December 4, 2007

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

**Re: USCBP-2007-0064 Advance Information on Private Aircraft Arriving and
Departing the United States**

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual
membership organization of more than 414,000 pilots. Representing two thirds of all
pilots in the United States, AOPA is the largest civil aviation organization in the world. In
developing these comments, AOPA has conducted extensive research of our members that
fly internationally from several studies that are cited in our comments. Specifically, to
respond to this proposed rule, AOPA undertook a statistically valid survey of its pilot
members. We received 1,171 responses and 95 percent have used a general aviation
aircraft to fly internationally in the last two years.

On September 12, 2007, Customs and Border Protection (CBP) issued a notice of proposed
rulemaking (NPRM) that expands on existing, and imposes new notification requirements
for general aviation aircraft arriving and departing the U.S.

Contrary to earlier discussions with general aviation stakeholders, the proposed rule far
exceeds the simple requirement to provide passenger manifests to CBP prior to entering
the United States. AOPA understands and recognizes the need for effective security
procedures for international flights, however we have serious concerns about the proposed
procedures. We strongly oppose the electronic transmission mandate in the proposed rule
and have identified significant problems with a number of the other requirements.
Instituting impossible to meet procedures, such as the electronic filing for aircraft
departing from international areas (arrival notification) where the Internet is unavailable is
not advancing security and makes no sense.

The proposed rule is operationally unworkable, will have a significant negative impact on
international air transportation, and adversely affect the United States economy, as well as
many other neighboring countries. In fact, 68 percent of AOPA members responding to
our survey indicated the proposed rule would cause them to fly internationally less often.

General Aviation is an Important Part of the Air Transportation System
General aviation includes all flying except for military and scheduled airline operations.

The typical general aviation aircraft (70 percent of all aircraft) is a four-seat, single-engine aircraft that operates at about twice the speed of a car (120 mph), has an average maximum weight of 2,300 pounds, carries 40 gallons of fuel, and has a useful load (after full fuel) for people and baggage of approximately 500 pounds. A Cessna 172 is a good example having less size and weight than a typical compact car, like the Honda Civic, which weighs around 2,600 pounds.

General aviation is an integral part of the U.S. economy making up more than 1 percent of the U.S. gross domestic product, supporting 1.3 million high-skill jobs and more than $102 billion of total annual economic activity. General aviation is a diverse industry with the types of operations varying greatly and being separate and distinct from those of commercial operations. General aviation pilots are not carrying passengers for compensation and in many cases have limited access to resources and support facilities when traveling internationally.

International general aviation flights range from the individual pilot flying family and friends across the border for short vacations to the corporate aircraft traveling on business flights. In our survey, 84 percent of the respondents indicated they usually fly with family or friends when traveling internationally, and only 5 percent fly with anyone other than themselves, friends, family members or business acquaintances. Nearly two-thirds (64 percent) fly with only one or two passengers when not flying by themselves. And, 88 percent of respondents said they fly piston powered (not turboprop or jet) aircraft when making international flights with 71 percent flying single-engine aircraft.

Risk-Based Approach to General Aviation Security – the Final Rule Should Not Cover Light Aircraft
AOPA supports the Department of Homeland Security's promise to use a threat-based, risk management and consequence analysis approach to security. In fact, we commend the Department's recognition that a "one size fits all" approach to general aviation security does not work. Current regulations and policy documents differentiate between aircraft size and weight -- with more stringent rules for aircraft with a maximum certified gross takeoff weight of 12,500 pounds or more. As such, AOPA questions why the Department has abandoned that approach with this proposed rule.

The Government Accountability Office has concluded that "the small size, lack of fuel capacity, and minimal destructive power of most general aviation aircraft make them unattractive to terrorists and, thereby, reduce the possibility of threat associated with their misuse."

In recent public statements about general aviation security, Secretary Chertoff has expressed the Department's policy of using a risk-based approach to security that does

not unduly burden general aviation or impede the "fluidity" of the industry. Secretary Chertoff has also focused on corporate jets, as distinguished from light aircraft, when describing the need for this proposed rule in recent discussions with industry and the media. AOPA supports the distinction between jets and light aircraft under current policy and strongly believes, at a minimum, that aircraft weighing 12,500 pounds or less should be excluded from this proposed rule.

