).[10] Some private aircraft, however, are much larger and carry many more people and thus could have potentially higher casualty losses and property damages in the event of an incident. We use two estimates of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk: $3 million per VSL and $6 million per VSL.

Additionally, we present four attack scenarios. Scenario 1 explores a situation where solely individuals are lost (no destruction of physical property). In this scenario, we estimate the losses if an attack resulted in 4 (average number of people on a private aircraft-one pilot, three passengers) to 1,000 casualties but no loss of physical capital. We acknowledge that this scenario is unlikely because an attack that would result in 1,000 casualties would almost certainly also result in loss of physical assets; however, this scenario provides a useful high end for the risk reduction probabilities required for the rule to break even.

Scenario 2 explores a situation where individuals are lost and a lower-value aircraft is destroyed. The value of the aircraft lost, $94,661, is based on the value from the FAA critical values study cited previously.[11] This value is for an aircraft built prior to 1982, which is a substantial proportion (75 percent) of the general aviation fleet of aircraft.[12]

Scenario 3 explores a situation where individuals are lost and a higher-value aircraft is destroyed. The value of the aircraft lost is $1,817,062 (aircraft built in 1982 and later).

Scenario 4 explores a situation where individuals are lost and substantial destruction of physical capital is incurred. In this scenario we again estimate individual lives lost but now consider a massive loss of physical capital (the 9/11 attack is an example of such an event).

Casualties are again estimated as before using the two VSL estimates. To value the loss of capital assets, we use a report from the Comptroller of the City of New York that estimated $21.8 billion in physical capital destruction as a result of the 9/11 attacks on the World Trade Center.[13] This report also estimates the ''ripple effects'' of the attack—the air traffic shutdown, lost tourism in New York City, and long-term economic impacts; however, we do not compare these secondary impacts to the direct costs of the rule estimated previously because we do not know the extent to which these losses are transfers versus real economic losses. In this analysis we compare direct costs to direct benefits to estimate the risk reduction required for the rule to break even.

Again, the impacts in these scenarios would be driven largely by the number of people aboard the aircraft and the size of the aircraft.

The annual risk reductions required for the rule to break even are presented in Table 2 for the four attack scenarios, the two estimates of VSL, and a range of casualties. As shown, depending on the attack scenario, the VSL, and the casualty level, risk would have to be reduced less than 1 percent (Scenario 4, 1,000 casualties avoided) to 184.1 percent (Scenario 1, 4 casualties avoided) in order for the benefits of the rule to exceed the costs to break even. However, CBP notes that risk reductions of over 100% are not possible to achieve.

TABLE 2—ANNUAL RISK REDUCTION REQUIRED (%) FOR NET COSTS TO EQUAL BENEFITS

[Annualized at 7 percent over 10 years]

Casualties avoided	Scenario 1: Loss of life	Scenario 2: Loss of life and aircraft (low value)	Scenario 3: Loss of Life and aircraft (high value)	Scenario 4: Loss of life and catastrophic loss of property
$3M VSL:				
4	184.1	182.6	159.9	<1
10	73.6	73.4	69.4	<1
100	7.4	7.4	7.3	<1
1,000	0.7	0.7	0.7	<1
$6M VSL:				
4	92.0	91.7	85.6	<1
10	36.8	36.8	35.7	<1
100	3.7	3.7	3.7	<1
1,000	0.4	0.4	0.4	<1

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the rule on small entities as required by the Regulatory Flexibility Act (RFA, *See* 5 U.S.C. 601–612). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for conducting

[10] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* Prepared by GRA, Inc. July 3, 2007. Table ES–1.

[11] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* Prepared by GRA, Inc. July 3, 2007. Table ES–1. This estimate has not been adjusted for inflation.

[12] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* Prepared by GRA, Inc. July 3, 2007. Table 3–14.

