

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 122 and 123

RIN 1515-AC73

**Private Aircraft Programs:
Establishment of the General Aviation
Telephonic Entry (GATE) Program and
Revisions to the Overflight Program****AGENCY:** Customs Service, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the GATE Program—a voluntary program designed to facilitate Customs processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada. This document also discusses Customs evaluation of the GATE Program tests which were conducted to determine whether to propose GATE as a regular Customs program. The proposed amendments provide that GATE participants that are in compliance with the program's requirements are exempted to some degree from the general Customs requirements concerning entry into the United States.

This document also proposes to amend the Customs Regulations regarding the Overflight Program that exempts certain private aircraft arriving in the continental United States via certain areas south of the United States from the special landing requirements applicable to such aircraft. The proposed amendments will modify the application process to standardize and streamline the information required and to provide for centralized processing of requests for overflight privileges. This will reduce the processing time of applications, without compromising Customs drug enforcement responsibilities.

These proposed regulatory changes are designed to allow inspection resources to be relocated where they are most effective.

DATES: Comments must be received on or before October 2, 2001.

ADDRESSES: Written comments may be addressed to, and inspected at, U.S. Customs Service, Office of Regulations and Rulings—Regulations Branch, 1300 Pennsylvania Avenue, NW—3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Steve Gilbert, Office of Field Operations, Passenger Programs Division, (202) 927-1391.

SUPPLEMENTARY INFORMATION:

Background

General Customs Requirements Concerning Entry Into the United States (Report of Arrival and Landing, Inspection, and Clearance Requirements)

In general, except as otherwise authorized by the Secretary, all individuals entering the United States are required to (1) enter only at designated border crossing points, (2) immediately report their arrival to Customs (and other Federal inspection agencies, such as the Immigration and Naturalization Service (INS), that have reporting requirements), and (3) present themselves and their vehicle, and all persons and merchandise (including baggage) on board, for inspection at the designated Customs facility, and may not depart from the designated facility until authorized to do so by the appropriate Customs officer. See 19 U.S.C. 1433 and 1459. Failure to report such arrival and make such presentation for inspection may result in the individual being liable for certain civil and criminal penalties. See 19 U.S.C. 1459, 1436, and 1497. These general Customs requirements concerning entry, which include the reporting of arrival, landing, inspection, and clearance requirements, applicable to individuals and aircraft entering the U.S. are provided for in Parts 122 and 123 of the Customs Regulations (19 CFR Parts 122 and 123). In general, aircraft arriving in the U.S. from a foreign area must give advance notice of arrival, as required by § 122.31 of the Customs Regulations (19 CFR 122.31).

Certain private aircraft that arrive in the continental U.S. via certain areas south of the U.S. are subject to special report of arrival and landing requirements. Such aircraft must give advance notice of their intended arrival at least one hour before crossing the U.S. coastline or border, see, § 122.23(b) of the Customs Regulations (19 CFR 122.23(b)), and land at airports nearest to the coastline or border crossing point designated for Customs processing, see § 122.24 of the Customs Regulations (19 CFR 122.24), unless exempted from these requirements in accordance with the provisions of § 122.25 of the Customs Regulations (19 CFR 122.25).

This document concerns two private aircraft programs: the General Aviation Telephonic Entry (GATE) Program, which concerns general aviation aircraft arriving in the United States directly from Canada, and the Overflight Program, which concerns certain private aircraft arriving in the continental United States

from areas south of the United States. This document proposes to amend the Customs Regulations by modifying the existing Overflight Program and by establishing a new permanent GATE Program.

I. The GATE Program

Facilitated Arrival and Clearance of General Aviation Aircraft Through the General Aviation Telephonic Entry (GATE) Program

Customs and other U.S. border-enforcement agencies frequently design and test programs that aim to facilitate the processing of certain, non-importing, frequent travelers arriving in the United States; such travelers pose low risks to these agencies' law-enforcement responsibilities. (See T.D. 97-48 (62 FR 32030, June 12, 1997), which makes provision for certain technologically-innovative, land-border inspection programs, collectively known as the Port Passenger Accelerated Service System (PORTPASS).) Participation in these kinds of programs is voluntary and requires participants to agree to the program's requirements, which include the pre-filing of certain personal information and requires the participant to arrive in the U.S. only at designated locations. In exchange for this cooperation, participants are exempted to some degree from the general Customs requirements concerning entry into the United States set forth at 19 CFR 123.1.

Historical data on certain general aviation aircraft (private aircraft and certain commercial aircraft, consisting of small charter/air taxi aircraft and air ambulances that have a seating capacity for fifteen or fewer individuals, when such aircraft are not in commercial service) arriving in the United States directly from Canada indicates a high degree of compliance with Customs and other federal agency reporting laws. Based on this history and pursuant to the U.S.-Canada Shared Border Accord, Customs developed the General Aviation Telephonic Entry (GATE) Program. The GATE Program was designed to facilitate Customs processing of certain frequent travelers (low-risk and pre-qualified) on selected flights (pre-registered) of general aviation aircraft by allowing the aircraft to report its arrival information telephonically and by Customs generally pre-clearing the flight: upon landing the frequent travelers may depart the aircraft with their personal effects at the time of arrival reported. Random inspections also were built into the program. Thus, the GATE Program

was designed to combine the proven benefits of facilitating the arrival and clearance of those low-risk frequent travelers that choose to participate in this voluntary program with inspection selectivity, so that Customs inspectional resources could be utilized where they are most effective.

GATE Program Tests Conducted

For programs designed to evaluate the effectiveness of new technology or operations procedures regarding the processing of passengers, vessels, or merchandise, § 101.9(a) of the Customs Regulations (19 CFR 101.9(a)), implements the general testing procedures. The general testing of the GATE Program—to evaluate the effectiveness of the new operations procedure—was established pursuant to that regulation.

On November 4, 1996, Customs implemented the GATE Program test for one year (*see* 61 FR 46902, dated September 5, 1996). The initial test allowed certain pre-registered, passenger-carrying flights of certain general aviation aircraft to report their arrival telephonically when entering the United States directly from Canada. If all the information regarding the GATE flight met the program's requirements, then Customs assigned an advance arrival number which gave permission for that flight to land at a GATE-designated airport. The test was implemented at designated airports of entry located nationwide.