General aviation security is a responsibility taken seriously by AOPA and its members. To augment federal security requirements and ensure that pilots understand the active role they must play in securing their aircraft and airports, AOPA partnered with the Transportation Security Administration in 2003 to create the Airport Watch Program. Airport Watch uses the resources of more than 600,000 pilots and aviation professionals to watch for and report suspicious activity. This network is encouraged to "lock up their aircraft" and "look out" for any irregularities that may have security implications. A toll-free hotline answered by the TSA's Transportation Security Operations Center is the centerpiece of this partnership. AOPA has actively *promoted and funded* the Airport Watch Program because we believe that security is every pilot's responsibility.

Current Rules and Procedures for "Light" General Aviation Aircraft Arriving in the United States are Adequate
General aviation aircraft are required to give advance notice of arrival to CBP before returning to the United States and to file a flight plan with the Federal Aviation Administration (FAA). The notice of arrival is provided directly to the CBP Port Director at the place of first landing by radio, telephone, or by an ADCUS (ADvise CUStoms) message in the FAA flight plan. The advance notice of arrival must include, the type of aircraft and registration number or marks of nationality, pilot's name, foreign point of departure, airport of arrival, number of passengers that are U.S. citizens, number of alien passengers, and estimated time of arrival. Southern border arrivals are required to provide a minimum of one-hour advance notice prior to border or coastline crossing. Northern border crossings are only required to give CBP enough notice to allow officers to meet the aircraft. By CBP procedures and polices outlined in The Guide to Private Flyers, a minimum of one-hour is the norm, although at some airports the advanced notice is longer.

In addition to the CBP requirements, general aviation aircraft must file an FAA flight plan and be in communication with air traffic control when crossing the border. Flight plans include information about the type of aircraft, pilot and contact information. Northern border crossings need only be a visual flight rules (VFR) or instrument flight rules (IFR) flight plan while Southern border crossings must be a Defense VFR (DVFR) or IFR flight plan for Air Defense Identification Zone (ADIZ) penetration. FAA requires that the ADIZ penetration be either on time, or no more than plus or minus five minutes from the time of intended ADIZ penetration.

General aviation aircraft are required to make their first landing at a CBP Airport of Entry. Here, the pilot meets face-to-face with a CBP representative and completes the *Private Aircraft Enforcement System Arrival Report* (CBP Form 178) which requires specific passenger information. In addition, all travel documents are provided for inspection. Operationally, aircraft must arrive within 15 minutes of the time they gave customs for their arrival at some airports of entry. If requested by CBP, the pilot must also produce for inspection a valid pilot's certificate or license, a medical certificate and the aircraft registration.

The Western Hemisphere Travel Initiative (WHTI) also requires all travelers to have a valid, unexpired passport or other valid DHS approved travel document when arriving by air from anywhere in the world. This includes general aviation arriving from Canada, Mexico, adjacent islands in the Caribbean Sea, and or South and Central America.

Electronic Only Submission Unworkable - Alternatives Needed
The proposed rule changes the method by which general aviation pilots transmit information to CBP. Currently, private pilots transmit arrival information and other relevant data to CBP via radio, telephone or through FAA flight notification procedure. Under the proposed rule, pilots will be required to electronically transmit the notice of arrival/departure and passenger manifest data to CBP. Electronic transmission can be made through the Electronic Advance Passenger Information System (eAPIS) Web portal or by a CBP approved alternative transmission medium. CBP states in the proposal that it assumes "pilots will have access to a computer and Internet access to make the electronic transmission." However, this is not the case.

General aviation pilots often operate from remote and rural areas where it is difficult to find a working telephone much less a working computer with Internet access. This is true in parts of Canada, Mexico, the Bahamas, various Caribbean nations, as well as parts of the United States. Sixty-three percent of pilots reported that the Internet is not available from any of their international departure locations. For many of these locations, CBP notification can only be done once the pilot is airborne, reaches a certain altitude and is able to contact air traffic control. While electronic transmissions are used for charter and commercial operations, they are not realistic or workable for general aviation. In addition, the volume of required data to be transmitted (social security numbers, dates of birth, etc.) not only raises privacy issues but also poses a tremendous chance for error.