[13] Thompson, Jr., William C. Comptroller, City of New York. ''One Year Later: The Fiscal Impact of 9/11 on New York City.'' September 4, 2002.

regulatory flexibility analysis. Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. We do not have information on the number of pilots and passengers traveling for business versus leisure or how many businesses, regardless of size, would be affected by the requirements. Those private individuals who are flying for leisure, rather than business, would not be considered small entities because individuals are not considered small entities. Some of the affected pilots and passengers are flying for business purposes; however, we do not know if these businesses are small entities or not. This rule may thus affect a substantial number of small entities.

In any case, the cost to submit data to CBP through eAPIS would be, at most, approximately $50 per submission ($9.30 for the APIS submission; $9.30 * 3.3 passengers + $9.30 * 1 pilot for potential early arrival). CBP believes such an expense would not rise to the level of being a ''significant economic impact.'' As we did not receive comments that demonstrate that the rule results in significant economic impacts, we are certifying that this action does not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. This rule would not result in such an expenditure.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires CBP to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include rules that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' CBP has analyzed the rule in accordance with the principles and criteria in the Executive Order and has determined that it does not have federalism implications or a substantial direct effect on the States. The rule requires private aircraft arriving in the United States from a foreign location or departing the United States to a foreign port or location to comply with notice of arrival requirements, passenger manifest requirements, and permission to land at landing rights airports. States do not conduct activities with which this rule would interfere. For these reasons, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

There are two collections of information in this document in 19 CFR 122.22. This information will be used by CBP to further improve the ability of CBP to identify high-risk individuals onboard private aircraft so as to prevent terrorist acts and ensure aircraft and airport safety and security. The likely respondents are individuals and businesses. Under § 122.22 a private aircraft pilot would be required to file an advance arrival manifest on all individuals via an electronic data interchange system approved by CBP no later than 60 minutes prior to the aircraft departing to the United States from a foreign port or location. Additionally, a private aircraft pilot would be required to file an advance departure manifest on all individuals onboard a private aircraft through an electronic data interchange system approved by CBP no later than 60 minutes prior to that aircraft departing from the United States to a foreign port or location. eAPIS is one CBP-approved electronic data interchange systems that private aircraft pilots will use to transmit information about all of the individuals aboard an aircraft.

The collection of information encompassed within this rule has been reviewed and approved by the Office of Budget and Management in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB control number 1651–0088. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The total estimated average annual burden associated with the collection of information in this final rule is 77,820 hours, with an estimated submission occurring twice annually taking .25 hours each for pilot respondents, and 1 minute annually for passenger respondents. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001–4501.

H. Privacy Statement

A Privacy Impact Assessment (PIA) for APIS was updated on August 8, 2007 and posted on the DHS Web site. In conjunction with the APIS Pre-departure Final Rule published in the **Federal Register** on August 23, 2007 (72 FR 48320), a System of Records Notice (SORN) was published in the **Federal Register** on that same date (72 FR 48349). On September 11, 2007, CBP and the DHS Privacy Office published and posted to the DHS Web site a PIA Update for APIS to address the General Aviation NPRM, which can be found at the following Web link: *http://dhs.gov/xinfoshare/publications/editorial_0511.shtm*. This document addressed CBP's expansion of its collection of information in APIS to include persons traveling by private aircraft. The PIA Update for APIS, also, sought comments, in conjunction with the General Aviation NPRM, with regard to CBP's and DHS's contemplation of imposing certain responsibilities upon the private pilot. In consideration of the several comments directed to this inquiry, CBP and DHS have determined that no official law enforcement functions of the Government will be delegated to the private pilot in connection with her or his obligation to submit flight manifest information to CBP.

Lastly, CBP and the DHS Privacy Office are amending the current SORN for APIS to provide further privacy compliance for APIS and the expansion of its collection of data elements pertaining to the pilot, owner, and/or operator of a private aircraft. In conjunction with the issuance of the amended SORN, CBP and the DHS Privacy Office will publish an update to the PIA for APIS.

VII. Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe regulations not related to customs revenue functions.