Although the initial test was to be open to all qualified flights along the northern border, many eligible flights could not participate in the GATE Program test due to personnel constraints and other matters. Accordingly, because an evaluation of the initial test yielded only partial results and an analysis of comments received showed a willingness by the traveling community to participate in GATE if only the program were more readily available, on July 6, 1998 (*see* 63 FR 36483), Customs announced its plan to conduct a second test of GATE for one year, beginning August 5, 1998. The second test expanded the scope of participation to include ports with one full-time inspector and additional flights of certain commercial aircraft (small charter/air taxi aircraft returning with flight crew members only).

A. Evaluation of GATE Tests

Customs evaluated the GATE Program tests by developing certain performance criteria and measuring over time the test population's overall compliance rating with these performance criteria against baseline measurements.

Overall, 235 airports were designated for GATE Program use and 2,982 aircraft participated in the two GATE Program tests. The data was collected over the period from September 1996 to September 1999.

B. Evaluation Process

To evaluate the achievement of the program tests, Customs established two performance criteria to measure such operational issues as whether participants met the requirements concerning advance notification and complete declarations. Baseline compliance measurements for each aircraft were recorded and subsequent compliance measurements were taken monthly and averaged quarterly. To evaluate the various performance statistics, the raw data was compiled and the following factor ratings were used in measuring participant's compliance:

If the criterion was met 100% of the time, an "Excellent" rating was ascribed;

If the criterion was met 90–99% of the time, a "Good" rating was ascribed; and

If the criterion was met less than 90% of the time, a "Poor" rating was ascribed.

C. Performance Criteria and Results of Evaluation

Customs evaluation of the GATE Program tests is based on the proficiency results of the 2,982 aircraft that participated in meeting the following performance criteria:

Criterion A measured the number of seizures resulting from attempted importation of prohibited or undeclared articles. Two surveys were conducted to determine the compliance rate for this criterion: the first, conducted between October 1, 1997–October 31, 1998, showed an overall compliance rating of 100%, and the second, conducted between April 1, 1999–June 30, 1999, similarly showed an overall compliance rating of 100%, which constitutes an "Excellent" rating for this criterion.

Criterion B measured the number of other violations, such as failure to timely report arrival. Again, two surveys were conducted to determine the compliance rate for this criterion: the first, conducted between October 1, 1997–October 31, 1998, showed an overall compliance rating of 100%, and the second, conducted between April 1, 1999–June 30, 1999, similarly showed an overall compliance rating of 100%, which constitutes an "Excellent" rating for this criterion.

In addition to these favorable compliance ratings, Customs received many comments from participants stating that the GATE Program was an

effective procedure for expediting the processing of certain flights carrying low-risk frequent travelers arriving in the United States.

Overall, an "Excellent" compliance rating was scored by the participants, which convinces Customs that the program tests were successful and that GATE achieved its quicker processing and law-enforcement objectives.

Proposed Amendments to the Regulations to Implement the GATE Program

Owing to the favorable comments and evaluations received concerning the testing of the GATE Program, Customs is proposing regulations to implement the GATE Program on a permanent basis. To make provision for the GATE Program, it is proposed in this document to amend the Customs Regulations at Part 122, which contains Air Commerce Regulations applicable to private aircraft, and at Part 123, which pertains to Customs relations with Canada and Mexico and contains the general report of arrival requirements applicable to individuals. In Part 122, a new § 122.39 will be added that explains the specifics of the GATE Program. Conforming reference changes also will be made to §§ 122.22, 122.24, 122.26, 122.31, and 122.36. In Part 123, § 123.1 will be revised to reference the GATE Program.

Customs notes that the test notices referenced both "private" and "corporate" aircraft as ostensibly separate types of aircraft. In these proposed regulations, because "corporate aircraft" are encompassed within the definition of "private aircraft" in 19 CFR 122.1(h) and private aircraft are included within the description of aircraft eligible for the GATE Program, there is no need to provide separately for corporate aircraft. Customs also notes that although the test notices stated that the GATE Program was concerned with allowing qualified flights to telephonically report their "entry" into the U.S., technically, these flights were reporting their "arrival", which is the nature of the reporting exemption proposed at § 123.1(a)(2). Also, because "private aircraft" are exempt from formal entry requirements, *see* 19 CFR 122.26, the proposed regulatory text references "arrival and clearance" requirements and not "entry" requirements.

Discussion of Proposed New Section 122.39

Section 122.39(a)—"Description of Program"

Under the heading "Description of program", paragraph (a) will describe

the GATE Program in general terms. It will provide that this program is designed to facilitate the processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada; that participation in the GATE Program is voluntary and requires participants to comply with the program's requirements, which include the pre-filing of certain personal information and arriving in the U.S. only at designated locations; and that in exchange for this cooperation, participants are exempted from the general Customs requirements for entry into the United States, so long as the participants are in compliance with the program's requirements. This paragraph also will caution that participants should be aware that failure to follow program requirements on GATE-approved flights can result in revocation of their participation in the program and may result in their being liable for certain civil and criminal penalties. It further provides that, although applications may be approved for a period of years, particular flights may be denied GATE privileges because of the further conditions pertaining to landing rights airports, found at § 122.14(d).

Paragraph (a) also will explain the modified arrival procedure of the GATE Program: that the pilot of the GATE-approved flight provides Customs with the required advance notice of the flight's arrival; that Customs then gives the GATE flight an advance arrival number which gives permission for the flight to land at an airport which has been designated for program use; and that upon landing in the U.S., the participants on board may depart the aircraft with their personal effects. However, if the flight is ahead of schedule, then all individuals must remain onboard the aircraft until the time of arrival that was reported. *See* 19 U.S.C. 1433(e) and 1454. Because the individuals on GATE-approved flights are to be pre-cleared telephonically, all individuals onboard must be participants in the GATE Program and in compliance with the program's requirements. This facilitated processing procedure is in lieu of the general Customs requirements concerning entry into the U.S., contained at § 123.1 of the Customs Regulations.

Section 122.39(b)—“Eligibility and Application Procedures”

Under the heading “Eligibility and application procedures”, paragraph (b) will explain both the eligibility criteria of individual frequent travelers, general aviation aircraft, and designated

airports, and the application procedure that only the aircraft owners/operators must follow. Although three entities (aircraft, airports, and individual frequent travelers) are separately identified as being eligible to participate in the GATE Program, the association between eligible general aviation aircraft and individual frequent travelers is very direct: the individuals to be carried on the aircraft must be either members of the flight crew, corporate employees/officers, or the pilot of the aircraft.