In situations where departure is from a location without electronic service, CBP's solution in the proposed rule is for the pilot to fly to a different location where they will have access to a computer and the Internet. This would be unduly burdensome and extremely costly for general aviation. This could mean additional extended flights over water and in some instances (i.e., in the Caribbean) stops in additional foreign countries.

General aviation flights face numerous factors including weather, lack of reliable fuel sources, air traffic control delays, and slow local customs clearance departure that can impact operations. Many of these situations occur at the last minute and during flight. With no method of updating CBP while in flight, pilots will be forced to weigh safety against the potential for monetary fines levied by CBP. Seventy-five percent of respondents to the AOPA survey who fly internationally reported having to update their arrival time in flight or just prior to their departure.

CBP must continue to allow general aviation pilots to transmit the requisite information via radio, telephone or through FAA flight notification procedures in addition to any new electronic system. These non-electronic methods provide CBP with ample opportunity for the proper vetting of passengers before flight without seriously impacting the flexibility and fluidity, economics, and safety of general aviation operations. This issue is absolutely crucial for the arrival notification.

No Security Rationale for New U.S. Departure Procedures
While there are currently no CBP requirements for general aviation aircraft departing the United States, the government imposes specific notification procedures through the FAA. General aviation aircraft departing the United States must file an FAA flight plan and be in communication with air traffic control when crossing the borders. Additionally, general aviation aircraft are responsible for complying with the arrival and notification procedures at the foreign country.

The proposed rule would require that general aviation aircraft obtain clearance from CBP prior to departing from the United States. To obtain the clearance, general aviation pilots will be required to electronically submit a notice of departure and passenger manifest no later than 60 minutes prior to departure.

AOPA questions the security benefit of this new requirement and therefore asserts that it is not needed. Eighty-nine percent of AOPA members objected to this requirement in the survey of pilots that fly internationally. This requirement places a burden on general aviation operations, especially those of light aircraft, without adequate justification. We recommend that it be dropped from the final rule, or at a minimum that the requirement not apply to light aircraft under 12,500 pounds.

DHS Must Provide Name(s) and Procedures for Passengers On No-Fly List
Responding to a question raised in the proposed rule, AOPA strongly believes that DHS must give the pilot the name(s) of passengers who are identified on the no-fly list in the event landing rights are restricted or denied. This gives the pilot and passenger(s) an opportunity to pursue redress. It also allows the pilot to remove the passenger(s), resubmit an updated manifest and obtain clearance to make the flight mitigating any delays. Without knowing which passenger(s) appeared on the no-fly list, pilots would be forced to play a guessing game by providing multiple submissions to CBP and waiting for approval/disapproval further delaying the flight.

Currently, DHS provides the Traveler Redress Inquiry Program (TRIP) to process commercial travelers that find themselves on the no-fly list. The proposed rule is silent on what redress procedures will apply to a general aviation pilot/passenger whose name appears on the no-fly lists. AOPA is also concerned that the TRIP process is not functioning smoothly which could lead to significant delays in clearing names preventing those impacted from traveling internationally.

Other Concerns/Recommendations

- **Clarify Timeframe for Advance Submission of Passenger Information**
  The proposed rule does not provide a maximum time for pilots to submit the required passenger information in advance of a flight. Establishing a maximum time for submission of this information is important. AOPA believes that allowing the submission of the information days, weeks or months prior to departure would give pilots the opportunity to submit their passenger manifests while still in the United States thus mitigating the issues of electronic access while outside the United States. AOPA recommends allowing for a maximum of 90 days for the advanced filing of passenger information. In implementing this recommendation, the arrival notification could then be provided via the methods discussed above, including non-electronic means.

- **CBP Form 178 Should Be Eliminated**
  Under the proposed rule, the information currently provided on *Private Aircraft Enforcement System Arrival Report (CBP Form 178)* will have already been given to CBP one hour prior to departure. Thus, Form 178 is redundant and elimination of this form will expedite the arrival process.

