

November 10, 2016

Office of the General Counsel
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528-0485

Delivered electronically via www.regulations.gov

RE: DOCKET NO. DHS-2016-0072; RETROSPECTIVE REVIEW OF EXISTING REGULATIONS – A FOCUS ON BURDEN REDUCTION; REQUEST FOR PUBLIC INPUT

The National Air Transportation Association (NATA) is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state and local governments. NATA's nearly 2,300 member companies are a vital prerequisite for a vibrant general aviation sector providing fuel, aircraft maintenance, parts sales, storage, rental, flight training, Part 135 on-demand air charter, and fractional aircraft program management. Our members conducting international flight operations are substantially impacted by U.S. Customs and Border Protection (CBP) regulations and we therefore appreciate the opportunity to submit comments on CBP regulations that are candidates for improvement, streamlining or repeal.

NATA is an active member of the CBP General Aviation Working Group representing the interests of our members, in particular those providing on-demand air charter services under 14 CFR part 135. There are approximately 2,100 carriers licensed by the Federal Aviation Administration (FAA) to conduct part 135 operations¹. Many, but not all, have international operational authority. Information quantifying this industry was captured and reported by the FAA in April of this year². The FAA report includes data useful in understanding the impact of regulatory burdens. Some key facts about these carriers:

- These companies are overwhelmingly small businesses. The average number of employees for an on-demand operator is 19, generating annual estimated revenues of less than \$2.5 million.
- Only 18% of operators have a fleet size of six or more.

¹ In addition to FAA certification, operators are subject to DOT certification as air taxi operators (14 CFR 298). They do not hold DOT issued certificates of public convenience and necessity.

² FAA *Study of Operators Regulated Under Part 135* (April 2016). Available at https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/afs200/branches/afs250/

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- Aircraft are limited by regulation to no more than twenty passenger seats, but typical aircraft have ten or fewer seats.

Many of the CBP regulatory requirements imposed on these carriers were designed and implemented with the scheduled airlines in mind, not the small ad hoc carriers represented by NATA. Regarding the largest aircraft operated by part 135 carriers, typically called “business jets” (i.e. multi-engine, turbojet airplanes), these aircraft largely did not exist when most of today’s regulations related to international departures and arrivals were first implemented. Much has changed in this industry over the last several decades but the regulations have not kept pace with how these aircraft are operated and the unique challenges faced when trying to fit our charter providers into a regulatory system developed for scheduled airlines—often the regulatory equivalent of trying to fit a square peg into a round hole.

When viewed objectively, the operations of on-demand carriers are much more akin to private aircraft operations (regulated by the FAA under 14 CFR 91). In fact, most business jets operated by on-demand carriers are not owned by the carrier but by a private individual or corporation. The aircraft owner then enters an agreement with the charter provider, allowing it to use the aircraft for commercial charter purposes when it is not being used for the owner’s flight needs. This results in the aircraft regularly shifting from private operations to commercial, often on a flight-by-flight basis in a single day. This shifting of an aircraft from private to commercial, while permissible, nonetheless can complicate and confuse matters with CBP personnel applying regulations and processes that were not designed with this flexibility in mind.

For this reason, NATA recommends CBP initiate a process to define charter operators in a manner consistent with FAA regulations and separate from airlines, re-evaluate the regulations, particularly those of 19 CFR 122, and re-assign these operations to the rules applicable to private operations. We note that CBP already defines “private aircraft” and “scheduled airline” in 19 CFR 122.1.

Another key issue for our members is the significant discretion afforded to port directors in lieu of cohesive national policy developed by CBP headquarters. The growth of technology to enable near instantaneous communications to nearly every location should be leveraged to eliminate inconsistencies that result in confusion, additional burdens and higher costs for all parties. One example of this is the International Carrier Bond (19 CFR 113) requirement. The amount of

bond required is at the discretion of the local port director. It is not uncommon for our members, given their ad hoc nature, to have a trip which is planned to arrive at a port that they rarely use. Although they have a bond in place, at a level approved by their most frequently used port, any other port director has the right to demand a higher bond. This is an especially burdensome issue for small businesses operating on relatively short timelines when compared to the scheduled airlines. We provide additional comment on this requirement in the attached document, but highlight it here as one example of where a national policy is appropriate and local discretion seems to have no meaningful benefit to government, industry or commerce.