Regarding aircraft eligibility, only U.S.-and Canadian-registered general aviation aircraft that arrive in the United States directly from Canada are eligible to participate in the GATE Program. Aircraft transiting Canada and aircraft that will carry cargo, merchandise requiring the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000 are not eligible to participate in the GATE Program. For GATE Program purposes, the term “general aviation aircraft” means private aircraft, and certain commercial aircraft, consisting of small charter/air taxi aircraft and air ambulances that have a seating capacity for fifteen or fewer individuals, when such aircraft are not in commercial service. Aircraft accepted into the GATE Program maintain their eligibility status so long as they make at least one flight per year.

Regarding airports, eligible flights must land at airports that are designated for GATE use. While airports already designated for GATE use are generally within a port of entry, other airports located outside of a port of entry also may be approved for GATE use. If an airport which is not already designated for GATE use is requested on a GATE application, the requested airport will be reviewed by the local port director, who will take the following factors into consideration in determining whether to approve the airport for GATE use:

- a. Willingness of the airport operator to participate in the GATE Program;
- b. The distance to the airport from the nearest Customs port of entry (so that random inspections can be performed), commuting time required for Customs officers, and Customs officer safety en route to the airport;
- c. Whether a secure place to work is provided at the airport; and
- d. Whether communications equipment is accessible.

Regarding the eligibility of individual frequent travelers, only U.S. citizens, permanent resident aliens of the United States, Canadian citizens, or landed immigrants in Canada from Commonwealth countries who are either members of the flight crew,

corporate employees/officers, or the pilot of the general aviation aircraft are eligible to participate in the GATE Program. Each individual must demonstrate his right to be legally admitted into the United States by passing a “face-to-face” inspection with either a U.S. Immigration or Customs officer. Further, on GATE-approved flights each individual must agree to carry all required personal identification and immigration documents and not to carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000.

Applications for GATE are to be submitted only by eligible general aviation aircraft owners/operators who want all or certain of their flights considered for participation in the GATE Program. An application is filed on new Customs Form (CF) 442 (Application for Exemption from Special Landing Requirements (Overflight) or General Aviation Telephonic Entry Program (GATE)). Copies of the new CF 442 are available at any Customs port. The following specific information is required to be submitted on the CF 442: the name of the aircraft owner/operator applicant; identification of the aircraft to be flown; identification of the airport(s) of intended landing in the U.S.; and the names and other personal identification information of individual frequent travelers, which include the pilot of the aircraft, the members of the flight crew, and corporate employees/officers intended to be carried onboard GATE-approved flights. The CF 442 also contains a statement which the applicant is required to sign that certifies the truthfulness of the information provided, authorizes Customs to perform whatever checks and inspections as are necessary to verify the information provided, and states that the applicant acknowledges having read the program's requirements, agrees to abide by them, and understands that failure to follow such requirements on GATE-approved flights can render participants liable for certain civil and criminal penalties. By signing and submitting a CF 442, an aircraft owner/operator acknowledges that individual frequent travelers identified have been informed of the program's requirements and the penalties for failure to comply with these requirements, and agrees that a participating aircraft will not carry individuals who are not approved and that frequent travelers onboard will not be allowed to carry merchandise that

requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000 on GATE-approved flights.

Individual frequent travelers who wish to participate in the program on aircraft of eligible general aviation aircraft owners/operators do not file a CF 442; they provide their personal identification information to the aircraft owner/operator who includes the information on his CF 442. Individual frequent travelers who provide their personal information for inclusion on an aircraft owner's/operator's CF 442 must sign a Privacy Act waiver provided to them by the aircraft owner/operator that authorizes Customs to perform whatever checks are necessary to determine their eligibility for participation in the program and to advise the aircraft owner/operator as to whether the individual is approved. Customs will verify information through the Treasury Enforcement Communications System (TECS). The waiver is to be submitted to the aircraft owner/operator who will forward all the individual Privacy Act waivers with his CF 442 to Customs. Individuals approved by Customs to participate in the GATE Program must abide by the program's requirements and not carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000 on GATE-approved flights.

Applications for GATE with the individual frequent traveler's signed Privacy Act waiver attached are to be filed with the GATE Program Center—U.S. Customs Service, Detroit Metropolitan Airport, GATE Program Center, International Terminal, Detroit, Michigan 48242. In general, applications must be submitted to the GATE Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect. (Although the time frame for submitting applications was 45 days prior to the date of the scheduled flight during the test phases of this program, Customs considers a 30-day time frame sufficient to process applications.)

Section 122.39(c)—“Notice of Action on Application; Appeal Rights”

Under the heading “Notice of action on application; appeal rights”, paragraph (c) will explain Customs notification procedure following its evaluation of an application to participate in the GATE Program. This

paragraph will provide that the GATE Program Center determines whether the information provided on the CF 442 meets the various eligibility criteria, and notifies the aircraft owner/operator-applicant within 30 days as to whether the application is approved or denied. Paragraph (c) will also delineate the specific grounds for not approving an application. Finally, the paragraph will reference the various administrative appeal procedures that general aviation aircraft owner/operator-applicants must follow to challenge Customs initial notice of denial (and any subsequent adverse determinations that may be issued). Individual frequent travelers designated by applicants will have no direct appeal rights.

In cases where certain of multiple frequent travelers listed on the CF 442 are not approved, those not approved will be lined out by the GATE Program Center and the overall application will be approved. In cases where either the aircraft, the owner/operator of the aircraft, or the pilot is not approved, then the GATE Program Center will deny the application. The applicant may then either submit a new application after waiting a period of 30 days from the date of issuance of the initial notice of denial or exercise its appeal rights. (The appeal procedure actually will be provided at paragraph (d), but is discussed here for convenience.)

The appeal procedure will allow for two levels of administrative review. The first level of appeal will be to the Detroit Port Director and the appeal must be filed within 10 calendar days of the date of issuance of the initial notice of denial. Within 30 days of receipt of the appeal, the Detroit Port Director, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the appeal to the Detroit Port Director results in an adverse determination, then a second level of appeal may be taken to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229, provided the appeal is filed within 10 calendar days of the date of issuance of the Detroit Port Director's adverse determination. Within 30 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the appeal to the Assistant Commissioner again results in an adverse determination, no further administrative recourse is available.

If an application designates multiple airports for landing and some of the airports cannot be approved for GATE

use, the application will be approved for GATE participation and the unapproved airports will be lined out. If an application designates only one airport for landing and that airport cannot be approved for GATE use, the application will be approved and the nearest GATE-approved airport will be designated for the applicant. Regarding airport designations, no appeal is available.