- **Aircraft Should Not Be Delayed Once CBP Clearance Received**
  The proposed rule requires the requisite information be transmitted to CBP at least 60 minutes prior to departure. However, it is unclear whether a pilot may depart as soon as he/she receives clearance from CBP (i.e., if clearance is given 15 minutes after the information is submitted). The rule must clearly state that a pilot may depart as soon as CBP clearance is provided.

- **Role of FAA's Flight Service Station (FSS) System Has Been Ignored and Could Expand**
  In early conversations with DHS prior to the rulemaking, AOPA recommended evaluating how the FAA's FSS system could be incorporated in the arrival notification procedures. This network of weather and safety information facilities has recently been modernized through a contract between the FAA and Lockheed Martin. Pilots use the services for weather briefings and to file flight plans for operations in the United States and internationally. FSS is familiar with interfacing

between FAA air traffic control facilities and CBP, and could be an important resource for CBP procedures.

- **CBP Should Consider FAA's New Surveillance Technology -- Automatic Dependent Surveillance-Broadcast (ADS-B)**
  In September 2007, the FAA issued a proposed rule that would require all aircraft to equip with ADS-B by 2020 in order to fly within Class B and C airspace and above 10,000 feet. ADS-B is datalink technology that uses satellite-based navigation equipment located on board aircraft and positioning information from GPS satellites to automatically transmit aircraft location and altitude to air traffic controllers and other nearby aircraft.

  The FAA plans to use ADS-B as the primary means of surveillance to replace air traffic control radar over the next 10 to 15 years. ADS-B could also be used to provide real time information of an aircraft's identification number, position, speed, and direction to others including those responsible for national and border security.

Issues with Specific Expanded Data Elements
- *Decal Number: Should be modified to "If Available."* Under the CBP Decal Program decals may be purchased at the Port of Entry. An aircraft, that has not yet purchased its decal, will not be able to enter a Decal Number.

- *Transponder code (beacon number): The requirement should be deleted.* In the United States, a clearance and transponder code is not issued until the pilot contacts air traffic control for departure. This is done just prior to the flight, generally with the engines running and all passengers on board. And, if the aircraft is operating under visual flight rules, a transponder code is generally not issued until such time as the pilot actually contacts air traffic control (usually when airborne). Thus, the transponder code is not available for submission to CBP 60 minutes prior to departure. Also, air traffic control has the option of changing an aircraft's transponder code in flight.

- *24-hour Point of Contact (e.g., broker, dispatcher, repair shop) name and phone number): Should be modified to "If Available."* For the vast majority of privately owned aircraft there is no 24-hour point of contact while the aircraft is in flight. These aircraft are not operating with the support of large dispatch or flight facilities. The 24-hour point of contact is the person flying the aircraft.

Summary
While the premise of the proposed rule has merit, some of the requirements will severely impede the ability of general aviation to fly internationally, negatively impact commerce, and create safety hazards for pilots. The proposed rule, if finalized, would be a dramatic departure from the Department's risk-based approach to security.

Electronic filing, as opposed to transmitting manifest information by phone or radio, does nothing to enhance security. It does not mitigate any threat, vulnerability, or consequence. It is merely shifting a burden from the government to an industry that is ill equipped to bear it. The proposed rule expects the general aviation industry to fly miles (many times hundreds of miles) out of their way sometimes in opposite directions to airports in other towns, cities, or countries to file electronically *even though* CBP could obtain the same information by radio or phone within timelines that allow it to perform risk assessments on passengers.

CBP can and should provide simple alternatives that would allow it to obtain sufficient and timely information without creating an extraordinary burden on pilots and passengers on private aircraft. The proposed rule, as written, places an incredibly large and wholly unnecessary burden on general aviation that will result negligible security benefit. This is inconsistent with DHS's risk-based philosophy.

As with the Airport Watch Program and other partnership security measures, AOPA looks forward to working with DHS and CBP to find practical and workable alternatives to enhance security that do not unduly restrict general aviation operations.

Sincerely,

Andrew V. Cebula
Executive Vice President
Government Affairs