List of Subjects

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

VII. Amendments to the Regulations

8 CFR CHAPTER I—AMENDMENTS TO THE REGULATIONS

■ For the reasons set out in the preamble, chapter 1 of title 8 of the Code of Federal Regulations is amended to read as follows:

PART 231—ARRIVAL AND DEPARTURE MANIFESTS

■ 1. The authority citation for part 231 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229; 8 CFR part 2.

■ 2. Section 231.3 is revised to read as follows:

§ 231.3 Exemptions for private vessels and aircraft.

The provision of this part relating to the presentation of arrival and departure manifests shall not apply to a private vessel or private aircraft. Private aircraft as defined in 19 CFR 122.1(h) are subject to the arrival and departure manifest presentation requirements set forth in 19 CFR 122.22.

■ For the reasons set out in the preamble, chapter I of title 19 of the Code of Federal Regulations is amended as follows:

19 CFR CHAPTER I—AMENDMENTS TO THE REGULATIONS

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122 continues to read and the specific authority citation for 122.22 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.22 is also issued under 46 U.S.C. 60105.

* * * * *

■ 2. Section 122.0 is revised to read as follows:

§ 122.0 Scope.

(a) *Applicability.* The regulations in this part relate to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft, and are applicable to all air commerce.

(b) *Authority of Other Agencies.* Nothing in this part is intended to divest or diminish authority and operational control that are vested in the FAA or any other agency, particularly with respect to airspace and aircraft safety.

■ 3. Section 122.12(c) is revised to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) *FAA rules; denial of permission to land.*

(1) *Federal Aviation Administration.* International airports must follow and enforce any requirements for airport operations, including airport rules that are set out by the Federal Aviation Administration in 14 CFR part 91.

(2) *Customs and Border Protection.* CBP, based on security or other risk assessments, may limit the locations where aircraft entering the United States from a foreign port or place may land. Consistent with § 122.32(a) of this Title, CBP has the authority to deny aircraft permission to land in the United States, based upon security or other risk assessments.

(3) *Commercial aircraft.* Permission to land at an international airport may be denied to a commercial aircraft if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a except in the case of emergency or forced landings.

(4) *Private Aircraft.* Permission to land at an international airport will be denied if the pilot of a private aircraft arriving from a foreign port or place fails to submit an electronic manifest and notice of arrival pursuant to § 122.22, except in the case of emergency or forced landings.

* * * * *

■ 4. Section 122.14 paragraphs (a) and (b) are revised to read as follows:

§ 122.14 Landing rights airports.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(i) *Additional flights, charters or changes in schedule—Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application must be made to the port director for landing rights. All requests must be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it must be put in writing before or at the time of arrival.

(2) *Private aircraft.* The pilots of private aircraft are required to secure permission to land from CBP following transmission of the advance notice of arrival via an electronic data interchange system approved by CBP, pursuant to § 122.22. Prior to departure as defined in § 122.22(a), from a foreign port or place, the pilot of a private aircraft must receive a message from CBP that landing rights have been granted for that aircraft at a particular airport.

(3) *Other aircraft.* Following advance notice of arrival pursuant to § 122.31, all other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(4) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or permanently or temporarily withdrawn for any of the following reasons:

(i) Appropriate and/or sufficient Federal Government personnel are not available;

(ii) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(iii) The entity requesting the landing rights has a history of failing to abide by appropriate instructions given by a CBP officer;

(iv) Reasonable grounds exist to believe that applicable Federal rules and regulations pertaining to safety, including cargo safety and security, CBP, or other inspectional activities may not be adhered to; or

(v) CBP has deemed it necessary to deny landing rights to an aircraft.

(5) *Appeal of denial or withdrawal of landing rights for commercial scheduled aircraft as defined in section 122.1(d).* In the event landing rights are denied or subsequently permanently withdrawn by CBP, within 30 days of such decision, the affected party may file a written appeal with the Assistant Commissioner, Office of Field Operations, Headquarters.