Section 122.39(d)—“Notice of Revocation; Appeal Procedures”

Under the heading “Notice of revocation; appeal procedures”, paragraph (d) will delineate the specific reasons participation in the GATE Program may be immediately revoked and explain the two levels of administrative appeal procedure, discussed above, common to both nonselected applicants and revoked participants who want to challenge Customs initial notices of action in the matter. An aircraft's participation in the GATE Program may be immediately revoked by the GATE Program Center for any of the following reasons:

(1) The application contained false or misleading information concerning a material fact;

(2) An approved individual:

(a) Is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe proscribed acts occurred. This provision will also apply to the owner/operator of the aircraft;

(b) Allows an unauthorized individual to use his GATE certificate or other approved form of identification;

(c) Refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(d) Fails to adhere to the conditions or restrictions imposed by the GATE Program;

(3) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed; or

(4) Continuation of GATE privileges would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

When a decision revoking participation has been made, the Gate Program Center will notify the aircraft owner/operator-participant of the decision in writing. The notice of revocation will state the reason(s) for revocation and advise the participant of its administrative appeal rights and

alternate recourse of submitting a new application after waiting a period of 30 days from the date of issuance of the initial notice of revocation or any subsequent adverse determination.

II. The Overflight Program

Although special report of arrival and landing requirements are applicable to private aircraft that arrive in the continental U.S. from areas south of the U.S. (19 CFR 122.23–122.24), private aircraft owners or operators may seek an exemption from the special landing requirements (overflight privileges), for either a single flight or for a number of flights over a period of one year, by filing a written request with the port director having jurisdiction over the airport designated for landing, as provided by § 122.25. The processing of requests for exemption(s) and the revocation of overflight privileges are administered by the Overflight Program.

Various amendments are proposed to the regulations concerning the Overflight Program. The present overflight regulatory procedure does not provide for the uniform processing of exemption requests. Requests for exemption(s) frequently contain nonstandardized information and are processed differently across the country. Customs is proposing to amend the overflight provisions at § 122.25 to provide for a more uniform approach to collecting information. Certain information regarding business activity is no longer considered necessary and the requirement to provide justification for the exemption sought are proposed to be removed. It is also proposed to provide for a centralized location—Newark International Airport in New Jersey—to process applications for exemptions. In addition, advance notification requirements are proposed to be changed. Section 122.25(a) currently provides that aircraft traveling under an exemption must continue to follow the advance notice requirements of § 122.23(b), which provide that the aircraft furnish the notice of intended arrival to Customs at the nearest designated airport to the point of crossing listed at § 122.24(b). Customs is proposing that the advance notice of arrival from exempted aircraft be made to the airport to which the aircraft is destined rather than to the nearest landing airport, designated by § 122.24(b), from which the aircraft has been exempted. Amendments are also proposed concerning the duration of term exemptions. Also, Customs proposes an appeal procedure similar to that already discussed under the proposed GATE regulations, so that private aircraft owners/operators either

requesting an exemption from the special landing requirements and being denied or having an approved exemption revoked can have administrative review of such decisions.

Conforming reference changes also will be made to §§ 122.22 and 122.24.

Discussion of Proposed Amendments to § 122.25

Section 122.25(a)—“Description of Overflight Program”

In § 122.25, the heading of paragraph (a), currently entitled “Request”, will be amended to read “Description of Overflight Program” to explain the program in general terms. Revisions to the regulatory text will more clearly show that exemptions can be requested by eligible private aircraft owner/operators (applicants) either for a single flight or for a number of flights over a period of two years (increased from one year). Further, these regulations will clarify that failure to follow program requirements can result in revocation of overflight privilege(s) and liability for certain civil and criminal penalties.

Paragraph (a) will more clearly describe the scope of the overflight privilege. It will provide that an exemption (overflight privileges) from the special landing requirements is available and specify the advance report of arrival procedures regarding when, where, and how Customs must be notified. Further, this paragraph will set forth the conditions and continuing responsibilities of aircraft owners/operators whose private aircraft have been granted an overflight privilege; this information is currently provided for at paragraphs (b) and (d).

Paragraph (a) will also inform participants that, although their applications may be approved for a period of years, particular flights may be denied because of the further conditions pertaining to landing rights airports, found at § 122.14(d). Lastly, the current provisions of paragraph (e) pertaining to inspection of the aircraft will be relocated to paragraph (a), since the inspection of the aircraft normally occurs before the overflight privilege is granted.

Section 122.25(b)—“Eligibility and Application Procedures”

The heading of paragraph (b), currently entitled “Procedure”, will be amended to read “Eligibility and application procedures”. This paragraph will explain both the eligibility criteria for private aircraft and individuals to be routinely carried onboard the Overflight-approved flights, and the application procedure that only the

aircraft owners/operators must follow who want all or certain of their flights considered for the Overflight Program.

Regarding aircraft eligibility, only private aircraft arriving in the continental United States via certain areas south of the United States are eligible to participate in the Overflight Program. For purposes of the Overflight Program, it is important to note that the definition of “private aircraft” is broader than the general aviation aircraft term employed by the GATE Program. “Private aircraft” in the context of this program includes aircraft with a seating capacity of 30 passengers. See § 122.23(a).

Regarding the identification of individuals to be carried on Overflight-approved flights, personal identification information of the pilot, members of the flight crew, and any individuals who will be the usual or anticipated passengers intended to be routinely onboard an eligible private aircraft must be provided on the application for an overflight privilege. On Overflight-approved flights each individual must agree not to carry restricted or prohibited merchandise on their person or in their baggage.

As discussed above for the GATE Program, the applications for exemptions from the special landing requirements (overflight privileges) are to be filed on the new Customs Form (CF) 442, which are available at any Customs port. The new CF 442 will streamline the amount of information required of applicants. Customs will no longer require information concerning business activities and justification for the exemptions. This should speed the processing of both the original request and any subsequent renewals for exemptions already on file.

Further as stated in the discussion on GATE, the following specific information is required to be submitted on the CF 442: the name of the aircraft owner/operator applicant; identification of the aircraft to be flown; identification of the airport(s) of intended landing in the U.S.; and the names of individuals, which include the pilot, and applicable flight crew and all usual or anticipated passengers, intended to be routinely carried onboard Overflight-approved flights. (Unlike the GATE Program where the approved flight is pre-cleared, the Overflight Program does not require information on every passenger that will be onboard because the approved flight will be met by Customs at the airport approved for the overflight.) Also, as discussed above for the GATE Program, the CF 442 contains a certification statement that must be signed and states that the applicant acknowledges having

read the program's requirements and agrees to abide by them and understands that failure to follow such requirements on Overflight-approved flights can render participants liable for certain civil and criminal penalties. By signing and submitting a CF 442, an aircraft owner/operator acknowledges that individual passengers identified have been informed of the program's requirements and the penalties for failure to comply with these requirements, and agrees not to knowingly carry individuals who do not comply with the Overflight Program requirements, or who carry restricted or prohibited merchandise on their person or in their baggage on Overflight-approved flights.

