

January 21, 2009

MEMORANDUM FOR: Directors, Field Operations  
Office of Field Operations

Director  
Pre-clearance Operations

Director  
Field Operations Academy

FROM: Assistant Commissioner /s/  
Office of Field Operations

SUBJECT: Boarding and Inspection of Foreign Government and Foreign  
Military Aircraft

This memorandum clarifies U.S. Customs and Border Protection (CBP) procedures and policies regarding the boarding process for foreign government and foreign military aircraft. Specifically, this memorandum addresses aircraft that have been given Diplomatic Over flight and Landing Clearance by the U.S. Department of State (DOS), Bureau of Political-Military Affairs, Office of International Security Operations (PM/ISO). Such aircraft are known as “state aircraft.”

In general, CBP officers and CBP agriculture specialists are instructed not to board the foreign government or foreign military aircraft described above. One reason that CBP does not board such aircraft is out of respect for international agreements between the United States and many foreign states regarding the sanctity of state aircraft. Also, international custom and practice dictates that once clearance is given, foreign military aircraft are exempt from inspection if there is not a specific agreement to the contrary, or unless the right to inspect is asserted in the terms of the diplomatic clearance.

Various international agreements and international custom and practice therefore oblige the United States to protect the sovereignty of state aircraft. These agreements and practices in turn serve to protect the sovereignty and security of the U.S. and diplomatic aircraft when our President, our Diplomats, and our soldiers travel abroad. Additionally, the Department of Defense Foreign Clearance Guide gives clear guidance to aircraft commanders that they are not to allow a foreign government official to board their aircraft unless approved by the ambassador or the head of the applicable service. Foreign governments often have the same expectation of their aircraft commanders.

If, however, a CBP officer or a CBP agriculture specialist (b) (7)(E)

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(b) (7)(E) authority to board may be obtained. For example, if CBP officials have (b) (7)(E)

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DOS may

obtain authorization from that foreign nation for CBP to board the aircraft. Boarding with permission of the foreign government does not violate principles of sovereignty. If CBP believes there is a need to board an aircraft that has been granted Diplomatic Over flight and Landing Clearance by DOS, both the Director, Field Operations and the Situation Room should be notified. Notification allows CBP to coordinate with the DOS and the foreign government's embassy at appropriate levels. CBP may then facilitate a solution to the situation.

Although CBP officers and CBP agriculture specialists are not to board such aircraft, all persons and merchandise (including equipment, baggage, and cargo) that exit the aircraft are subject to normal inspection procedures in accordance with the law, unless separate regulations, agreements, policies, or arrangements apply. For example, heads of state, diplomats, and diplomatic couriers (and their pouches) that are accredited to the United States by the government of that country, may be entitled to certain exceptions. These are addressed in accordance with the January 5, 2002 CBP Directive 3340-032, Processing Foreign Diplomatic and Consular Officials. Regardless of the status of the person or the aircraft, unless prior arrangement is made with CBP, all meats, cut flowers, agricultural products and garbage must remain on board while the aircraft is in the United States.

Therefore, CBP will not ordinarily board or inspect foreign state aircraft, military or non-military. If circumstances arise in which boarding and inspection is necessary, contact the Director, Field Operations and the Situation Room at (b) (6), (b) (7)(C) to file a significant Incident report (SIR). The Situation Room should be contacted if outside normal working hours.

To verify the issuance of the Diplomatic Over flight and Landing Clearance, CBP ports of entry or field offices should use the Diplomatic Clearance Automated System (DCAS). If questions arise concerning the status of any foreign aircraft, CBP should contact the PM/ISO at (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) during normal working hours, or their 24-hour center at (b) (6), (b) (7)(C)

Field Directors should also ensure there are primary and secondary CBP officers and CBP agriculture specialists assigned to access and verify Diplomatic Over flight and Landing Clearances authorization at the field offices and airports utilizing DCAS. This will ensure CBP officers have pre-notice of all authorized arrivals. Requests for access to the DCAS can be requested by contacting Program Manager (b) (6), (b) (7)(C) DCAS clearances affecting your Area of Responsibility must be monitored for foreign military/diplomatic aircraft scheduled to arrive at a CBP airport.

Please ensure that the ports under your jurisdiction are aware of this policy, and if you have any questions regarding this matter, please contact Mr. (b) (6), (b) (7)(C) Executive Director, Admissibility and Passenger Programs, at (b) (6), (b) (7)(C)

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