(6) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (covered under § 122.35).

(b) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft must pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§ 24.17 and 24.22(e) of this chapter).

* * * * *

■ 5. Section 122.22 is revised to read as follows:

§ 122.22 Electronic manifest requirement for all individuals onboard private aircraft arriving in and departing from the United States; notice of arrival and departure information.

(a) *Definitions.* For purposes of this section:

Departure. ''Departure'' means the point at which the aircraft is airborne and the aircraft is en route directly to its destination.

Departure Information. ''Departure Information'' refers to the data elements that are required to be electronically submitted to CBP pursuant to paragraph (c)(4) of this section.

Pilot. ''Pilot'' means the individual(s) responsible for operation of an aircraft while in flight.

Travel Document. ''Travel Document'' means U.S. Department of Homeland Security approved travel documents.

United States. ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam and the Commonwealth of the Northern Mariana Islands.

(b) *Electronic manifest requirement for all individuals onboard private aircraft arriving in the U.S.; notice of arrival.*

(1) *General requirement.* The private aircraft pilot is responsible for ensuring the notice of arrival and manifest information regarding each individual onboard the aircraft are transmitted to CBP. The pilot is responsible for the submission, accuracy, correctness, timeliness, and completeness of the submitted information, but may authorize another party to submit the information on their behalf. Except as provided in paragraph (b)(7) of this section, all data must be transmitted to CBP by means of an electronic data interchange system approved by CBP and must set forth the information specified in this section. All data pertaining to the notice of arrival for the aircraft and the manifest data regarding each individual onboard the aircraft must be transmitted at the same time via an electronic data interchange system approved by CBP.

(2) *Time for submission.* The private aircraft pilot is responsible for ensuring that the information specified in paragraphs (b)(3) and (b)(4) of this section is transmitted to CBP:

(i) For flights originally destined for the United States, any time prior to departure of the aircraft, but no later than 60 minutes prior to departure of the aircraft from the foreign port or place; or

(ii) For flights not originally destined to the United States, but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation.

(3) *Manifest data required.* For private aircraft arriving in the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F=female; M=male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) DHS-Approved travel document type (e.g. passport; alien registration card, etc.);

(viii) DHS-Approved travel document number, if a DHS-approved travel document is required;

(ix) DHS-Approved travel document country of issuance; if a DHS-approved travel document is required;

(x) DHS-Approved travel document expiration date, where applicable;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers including crew onboard the aircraft.

(4) *Notice of arrival.* The advance notice of arrival must include the following information about the aircraft and where applicable, the pilot:

(i) Aircraft tail number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) CBP issued decal number (if available);

(v) Place of last departure (ICAO airport code, when available);

(vi) Date of aircraft arrival;

(vii) Estimated time of arrival;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended U.S. airport of first landing (as listed in § 122.24 if applicable, unless an exemption has been granted under § 122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands);

(x) Owner/Lessees name (if individual: Last, first, and, if available, middle; or business entity name, if applicable);

(xi) Owner/Lessees address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xii) Pilot/Private aircraft pilot name (last, first, middle, if available);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip/postal code,

country, telephone number, fax number, and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (for individuals: last, first, and if available, middle; or business entity name, if applicable);

(xvii) Operator street address (number and street, city, state, zip code, country, telephone number, fax number, and e-mail address);

(xviii) Aircraft color(s);

(xix) Complete Itinerary (foreign airports landed at within past 24 hours prior to landing in United States); and

(xx) 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop, or other third party contact or individual who is knowledgeable about this particular flight) name (first, last, middle, if available) and phone number.

(5) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing must be made at a foreign place where notice can be sent prior to coming into the United States.

(6) *Permission to land.* Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving landing within the United States, and follow any instructions contained therein prior to departure. Once DHS has approved departure, and the pilot has executed all instructions issued by DHS, the aircraft is free to depart with the intent of landing at the designated U.S. port of entry.