Also as discussed above for the GATE Program, individuals that are routinely carried on eligible private aircraft who wish to participate in the program do not file a CF 442; they provide their personal identification information to the aircraft owner/operator who includes the information on his CF 442. The proposed provisions regarding the collection of personal information from individual passengers and the signing of the Privacy Act waiver that must be submitted to Customs parallel the procedures discussed above for GATE applications.

Applications for an overflight privilege with the individual passenger's Privacy Act waivers attached are to be filed with the Overflight Program Center—U.S. Customs Service, Sealand Building, Overflight Program Center, 1210 Corbin Street, Elizabeth, New Jersey 07201. In general, applications are to be submitted to the Overflight Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect.

Section 122.25(c)—“Notice of Action on Application; Appeal Rights”

Since the current provisions of paragraph (c) will be covered in new paragraph (b), the heading of paragraph (c), currently entitled “Content of request”, will be amended to read “Notice of action on application; appeal rights”. This paragraph will provide that, after consulting with the port director having jurisdiction over the airport designated for landing, the Overflight Program Center determines whether the information provided on the CF 442 meets the program's criteria, and notifies the aircraft owner/operator-applicant within 30 days as to whether the application is approved or denied.

Paragraph (c) will also delineate the specific grounds for not approving an application. Finally, the paragraph will reference the various administrative appeal procedures that private aircraft owner/operator-applicants must follow to challenge Customs initial notice of denial (and any subsequent adverse determinations that may be issued). Individual passengers designated by applicants will have no direct appeal rights.

As discussed for the GATE Program, in cases where certain of multiple passengers listed on the CF 442 are not approved, those not approved will be lined out by the Overflight Program Center and the overall application will be approved. In cases where either the aircraft, the owner/operator of the aircraft, or the pilot is not approved, then the Overflight Program Center will deny the application. Applicants denied an exemption request may either submit a new application to the Overflight Program Center after waiting a period of 30 days from the date of issuance of the initial denial notice or appeal the notice of denial through two levels of administrative review. The first level of administrative review of Customs initial denial of an application is to the Director of Field Operations at the Customs Management Center responsible for supporting the particular port of entry. The second level of administrative review is to the Assistant Commissioner, Office of Field Operations. Appeals must be filed within 10 calendar days of the date of issuance of a denial and the appeal decision will be made within 30 days of the date of receipt of the appeal.

Section 122.25(d)—“Notice of Revocation; Appeal Procedures”

Since the current provisions of paragraph (d) will be covered in new paragraph (a), the heading of paragraph (d), currently entitled “Procedure following exemption”, will be amended to read “Notice of revocation; appeal procedures”. This paragraph will provide that exemption(s) can be immediately revoked by the Overflight Program Center, after consulting with the port director having jurisdiction over the airport designated for landing, for any of the specified reasons, which parallel the reasons given above for the GATE Program. When Customs decides to revoke an exemption, notice of the action will be in writing and advise the applicant of its appeal rights, discussed above under paragraph (c), which also parallel the procedures discussed for the GATE Program.

III. Privacy/Freedom of Information Acts Notice

Customs files containing the information provided on the CF 442, the individual frequent traveler's/ passenger's signed Privacy Act waivers authorizing Customs to advise the aircraft owner/operator whether the individual is approved for program participation, and information concerning Customs determinations of individuals' eligibility to participate in a private aircraft program will be maintained in filing cabinets and are retrievable only by aircraft tail number reference. For the GATE Program, the files will be located at the GATE Program Center in Detroit, Michigan; for the Overflight Program, the files will be located at the Overflight Program Center in Elizabeth, New Jersey. Information may also be retrieved electronically through TECS, again using only the aircraft tail number as a reference.

Comments

Before adopting these proposed regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue—3rd Floor, NW, Washington, D.C.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities because the proposed amendments either pertain to a voluntary program (the GATE Program), which confers a benefit on private and general aviation aircraft, or streamline the information collection of an existing program (the Overflight Program). Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. These proposed amendments do not meet the criteria for a “significant

regulatory action” as specified in Executive Order 12866.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these proposed regulations are at § 122.39(b)(2) (for the GATE Program) and § 122.25(b) (for the Overflight Program).

For the GATE Program, the information to be collected is necessary so that Customs can select only those frequent traveler individuals who present no risk to the northern border by their voluntary participation in the GATE Program. The likely respondents are individuals and general aviation aircraft owners/operators that engage in foreign commerce and trade along the northern border of the United States.

Estimated total annual reporting and/or recordkeeping burden: 203 hours.

Estimated average annual burden per respondent/recordkeeper: 10 minutes.

Estimated number or respondents and/or recordkeepers: 3,497.

Estimated annual frequency of responses: on occasion.

For the Overflight Program, the information to be collected is necessary so that Customs can grant exemptions from the special landing requirements (overflight privileges) only to those private aircraft that will not be endeavoring to smuggle narcotics from countries south of the U.S. The likely respondents are individuals and private aircraft owners/operators that engage in foreign commerce and trade along the southern border of the United States.

Estimated total annual reporting and/or recordkeeping burden: 15 hours.

Estimated average annual burden per respondent/recordkeeper: 3 minutes.

Estimated number or respondents and/or recordkeepers: 300.

Estimated annual frequency of responses: on occasion.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Entry procedures, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Aliens, Canada, Customs duties and inspection, Forms, Immigration, Imports, Mexico, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 122 and 123 of the Customs Regulations (19 CFR parts 122 and 123) as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

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

2. Section 122.22 is amended by adding at the end before the period the words “, unless authorized to participate in the GATE Program (see § 122.39) or exempted from this requirement in accordance with the Overflight Program (see § 122.25)”.

3. In § 122.24, paragraph (a) is amended by adding at the end before the period the words “, unless authorized to participate in the GATE Program (see § 122.39) or exempted from this requirement in accordance with the Overflight Program (see § 122.25)”.

4. Section 122.25 is revised to read as follows:

§ 122.25 Exemption from special landing requirements.

(a) Description of Overflight Program.

