

US: New Rules For Outbound Private Flights

David Mumford
11 October, 2023



Key Points

- US CBP have made some changes to APIS procedures for private flights departing from the US.
- You now need a new APIS for any pax changes, or ETD change of more than 60mins.
- CBP will also reportedly be increasing spot checks and in-person clearances.

Departing the US

CBP are tightening up the rules private flights departing the US. In a nutshell, the new rule is this:

If you have any pax changes, tail number change, or departure time changes of more than 60 minutes, you now have to file a new APIS - and this needs to be done no later than 60 minutes prior to departure.

These changes are reflected in the new text operators receive when they file their APIS:

United States Customs and Border Protection (CBP) is in receipt of your APIS manifest transmission.

Based upon the APIS manifest information transmitted, private aircraft departure clearance is approved for:

- . the travelers identified within this manifest,
- . the conveyance details provided,
- . with a tolerance of +/- 60 minutes from the departure time manifested in your APIS transmission, but
- . not within 60 minutes of transmission.

You must present yourself for inspection before departure if contacted by CBP.

Unless otherwise exempted, this permission to depart applies only to private aircraft departures. (Permission to depart for commercial aircraft must be requested by the aircraft commander or agent to the director of the port of entry nearest the final departure airport.)

Previously secured permission to depart (clearance) applies only to the previously submitted APIS manifest details. Changes in manifested details such as tail number changes and traveler additions or substitutions require updated or amended APIS transmissions and a direct (re)confirmation of CBP approval and permission to depart.

For departure time changes greater than 60 minutes, operators must re-transmit an APIS manifest no later than 60 minutes prior to departure and call the local CBP port associated with your departure to cancel the original flight clearance request, and, in cases where time is a limiting factor, to request manual departure clearance for the amended flight.

This receipt message and approval for U.S. departure clearance is based on the manifest information submitted and does not confirm that the submitted manifest information is correct, valid, accurate, and/or complete, or that the manifest was submitted within specified timeline requirements. The submission of manifests within 60 minutes of departure or the submission of incorrect, invalid, inaccurate and/or incomplete manifest data may be subject to penalty or other appropriate enforcement action. This email was sent from a notification-only address that cannot accept incoming email.

So if you do have to file a new APIS, it must be filed **at least 60 mins prior to departure**. The new procedure says that if you're pushed for time you can request **"manual departure clearance."** This basically means a phone call to CBP at your departure airport to request permission to depart - and it's always a good idea to get the name, initials or badge number of the officer you speak to, just in case the early departure is questioned.

~~Unsolved~~ SOLVED Mysteries!

Thanks to our friends at the NBAA IOC we now have answers to some of the big questions operators had regarding these changes.

1. Just before departure, another pax gets added to the flight. What do we do?

File a new APIS with all the pax info. Remember, your ETD needs to be at least 60mins from the time you file the new APIS, as per the new rules. If you want to leave early, you need to call CBP and ask for manual departure clearance.

2. What if you're departing overnight or early in the morning when the CBP office is closed, and you have no one to call for manual clearance?

If you can't call CBP because the office is closed, you just have to wait 60mins to depart. There's no out-of-hours fall-back option here. So watch out when planning departures when CBP will be closed! And let your pax know in advance that any last-minute changes are going to cause delays!

3. If one of our pax shows up with a different passport than the one we filed on APIS, must we submit a new one?

Yes. And then, same as above, you have to wait 60mins to depart, or else try calling for manual clearance.

4. If we file with 5 pax but only 4 show up, do we have to file a new APIS?

At the moment, the simple answer is no. This may change in the future though.

5. If our flight cancels altogether, must we call CBP to tell them so?

Yes. If you can't do this because they are closed, call them in the morning.

6. Can anyone make calls to CBP? (to ask for manual clearance, etc)

Yes. PIC, SIC, handler, or trip support provider are all fine.

7. What if we push back on time but get an ATC delay or something, and have to sit around on the taxiway waiting to depart. If it looks like our departure will fall outside of the 60 minute window, must we file a new APIS and then potentially have to wait another hour?

Ooh, trickiest of trickies! This is a slightly grey area. CBP define your "departure" as being the time you are wheels-up. After you push-back, if you get delayed before you actually depart - there's no clear cut answer to when you have to depart by. You just have to be able to show that whatever you do is "reasonable and responsible". CBP will only pursue penalty action if you fail to do this. If you do end up departing after the 60 mins due to delays, make a proactive call to CBP afterwards to explain why. Give them the answer before they ask the question!

Spot checks!

CBP will be increasing random departure inspections on aircraft departing from the US. The name of the game is simple: **always update departure times with CBP!**

If they arrive and you've departed already, you could be subject to **penalty action**.

Many of the recent penalty actions are falling into the following categories

Thanks to Rick Gardner of CST Flight Services for providing this info:

- **Not obtaining Permission To Land.** When returning to the US, once you have filed APIS and received the receipt email from DHS, you need to contact CBP at the port of entry and obtain permission to land. This is spelled out in the text of the receipt email from CBP. I always urge pilots to carefully read the receipt email to make sure the airports, dates and numbers of crew and passengers match what you think you transmitted. Yes, pilots are being penalized for failing to do this.
- **Missing Manifest.** Some pilots are just failing to file APIS. CBP becomes aware through a variety of different methods so this is not a matter to take lightly.
- **Missing people.** The people who were submitted on the manifest are missing and people not on the manifest are on board.
- **Arriving or departing outside the +/- 60-minute tolerance** as specified on Airport Fact Sheets or on the Departure receipt email from DHS. In the past pilots did not pay a lot of attention to complying with the times they submitted on departure manifests. CBP has their own ways of detecting non-compliance including the fact that they do randomly conduct departure inspections. If you depart from the US outside of that tolerance, you can be subject to penalty action.

What should you do if you become subject to penalty action?

- **Don't ignore it.** If you get a notification from CBP that a penalty action has been initiated, address it quickly, it's not going to go away. Penalties can be initiated via a number of different channels within CBP, but the notification will come from CBP General Aviation Headquarters.
- **Own up.** By notifying you of a pending penalty action, CBP wants to give you the opportunity to give your side of the story. Explain what you did and why you did it. If you made a mistake, identify what caused the mistake to occur. As PIC you are solely responsible and CBP will not look favorably on attempts to shirk that responsibility by blaming others or by omitting facts. Be honest, tell them what happened, how it happened and why it happened.
- **Corrective action!** If you did something wrong, tell CBP what you are doing to ensure that this mistake does not happen again. Outline an action plan on how you are changing your procedures to ensure that you achieve compliance going forward.

Doing this does not guarantee that CBP will withhold the penalty action, CBP handles penalty actions on a case-by-case basis. However, **a very significant percentage of penalty actions are resolved** during the initial interaction with CBP headquarters. CBP's expectation of pilots is that we demonstrate that we are trying to act reasonably and responsibly. CBP is looking for compliance, not finding blame.

Professional pilots have a lot on the line because if we receive a penalty, not only can there be a sizeable fine but we also **lose our Border Overflight Exemption privileges** for any operator we are flying with. In addition, we can **lose our Global Entry** as well. If sharing this knowledge from our industry collaboration and ongoing operations keeps just one pilot from getting into trouble, then it is worth it.

More info

For more info on on private flights to the US, check this article.