Attached to this comment is a table highlighting several key regulatory areas that NATA supports for streamlining, revision and/or elimination.

NATA appreciates the opportunity to raise these issues with DHS and CBP and welcomes the ability to participate in any next steps taken to improve the regulatory environment.

Sincerely,



William R. Deere

Executive Vice President

Government & External Affairs

Attachment

| Topic | Reference | Issue | Action |
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| International Carrier Bonds | 19 USC 1623 19 CFR 113 | Lack of a uniform, public process to establish bond amounts. Unclear it serves a purpose, particularly for passenger carriers. CBP has civil penalties and can seize an aircraft. Poses a significant financial hardship on small businesses as bonds are typically reimbursable forcing businesses to maintain significant funds in unusable reserve. Any port director can decide the amount set by another port is insufficient. | Recommend CBP conduct analysis of the number of bonds surrendered by small on-demand carriers. Evaluate whether it is necessary for small carriers to obtain bonds. If justified to keep, recommend publication of a single national standard for establishing bond amounts not subject to local CPB variance. |
| Penalties | 19 CFR 122 – Subpart Q | Penalties are overly burdensome for small business air carriers when compared to the airlines. Currently a charter that fails to transmit a single APIS manifest is subject to \$5,000 per person fine as opposed to a single \$5,000 per manifest fine. Private aircraft are subject to a \$5,000 per manifest penalty. | Penalties should be assessed in the same manner as private aircraft as these are substantially similar aircraft, passenger counts and operations. CBP should establish policies that take into consideration the relative impact a penalty will have on a small business. |
| Define on-demand carrier segment | 19 CFR 122.1 | “private” aircraft and “scheduled airline” are defined. There is no specific definition to accommodate the on-demand operations conducted under 14 CFR 135 in small aircraft. | Recommend establishment of a definition that captures and distinguishes this class of operator so that specific regulations can either apply (or not) as appropriate to the operational risks and needs of CBP. |

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| <p>APIS</p> | <p>19 CFR 122.22 and 122.49</p> | <p>Currently small on-demand carriers fall under the same commercial manifest rules as the scheduled airlines. The commercial systems and efficiencies they provide are all presumptive of interactive communications capabilities that are not available to small carriers.</p> | <p>In the on-demand industry, aircraft can switch from private to commercial from flight leg to flight leg. As the aircraft and operations more closely align to private aircraft operations and because the APIS data is effectively similar, it would streamline and eliminate confusion for on-demand operations to use the same as private. This would also reduce costs for small businesses without reducing security.</p> |
| <p>General Declaration</p> | <p>19 CFR 122.43 Customs Form 7507</p> | <p>The General Declaration is a paper document containing information substantially similar to that submitted via APIS.</p> | <p>This is a redundant paperwork requirement that should be eliminated. Any specific data points that are not already collected in APIS should be added to APIS so this form can be eliminated, resulting in decreased burdens for carriers and CBP. Successful APIS submission should supply a confirmation code to supply CBP officials for verification.</p> |
| <p>Master Crew List (MCL) and Crewmember Manifest (FCM)</p> | <p>MCL - 19 CFR 122.49c CM - TSA TFSSP Security Program</p> | <p>Collects data that is redundant</p> | <p>DHS should require coordination between TSA, CBP and stakeholders to determine what crew information is necessary from small operators and the most effective collection and submission method. The MCL and FCM are a cumbersome, duplicative, labor intensive submissions for small carriers. While there may be value in special crew databases/manifests from airlines with</p> |

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| | | | thousands of pilots and aircraft in operation, our industry is much smaller and subject to last minute changes. |
| Clearance to depart | 19 CFR 122 Subpart G | On-demand aircraft often based and operate to/from non-CBP staffed airports. The ad hoc nature leads to after-business-hours departures. Operators are given conflicting information from different agents/ports. Some allow the departure from the based airport while others force the aircraft and passengers to reposition to a CBP facility for no apparent reason other than to deliver paperwork. | On-demand operations should comply with 19 CFR 122.26. There is no need to require aircraft at an airport not staffed by CBP to position that aircraft at short notice and considerable expense to a CBP-staffed facility simply to deliver paperwork. Suggest that the APIS manifest submission confirmation serve as clearance to depart as it does for private aircraft. This is an opportunity for CBP to establish national consistency in how small aircraft departures are best served and don't incur unwarranted expenses or delays in commerce. |