—(1) *In general.* Any company or individual that has operational control over a private aircraft as defined under § 122.23(a), that is required to give advance notice of arrival under the provisions of § 122.23(b), and is required to land for Customs processing at the nearest designated airport to the border or coastline crossing under the provisions of § 122.24 may request an exemption from the special landing requirements. Exemptions (overflight privileges), granted based on the pre-filing of certain personal and aircraft information, may be requested by the owners/operators of eligible private aircraft either for a single flight or for all flights over a period of two years. Term exemptions may be renewed for two-year periods of time. Failure to follow program requirements on Overflight-approved flights can result in revocation of overflight privileges and may result in liability for certain civil and criminal penalties. Owners/operators participating in the Overflight Program also should note that, although their applications may be approved for a period of years, particular flights may be denied because of the further conditions pertaining to landing rights airports, found at § 122.14(d).

(2) *Overflight procedures.* Where an exemption has been granted, the aircraft commander must give Customs notice of arrival as follows:

(i) *When to report.* The notice of arrival must be reported at least 60 minutes prior to landing, unless Customs notifies the aircraft commander that more advance notice of arrival is necessary because the airport of destination is located in a remote area, see § 122.31(e);

(ii) *Where to report.* The notice of arrival must be reported to Customs at the approved airport of destination; and

(iii) *How to report.* The notice to Customs may be furnished directly to Customs by telephone, radio, or other method, or indirectly through the Federal Aviation Administration to Customs. Where the notice is furnished indirectly, it is still the responsibility of the aircraft commander to ensure that Customs is properly notified of the aircraft's arrival.

(3) *Overflight conditions and responsibilities.*—(i) *Flight rules.* An overflight must be conducted pursuant to an instrument flight rule (IFR) flight plan filed with the Federal Aviation Administration (FAA) or equivalent foreign aviation authority prior to commencement of the overflight. The crossing into the U.S. must be made within an FAA authorized airway.

(ii) *Flight crew and passengers.* On Overflight-approved flights the pilot(s) and all crew members must be approved, and, if passengers are on board, at least one of the passengers must be approved. Further, all individuals must abide by the program's requirements and not carry restricted or prohibited merchandise on their person or in their baggage.

(iii) *Other requirements.* The owner/operator of the private aircraft granted an exemption from the special landing requirements must:

(A) Notify Customs of any of the following events regarding the aircraft or flight crew members of the aircraft either within 5 working days of the event or before a scheduled flight of that aircraft, whichever occurs earlier:

(1) A change of Federal Aviation Administration or foreign registration number for the aircraft;

(2) The sale, theft, modification or destruction of the aircraft; or

(3) Changes of pilots or crewmembers. Every pilot and crewmember participating in an overflight must have prior Customs approval either through the initial application or a supplemental application before commencement of the aircraft's first overflight with that pilot or crew member;

(B) Request permission from Customs to fly to any airport that is not listed in the initial exemption application; and

(C) Retain on board the aircraft copies of the initial application for an exemption, all applicable supplemental applications filed, and all requests for additional landing privileges, as well as a copy of the letter from Customs approving each of these requests.

(b) *Eligibility and application procedures.*—(1) *Eligibility.* Private aircraft that arrive in the continental U.S. from areas south of the U.S. may seek an exemption from the special landing requirements of § 122.24

(overflight privileges), for either a single flight or for a number of flights over a period of two year. Private aircraft that carry restricted or prohibited merchandise are not eligible for this program. For Overflight Program purposes, the term "private aircraft" is defined at § 122.23(a).

(2) *Application procedure.*—(i) *Who applies for the overflight privilege.* Owners/operators of eligible private aircraft (see paragraph (b)(1) of this section) who want all or certain of their flights considered for participation in the Overflight Program should contact the following Customs office to request an application for exemption from the special landing requirements of § 122.24: U.S. Customs Service, Sealand Building, Overflight Program Center, 1210 Corbin Street, Elizabeth, New Jersey 07201. Customs Form (CF) 442 (Application for Exemption from Special Landing Requirements (Overflight) or General Aviation Telephonic Entry Program (GATE)) is the application form. The owner/operator applying for an exemption will provide on the application the personal identification information of pilot(s), members of the flight crew, and any individuals who will be the usual or anticipated passengers intended to be routinely carried onboard an Overflight-approved flight. Individual passengers who provide their personal information for inclusion on an aircraft owner's/operator's CF 442 must sign a Privacy Act waiver provided to them by the aircraft owner/operator that authorizes Customs to perform whatever checks are necessary to determine their eligibility for participation in the program and to advise the aircraft owner/operator as to whether the individual is approved.

Customs will verify information through the Treasury Enforcement Communications System (TECS). The waiver is to be submitted to the aircraft owner/operator who will forward all the individual Privacy Act waivers with his CF 442 to Customs. By signing and submitting a CF 442, a private aircraft owner/operator acknowledges that the individuals identified on the form have been informed of the program's requirements to not carry restricted or prohibited merchandise on their person or in their baggage and of the penalties for failure to comply with these requirements, and agrees that he will not knowingly carry individuals who do not comply with the program's requirements on Overflight-approved flights.

(ii) *When to apply.* Generally, applications, with the individual Privacy Act waivers attached, must be submitted to the Overflight Program

Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect. However, in cases involving air ambulance operations when emergency situations arise or where other flights of private aircraft entail the non-emergency transport of persons seeking medical treatment in the U.S., Customs may accept exemption requests when the aircraft is in flight through a Federal Aviation Administration Flight Service Station.

(3) *Aircraft inspection requirement.* Applicants for the Overflight Program must agree to make the subject aircraft available for Customs inspection to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight privilege. Inspections may be conducted during the review of an initial application or at any time during the term of an exemption.

(c) *Notice of action on application; appeal rights.* Applications will be evaluated based on the information provided on the CF 442 as verified by Customs. Following an evaluation of the information submitted and after consulting with the port director having jurisdiction over the airport designated for landing, the Overflight Program Center will notify the applicant within 30 days whether the application is approved or denied. In cases where the application is denied, notice will be in writing and state the reason(s) for denial, advise the applicant of its administrative appeal rights under paragraph (c)(2) of this section and of the alternate recourse of submitting a new application after waiting a period of 30 days, and recite the appeal procedures under paragraph (d)(3) of this section.

(1) *Grounds for denial.* The Overflight Program Center may deny an application for any of the following reasons:

(i) Failure of the applicant to meet the eligibility criteria, specified at paragraph (b)(1) of this section;

(ii) Evidence that the application contains false or misleading information concerning a material fact;

(iii) Evidence of criminal or dishonest conduct regarding the owner/operator of the aircraft or the designated pilot; or

(iv) A determination is made that the grant of an overflight privilege would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Appeal rights.* Applicants denied overflight privileges have appeal rights,

and, upon receiving notice of the denial, may either:

(i) Submit a new application to the Overflight Program Center after waiting a period of 30 days from the date of issuance of the initial denial notice; or

(ii) Appeal the notice of denial in accordance with the administrative appeal procedures set forth in paragraph (d)(3) of this section.

