The purpose of this brochure is to clarify the proper declaration of "private" vs. "commercial" status of aircraft and aircraft operators at time of inbound Customs and Border Protection (CBP) clearance.

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U.S. Customs and
Border Protection

1300 Pennsylvania Avenue, NW
Washington, DC 20229
1-800-BE-ALERT

Please visit the U.S. Customs and Border Protection Web site at www.cbp.gov

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Aircraft Status Declaration

Information for All Pilots and Operators of Aircraft Transporting Passengers and/or Cargo (Including Mail)

U.S. Customs and
Border Protection

- "Commercial Aircraft" are defined by U.S. Customs regulations as aircraft **"transporting passengers and/or cargo for some payment or other consideration, including money or services rendered."** 19 C.F.R. § 122.1(d). A "Commercial Aircraft" also includes any aircraft which is **not** carrying passengers and/or cargo at the time of its inbound CBP clearance, but which, nonetheless, left the U.S. with passengers and/or cargo transported to a foreign area for "commercial purposes."
- "Private Aircraft" are defined as aircraft which are **not** carrying passengers and/or cargo for "commercial purposes" (that is, for payment or other consideration). 19 C.F.R. § 122.1(h)(1). "Private Aircraft" also may include returning aircraft which are **not** carrying passengers and/or cargo and did **not** leave the U.S. with passengers and/or cargo carried for "commercial purposes." 19 C.F.R. § 122.1(h)(3).
- Consistent with the above definitions, a "commercial aircraft" departing the U.S. carrying passengers and/or cargo (including processed and unprocessed mail) for payment (that is, for a "commercial purpose") **MAY NOT** be declared by the pilot or aircraft operator as a "private aircraft" upon its return to the U.S.
- In determining whether an aircraft is "private" or "commercial" for CBP clearance purposes, pilots and/or aircraft operators must ask themselves the following:

  1. Has any form of payment or other consideration been supplied (or agreed to be supplied), directly or indirectly, to the pilot and/or aircraft operator by any passenger, any non-passenger third-party, or any business (i.e. a hotel, resort, casino, travel agency, charter broker, etc.) not directly connected with the actual operation, ownership or navigation of the aircraft (or the operator's air transport business)?

     Indirect third party payments include payments provided to a pilot and/or aircraft operator by a hotel, resort, casino, travel agent, charter broker, etc. for the service of transporting its guests or customers, regardless of whether such payments are made:

     (a) on a non-scheduled per flight basis,

     (b) in accordance with a so-called "private carriage" contract between such a business and the pilot and/or operator, or

     (c) through any other means.

  2. Was such payment provided (or agreed to be provided) as consideration for the service of transporting any passenger(s) and/or item of cargo, including cargo consisting of processed or unprocessed mail or other items transported via an air courier service agreement?

  If the answer to both of the above inquiries is in the affirmative, then the aircraft conducting the flight must be declared as a "commercial" aircraft conducting a flight for "commercial purposes" as set forth in 19 C.F.R. §§ 122.1(d).

- Consistent with the above definitions, a pilot and/or operator of a "commercial aircraft" MAY NOT truthfully file a Private Aircraft Enforcement System ("PAES") Report (Customs Form 178), without notifying CBP personnel of the true commercial nature and purpose of the flight. Submission of a false PAES Report under these circumstances will constitute a criminal offense if done knowingly and willfully. Moreover, it would amount to a potential criminal false statement for any pilot or other flight crew member of such an aircraft to affirmatively set forth that the purpose of his/her travel was "personal" upon any CBP declaration (Customs Form 6059B) that is filed by the pilot along with such a PAES Report.
- Pilots and aircraft operators should be aware that **FAA regulations and publications do not dictate whether a particular aircraft or flight operation is "private" or "commercial" for CBP purposes.** For example, the alleged distinctions made by the Federal Air Regulations between "private" and "common" carriage operations, as well as issues pertaining to whether or not an aircraft operator is "holding out" to the public, or is engaged in leasing, "wet-leasing," or operating pursuant to a so-called "private carriage" agreement is irrelevant in determining whether an aircraft is "private" or "commercial" within the meaning of the Customs regulations.
- It is the duty of the pilot and/or aircraft operator seeking CBP clearance to properly ascertain whether an aircraft presented to CBP is "commercial" within the meaning of the above-mentioned regulations. As stated earlier, this determination must be made **independent of** any contrary interpretation of the terms "private" or "commercial" arising from the Federal Air Regulations or addressed by the FAA in any of its publications or circulars.
- All commerical aircraft are subject to applicable fees and submission of electronic manifests as provided for by regulations.

Please visit the CBP web site for an explanation of clearance procedures for aircraft being operated in a commercial capacity, including requirements for posting Customs bonds and for providing advance passenger and cargo manifests.