



Private Flights Will Be Less Private

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Beginning on August 2, 2011, the Federal Aviation Administration (FAA) will release registration numbers of all private flight operations unless a specified security concern is received. Since its authorization in 2000, the Block Aircraft Registration Request (BARR) program has allowed aircraft operators to prevent the general public from tracking their individual flight movements. The registration numbers will not reveal the identity of the passengers or the purpose of the flight.

In order to block the release, a general aircraft owner or operator must submit to the FAA a written "Certified Security Concern". In order to cover on-demand air charters, an on-demand aircraft operator must similarly submit a "Valid Security Concern" with a minimum of 30 days' notice and specify the time period during which such security concern will exist.

According to the FAA, a "Certified Security Concern" is satisfied by either facts and circumstances which establish a "Valid Security Concern" or by meeting the requirements of an income tax regulation (section 1.132-5(m)) which defines a bona fide business-oriented security concern on flights provided to employees where the employer can establish the security concern to the IRS' satisfaction.

A "Valid Security Concern" is a verifiable threat to person, property or company, including a threat of death, kidnapping or serious bodily harm against an individual, a recent history of violent terrorist activity in the geographic area in which the transportation is provided, or a threat against a company.

In either case, a generalized concern about safety will no longer suffice. The final Notice does state that the FAA anticipates relying on good-faith certifications in most cases.

Background:

On March 4, 2011, the Federal FAA issued a proposed Notice to substantially modify the existing BARR program, which had allowed aircraft operators to prevent the general public from tracking their individual flight movements. After thirty days of public comments, many opposed to the FAA's proposal, the FAA has finalized the Notice, with little change from the original proposal.

In seeking comments on the FAA's proposed modifications, interested parties were instructed to respond by April 4, 2011. A sampling of comments and concerns included the following:

1. The privacy and well being of business executives is critical to the success of their business and their safety. Real-time access to the progress of their aircraft could harm their business and security.
2. Knowing where your competitors are headed in real time provides a critical advantage, just as your competitors knowing what you are doing puts you at a disadvantage.
3. Attack planning by individuals or terrorist groups would be enhanced if they could track their targets without ever entering a designated "secure" area.
4. The equivalent of insider information may be obtained by those who become privy to pre-transaction business travel.
5. The BARR program has worked well for over a decade and is generally viewed as a low cost, efficient security measure for those who have not been threatened or victimized.

However, as indicated in both the original proposal and the final Notice, the FAA is modifying the existing rules since the Privacy Act does not protect general aviation operators from public knowledge of their flight information

For additional details, visit: <http://www.fly.faa.gov/ASDI/asdi.html>

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