(d) *Notice of revocation; appeal procedures.*—(1) *Revocation.* The

Overflight Program Center may immediately revoke an exemption for any of the following reasons:

(i) The application contained false or misleading information concerning a material fact;

(ii) An approved individual or the owner/operator of the aircraft is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe proscribed acts occurred;

(iii) Any individual carried on an Overflight-approved flight refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(iv) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed;

(v) Any individual carried on an Overflight-approved flight fails to adhere to the conditions or restrictions imposed by the Overflight Program; or

(vi) Continuation of the overflight privilege would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Notice.* When a decision to revoke an exemption or to deny an applicant overflight privileges is made, the Overflight Program Center, after consulting with the port director having jurisdiction over the airport designated for landing, will notify the participant or applicant of the decision in writing. The notice of revocation or notice of denial and any subsequent notices of adverse determination will state the reason(s) for the adverse action, advise the participant or applicant of its administrative appeal rights and of the alternate recourse of submitting a new application after waiting a period of 30 days from the date of issuance of the initial notice of revocation or notice of denial, or any subsequent adverse determination, and recite the appeal procedures under paragraph (d)(3) of this section.

(3) *Appeal procedures.* An Overflight Program participant who receives notice of revocation or an applicant for overflight privileges who receives notice of denial may administratively appeal the initial notice of adverse action in writing within 10 calendar days of the date of issuance of the notice to the next level of administrative review. Appeals must be filed in duplicate and must set forth the appellant's responses to the grounds specified in the notice of adverse action or the subsequent notice of adverse determination issued by the Overflight Program Center.

(i) *The Director of Field Operations.* The first appeal is to the Director of Field Operations at the appropriate Customs Management Center, which will be specified by the Overflight Program Center in its notice of adverse action. Within 30 days of receipt of the appeal, the Director of Field Operations, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will contain the information specified at paragraph (d)(2) of this section. If the appellant wants to appeal the Director of Field Operations' adverse determination to the Assistant Commissioner, then the appellant must file the second appeal within 10 calendar days of the date of issuance of the Director of Field Operations' adverse determination.

(ii) *The Assistant Commissioner.* The second appeal is to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229. Within 30 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will state the reason(s) for the adverse action.

5. In § 122.26, the second sentence is amended at the end before the period by adding the words “, unless they are participating in and in compliance with the GATE Program (see § 122.39)”.

6. In § 122.31:

(a) paragraph (a) is amended in the second sentence at the end before the period by adding the words “or, if applicable, § 122.25”; and

(b) paragraph (c)(1) is amended in the second sentence by adding after the words “place of first landing” the words “or, in cases of GATE-approved flights (see § 122.39), to the GATE Program Center as required”.

7. Section 122.36 is revised to read as follows:

§ 122.36 Responsibility of aircraft commander.

Generally, if Customs officers are not present when an aircraft lands in the U.S., the aircraft commander must hold the aircraft and all merchandise and baggage on the aircraft for inspection. Passengers and crewmembers must be kept in a separate place until they are authorized by Customs officers to depart. If the aircraft is participating in the GATE Program (see § 122.39), the participants onboard GATE-authorized flights may depart the landed aircraft with their personal effects, which must not include merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000; however, if the flight is ahead of schedule, they must remain on the aircraft until the time that was reported to be their estimated time of arrival.

8. A new § 122.39 is added in subpart D to read as follows:

§ 122.39 The General Aviation Telephonic Entry (GATE) Program.

(a) *Description of program.*—(1) *In general.* The General Aviation Telephonic Entry (GATE) Program is a program designed to facilitate the processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada. Participation in the GATE Program is voluntary and requires participants to comply with the program's requirements, which include the pre-filing of certain personal information and arriving in the U.S. only at designated locations. In exchange for this cooperation, participants are exempted from the general Customs requirements for entry into the United States, contained at § 123.1 of this chapter. Because GATE flights are pre-cleared telephonically, GATE-approved flights may carry only individuals that are approved to participate in the GATE Program. Participants should be aware that failure to follow program requirements on GATE-approved flights can result in revocation of their participation in the program and may result in liability for certain civil and criminal penalties. Owners/operators participating in the GATE Program also should note that, although their applications may be approved for a period of years, particular flights may be denied GATE privileges because of the further conditions pertaining to landing rights airports, found at § 122.14(d).

(2) *GATE procedures.* The pilot of the GATE-approved flight provides Customs with the required advance notice of the flight's arrival. Customs then assigns the GATE-approved flight an advance arrival number which gives permission for the flight to land at a GATE-designated airport. Upon landing in the U.S., the participants onboard may depart the landed aircraft with their personal effects, which must not include merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000. However, if the flight is ahead of schedule, then all individuals must remain onboard the aircraft until the time that was reported to be their estimated time of arrival.

(b) *Eligibility and application procedures.*—(1) *Eligibility.*—(i) *Aircraft.* U.S.- and Canadian-registered general aviation aircraft that arrive in the United States directly from Canada are eligible to participate in the GATE Program. Aircraft transiting Canada are not eligible to participate in the GATE Program. Further, aircraft that will carry cargo or merchandise requiring the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000 are not eligible for this program. For GATE Program purposes, the term "general aviation aircraft" means private aircraft, and certain commercial aircraft, consisting of small charter/air taxi aircraft and air ambulances that have a seating capacity for fifteen or fewer individuals, when such aircraft are not in commercial service. Aircraft accepted into the GATE Program maintain their eligibility status so long as they make at least one flight per year.

(ii) *Airports.* Airports already designated for GATE flights and other airports not previously considered may be requested on an application. In these later cases, the local port director will determine whether the airport specified is suitable to receive GATE flights by reviewing the facilities at the airport.

(iii) *Individuals.* The pilot(s), members of the flight crew, and corporate employees/officers who frequently travel on general aviation aircraft are individuals eligible to be carried on GATE-approved flights. Each individual must meet the following additional criteria:

(A) *Citizenship.* Each individual must be a:

- (1) U.S. citizen;
- (2) Permanent resident of the U.S.;
- (3) Canadian citizen; or
- (4) Landed immigrant in Canada from a Commonwealth country;

(B) *Admissibility into the U.S.* Each individual must demonstrate his right to be legally admitted into the United States by passing a "face-to-face" inspection with either a U.S. Immigration or Customs officer; and

(C) *Compliance with program requirements.* On GATE-approved flights, each individual must agree to carry all required personal identification and immigration documents and not to carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000.