(7) *Changes to manifest.* The private aircraft pilot is obligated to make necessary changes to the arrival manifest after transmission of the manifest to CBP. If changes to an already transmitted manifest are necessary, an updated and amended manifest must be resubmitted to CBP. Only amendments regarding flight cancellation, expected time of arrival (ETA) or changes in arrival location, to an already transmitted manifest may be submitted telephonically, by radio, or through existing processes and procedures. On a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart. Changes in ETA and arrival location must be coordinated with CBP at the new arrival location to ensure that resources are available to inspect the arriving aircraft. If a subsequent manifest is submitted less than 60 minutes prior to departure to the United States, the private aircraft pilot must receive approval from CBP for the amended manifest containing added passenger information and/or changes to information that were submitted regarding the aircraft and all individuals onboard the aircraft, before the aircraft is allowed to depart the foreign location, or the aircraft may be, as appropriate, diverted from arriving in the United States, or denied permission to land in the United States. If a subsequent, amended manifest is submitted by the pilot, any approval to depart the foreign port or location previously granted by CBP as a result of the original manifest's submission is invalid.

(8) *Pilot responsibility for comparing information collected with travel document.* The pilot collecting the information described in paragraphs (b)(3) and (b)(4) of this section is responsible for comparing the travel document presented by each individual to be transported onboard the aircraft with the travel document information he or she is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the individual is the person to whom the travel document was issued.

(c) *Electronic manifest requirement for all individuals onboard private aircraft departing from the United States; departure information.*

(1) *General requirement.* The private aircraft pilot is responsible for ensuring that information regarding private aircraft departing the United States, and manifest data for all individuals onboard the aircraft is timely transmitted to CBP. The pilot is responsible for the accuracy, correctness, timeliness, and completeness of the submitted information, but may authorize another party to submit the information on their behalf. Data must be transmitted to CBP by means of an electronic data interchange system approved by CBP, and must set forth the information specified in paragraph (c)(3) and (c)(4) of this section. All data pertaining to the aircraft, and all individuals onboard the aircraft must be transmitted at the same time. On a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically to CBP when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart.

(2) *Time for submission.* The private aircraft pilot must transmit the electronic data required under paragraphs (c)(3) and (c)(4) of this section to CBP any time prior to departing the United States, but no later than 60 minutes prior to departing the United States.

(3) *Manifest data required.* For private aircraft departing the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F=female; M=male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) DHS-Approved travel document type (e.g. passport; alien registration card, etc.);

(viii) DHS-Approved travel document number;

(ix) DHS-Approved travel document country of issuance, if a DHS-Approved travel document is required;

(x) DHS-approved travel document expiration date, where applicable;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip/postal code). This information is required for all travelers including crew onboard the aircraft.

(4) *Notice of Departure information.* For private aircraft and pilots departing the United States, the following departure information must be submitted by the pilot:

(i) Aircraft tail number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) CBP issued decal number (if available);

(v) Place of last departure (ICAO airport code, when available);

(vi) Date of aircraft departure;

(vii) Estimated time of departure;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended foreign airport of first landing (ICAO airport code, when available);

(x) Owner/Lessees name (if individual: last, first, and, if available, middle; or business entity name if applicable);

(xi) Owner/Lessees street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xii) Pilot/Private aircraft pilot name (last, first and, if available, middle);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (if individual: last, first, and if available, middle; or business entity name, if applicable);

(xvii) Operator street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xviii) 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop, or other third party contact, or individual who is knowledgeable about this particular flight) name (last, first, middle, if available) and phone number;

(xix) Aircraft color(s); and

(xx) Complete itinerary (intended foreign airport destinations for 24 hours following departure).

(5) *Permission to depart.* Prior to departure for a foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure from the United States and follow any instructions contained therein. Once DHS has approved departure, and the pilot has executed all instructions issued by DHS, the aircraft is free to depart.