(2) *Application procedure.*—(i) *Who applies for GATE entry privileges.* Owners/operators of eligible general aviation aircraft (see paragraph (b)(1)(i) of this section) who want all or certain of their flights considered for participation in the GATE Program should contact the following Customs office to request an application for GATE: U.S. Customs Service, Detroit Metropolitan Airport, GATE Program Center, International Terminal, Detroit, Michigan 48242. Customs Form (CF) 442 (Application for Exemption from Special Landing Requirements (Overflight) or General Aviation Telephonic Entry Program (GATE)) is the application form. The owner/operator applying for the GATE Program will provide on the application the personal identification information of individual frequent travelers who will be carried onboard a GATE-approved flight. Individual frequent travelers who provide their personal information for inclusion on an aircraft owner's/operator's CF 442 must sign a Privacy Act waiver provided to them by the aircraft owner/operator that authorizes Customs to perform whatever checks are necessary to determine their eligibility for participation in the program and to advise the aircraft owner/operator as to whether the individual is approved. Customs will verify information through the Treasury Enforcement Communications System (TECS). The waiver is to be submitted to the aircraft owner/operator who will forward all the individual Privacy Act waivers with his CF 442 to Customs. By signing and submitting a CF 442, a general aviation aircraft owner/operator acknowledges that individual frequent travelers identified on the form have been informed of the program's requirements to not carry merchandise that requires the payment of Customs duties or merchandise that is restricted or prohibited, or monetary instruments in excess of \$10,000 and of the penalties for failure to comply with these requirements. Further, the applicant

agrees that he will not allow his participating aircraft to carry individuals who are not listed on their application and approved by Customs and that he will not allow any individuals to carry merchandise or monetary instruments that violate the program's requirements on GATE-approved flights.

(ii) *When to apply.* Generally, applications, with the individual Privacy Act waivers attached, must be submitted to the GATE Program Center at least 30 days prior to the date of the first scheduled flight and addenda or modifications reflecting material changes must be submitted at least 30 days prior to the date of the flight for which the changes are in effect.

(c) *Notice of action on application; appeal rights.* Applications will be evaluated based on the information provided on the CF 442 as verified by Customs. Following an evaluation of the information submitted, the GATE Program Center will notify the applicant within 30 days whether the application is approved or denied. In cases where the application is denied, notice will be in writing and state the reason(s) for denial, advise the applicant of its administrative appeal rights under paragraph (c)(2) of this section and of the alternate recourse of submitting a new application after waiting a period of 30 days, and recite the appeal procedures under paragraph (d)(3) of this section.

(1) *Grounds for denial.* The GATE Program Center may deny an application for any of the following reasons:

(i) Failure of the applicant to meet the eligibility criteria, specified at paragraph (b)(1) of this section;

(ii) Evidence that the application contains false or misleading information concerning a material fact;

(iii) Evidence of criminal or dishonest conduct regarding the owner/operator of the aircraft or the designated pilot; or

(iv) A determination is made that the grant of GATE privileges would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Appeal rights.* Applicants denied participation in the GATE Program have appeal rights, and, upon receiving notice of the denial, may either:

(i) Submit a new application to the GATE port director after waiting a period of 30 days from the date of issuance of the initial notice of denial; or

(ii) Appeal the notice of denial in accordance with the administrative appeal procedures set forth in paragraph (d)(3) of this section.

(d) *Notice of revocation; appeal procedures.*—(1) *Revocation.* The GATE Program Center may immediately revoke an aircraft's participation in the GATE Program for any of the following reasons:

(i) The application contained false or misleading information concerning a material fact;

(ii) A participating individual or the owner/operator of the aircraft is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe proscribed acts occurred;

(iii) A participating individual allows an unauthorized individual to use his GATE certificate or other approved form of identification;

(iv) A participating individual refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(v) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed;

(vi) A participating individual fails to adhere to the conditions or restrictions imposed by the GATE Program; or

(vii) Continuation of GATE privileges would endanger the revenue or otherwise invite circumvention of laws enforced by Customs.

(2) *Notice.* When a decision to revoke participation in the GATE Program or deny an applicant GATE privileges is made, the GATE Program Center will notify the participant or applicant of the decision in writing. The notice of revocation or notice of denial and any subsequent notices of adverse determination will state the reason(s) for the adverse action, advise the participant or applicant of its administrative appeal rights and of the alternate recourse of submitting a new application after waiting a period of 30 days from the date of issuance of the initial notice of revocation or notice of denial or any subsequent adverse determination, and recite the appeal procedures under paragraph (d)(3) of this section.

(3) *Appeal procedures.* A GATE Program participant who receives notice of revocation or an applicant for GATE privileges who receives notice of denial may administratively appeal the initial notice of adverse action in writing within 10 calendar days of the date of issuance of the notice to the next level of administrative review. Appeals must be filed in duplicate and must set forth

the appellant's responses to the grounds specified in the notice of adverse action or the subsequent notice of adverse determination issued by the Detroit Port Director.

(i) *The Detroit Port Director.* The first appeal is to the Detroit Port Director, U.S. Customs Service, Detroit Metropolitan Airport, GATE Program Center, International Terminal, Detroit, Michigan 48242. Within 30 days of receipt of the appeal, the Detroit Port Director, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will contain the information specified at paragraph (c)(2) of this section. If the appellant wants to appeal the Detroit Port Director's adverse determination, then the appellant must file the second appeal within 10 calendar days of the date of issuance of the Detroit Port Director's adverse determination.

(ii) *The Assistant Commissioner.* The second appeal is to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229. Within 30 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of adverse determination will state the reason(s) for the adverse action.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624. Section 123.1 also issued under 19 U.S.C. 1459;

* * * * *

2. In § 123.1, paragraph (a)(2) is amended at the end before the period by adding the words “except in the case of a GATE-approved flight”.

Raymond W. Kelly,
Commissioner of Customs.

Approved: July 30, 2001.

Timothy E. Skud,
Acting Deputy Assistant Secretary of the Treasury.
[FR Doc. 01–19337 Filed 8–2–01; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107151–00]

RIN 1545–AX99

Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 1041 of the Internal Revenue Code relating to the tax treatment of certain redemptions, during marriage or incident to divorce, of stock owned by a spouse or former spouse. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by November 1, 2001. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Friday, December 14, 2001, must be received by November 23, 2001.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–107151–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:U (REG–107151–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the “Tax Regs” option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Edward C. Schwartz, (202) 622–4960; concerning submissions and the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for