(6) *Changes to manifest.* If any of the data elements change after the manifest is transmitted, the private aircraft pilot must update the manifest and resubmit the amended manifest to CBP. Only amendments regarding flight cancellation, expected time of departure or changes in departure location, to an already transmitted manifest may be submitted telephonically, by radio, or through existing processes and procedures. If an amended manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must receive approval from CBP for the amended manifest containing added passenger information and/or changes to information that were submitted regarding the aircraft before the aircraft is allowed to depart the U.S. location, or the aircraft may be denied clearance to depart from the United States. If a subsequent amended manifest is submitted by the pilot, any clearance previously granted by CBP as a result of the original manifest's submission is invalid.

(7) *Pilot responsibility for comparing information collected with travel document.* The pilot collecting the information described in paragraphs (c)(3) and (c)(4) of this section is responsible for comparing the travel document presented by each individual to be transported onboard the aircraft with the travel document information he or she is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the individual is the person to whom the travel document was issued.

■ 6. Section 122.23 is amended by revising the heading, the introductory text to paragraph (a)(1) and paragraph (b) to read as follows:

§ 122.23 Certain aircraft arriving from areas south of the U.S.

(a) *Application.* (1) This section sets forth particular requirements for certain aircraft arriving from south of the United States. This section is applicable to all aircraft except:

* * * * *

(b) *Notice of arrival.* All aircraft to which this section applies arriving in the Continental United States via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or [notwithstanding the definition of ''United States'' in § 122.1(l)] from Puerto Rico, must furnish a notice of intended arrival. Private aircraft must transmit an advance notice of arrival as set forth in § 122.22 of this part. Other than private aircraft, all aircraft to which this section applies must communicate to CBP notice of arrival at least one hour before crossing the U.S. coastline. Such notice must be communicated to CBP by telephone, radio, other method or the Federal Aviation Administration in accordance with paragraph (c) of this section.

* * * * *

■ 7. Section 122.24 is amended by revising the heading, paragraph (a), the heading for paragraph (b) and by removing all of the text of paragraph (b) except for the table to read as follows:

§ 122.24 Landing requirements for certain aircraft arriving from areas south of U.S.

(a) *In general.* Certain aircraft arriving from areas south of the United States that are subject to § 122.23 are required to furnish a notice of intended arrival in compliance with § 122.23. Subject aircraft must land for CBP processing at the nearest designated airport to the border or coastline crossing point as listed under paragraph (b) unless exempted from this requirement in accordance with § 122.25. In addition to the requirements of this section, pilots of aircraft to which § 122.23 is applicable must comply with all other landing and notice of arrival requirements. This requirement shall not apply to those aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico, if the aircraft was inspected by CBP officers in the U.S. Virgin Islands, or otherwise precleared by CBP officers at designated preclearance locations.

(b) *List of designated airports.*

* * * * *

■ 8. In § 122.25, paragraphs (d)(1) introductory text and (d)(4) introductory text by removing the term ''private aircraft'' wherever it appears, and by adding the term ''an aircraft subject to § 122.23'' in its place.

■ 9. Section 122.26 is revised to read as follows:

§ 122.26 Entry and clearance.

Private aircraft, as defined in § 122.1(h), arriving in the United States as defined in § 122.22, are not required to formally enter. No later than 60 minutes prior to departure from the United States as defined in § 122.22, to a foreign location, manifest data for each individual onboard a private aircraft and departure information must be submitted as set forth in § 122.22(c). Private aircraft must not depart the United States to travel to a foreign location until CBP confirms receipt of the appropriate manifest and departure information as set forth in § 122.22(c), and grants electronic clearance via electronic mail or telephone.

■ 10. Section 122.31 is revised to read as follows:

§ 122.31 Notice of arrival.

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the United States from a foreign area must give advance notice of arrival.

(b) *Exceptions for scheduled aircraft of a scheduled airline.*

Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule must have been filed with the port director for the airport where the first landing is made.

(c) *Giving notice of arrival*—(1) *Procedure.*

(i) *Private aircraft.* The pilot of a private aircraft must give advance notice of arrival in accordance with § 122.22 of this part.

(ii) *Aircraft arriving from Cuba.* Aircraft arriving from Cuba must follow the advance notice of arrival procedures set forth in § 122.154 in subpart O of this part.

(iii) *Certain aircraft arriving from areas south of the United States.* Certain aircraft arriving from areas south of the United States (other than Cuba) must follow the advance notice of arrival procedures set forth in § 122.23 of this part.

(iv) *Other aircraft.* The commander of an aircraft not otherwise covered by paragraphs (c)(1)(i), (c)(1)(ii) and (c)(1)(iii) of this section must give advance notice of arrival as set forth in paragraph (d) of this section. Notice must be given to the port director at the place of first landing, either:

(A) Directly by radio, telephone, or other method; or

(B) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a departure must be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival required by aircraft covered in paragraph (c)(1)(iv) of this section must include the following information:

(1) Type of aircraft and registration number;

(2) Name (last, first, middle, if available) of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by CBP;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival as required pursuant to paragraph (c)(1)(iv) of this section must be furnished far enough in advance to allow inspecting CBP officers to reach the place of first landing of the aircraft prior to the aircraft's arrival.

(f) *Notice of other Federal agencies.* When advance notice is received, the port director will inform any other concerned Federal agency.

■ 11. Section 122.32 is revised to read as follows:

§ 122.32 Aircraft required to land.

(a) Any aircraft coming into the U.S., from an area outside of the U.S., is required to land, unless it is denied permission to land in the U.S. by CBP pursuant to § 122.12(c), or is exempted from landing by the Federal Aviation Administration.

(b) *Conditional permission to land.* CBP has the authority to limit the locations where aircraft entering the U.S. from a foreign area may land. As such, aircraft must land at the airport designated in their APIS transmission unless instructed otherwise by CBP or changes to the airport designation are required for aircraft and/or airspace safety as directed by the Federal Aviation Administration (FAA) flight services.

■ 12. Section 122.61 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 122.61 Aircraft required to clear.

(a) Private aircraft leaving the United States as defined in § 122.22, for a foreign area are required to clear as set forth in § 122.26. All other aircraft, except for public aircraft leaving the United States for a foreign area, are required to clear if:

* * * * *

■ 13. Section 122.154 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 122.154 Notice of arrival.

(a) *Application.* All aircraft entering the U.S. from Cuba must give advance notice of arrival, unless it is an Office of Foreign Assets Control (OFAC) approved scheduled commercial aircraft of a scheduled airline.

* * * * *

(d) *Private Aircraft.* In addition to these requirements, private aircraft must also give notice of arrival pursuant to § 122.22 of this part.

Michael Chertoff,

Secretary.

[FR Doc. E8–26621 Filed 11–17–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0265; Directorate Identifier 2007–NM–349–AD; Amendment 39–15732; AD 2008–23–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model CL–600–2B19 airplanes. That AD currently requires repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and replacement with new or serviceable MLG main fittings if necessary. The existing AD also currently requires servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary. For certain airplanes, this new AD requires replacement of the MLG main fittings with new improved MLG main fittings, which would terminate the repetitive inspections of the MLG main fittings and inspection and servicing of the MLG shock struts. This AD results from premature failure of the MLG main fittings. We are issuing this AD to prevent failure of the MLG main fittings, which could result in collapse of the MLG upon landing.

DATES: This AD becomes effective December 23, 2008.

On February 16, 2007 (72 FR 1430, January 12, 2007), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–32–093, Revision B, dated July 14, 2005.

On June 13, 2003 (68 FR 31956, May 29, 2003), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–32–079, Revision 'E,' dated September 12, 2002; including Appendix 1, Revision 'D,' dated September 12, 2002; including Appendices 2 and 3, dated September 12, 2002.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–