



Ottawa, August 30, 2007

# MEMORANDUM D2-5-0

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## In Brief

### LEGISLATIVE REQUIREMENTS FOR THE PRESENTATION OF PERSONS AT A CANADA BORDER SERVICES AGENCY (CBSA) OFFICE

1. This memorandum has been updated and outlines the eligibility criteria for various alternative programs and explains requirements and method of presentations in an alternative manner for the following programs:

- (a) CANPASS Air
- (b) CANPASS Private Aircraft
- (c) CANPASS Corporate Aircraft
- (d) CANPASS Private Boats
- (e) Commercial Driver Registration Program (CDRP)
- (f) Nexus Highway
- (g) Free and Secure Trade (FAST).

2. This memorandum contains the *Presentation of Persons (2003) Regulations*. Revisions made to the Regulations are current to December 16, 2006.

3. The *Presentation of Persons (2003) Regulations* replaced the *Presentation of Persons (Customs) Regulations* that have been repealed.



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## LEGISLATIVE REQUIREMENTS FOR THE PRESENTATION OF PERSONS AT A CANADA BORDER SERVICES AGENCY (CBSA) OFFICE

This memorandum outlines the legislative requirements of the *Presentation of Persons (2003) Regulations*. Part 1 lists the exceptions under subsection 11(1) and 11(3) of the *Customs Act* and Part 2 lists the alternative manners of presentation.

### GUIDELINES AND GENERAL INFORMATION

1. The *Presentation of Persons (2003) Regulations* allow pre-approved, low-risk commercial clients and travellers to meet their border obligations through various alternative means and programs.
2. The Regulations introduce the Canadian portion of the NEXUS program, the Free and Secure Trade program, the Commercial Driver Registration Program and the CANPASS program.
3. Persons who want to participate in the alternative presentation programs have to meet eligibility requirements, which are set out in Part 2 of the Regulations.
4. In support of these programs, the following changes have been announced in the Regulations:
  - (a) The proposed eligibility criteria have been amended to clarify who can apply for authorization to present themselves in an alternative manner.
  - (b) A three-year residency requirement has been introduced for all the programs.
  - (c) Details about the biometric data for various programs have been included.
  - (d) The advance notification requirement for travellers using general aviation aircraft has been aligned with the advance notification binding CANPASS Private Aircraft and Corporate Aircraft program members.
  - (e) The Regulations specify fees to be paid by applicants for the processing of an application, as well as the duration of the authorization and the criteria for suspending or cancelling an authorization.
5. These Regulations provide the legal basis for the various departmental practices and procedures that have been developed to regulate and control the presentation of persons at the border on arrival in Canada.

6. Detailed information on reporting procedures for general aviation and CANPASS Private Aircraft and Corporate Aircraft program members is outlined in Memorandum D2-5-10, *Transborder General Aviation – Telephone Reporting and CANPASS Programs*.

7. Detailed information on reporting procedures for travellers arriving in Canada on private boats using telephone reporting is outlined in Memorandum D2-5-12, *Telephone Reporting for Private Boats and CANPASS Private Boats Program*.

### Regulations

#### *Presentation of Persons (2003) Regulations*

#### *Interpretation*

1. The following definitions apply in these Regulations.
  - “Act” means the *Customs Act*. (*Loi*)
  - “authorization” means an authorization, issued by the Minister under section 11.1 of the Act, for a person to present himself in an alternative manner. (*autorisation*)
  - “authorized person” means a person to whom the Minister has issued an authorization. (*personne autorisée*)
  - “commercial driver” means a person who operates a commercial highway conveyance. (*routier*)
  - “commercial highway conveyance” means a conveyance designed for hauling freight on highways. (*moyen de transport routier commercial*)
  - “commercial passenger conveyance” means a conveyance that is used to carry passengers who have paid for passage. (*moyen de transport commercial de passagers*)
  - “common-law partner” [Repealed, SOR/2005-385, s. 3]
  - “corporate aircraft” means an aircraft that is used for purposes related to the business affairs of a person, that does not carry passengers who have paid for passage and that has aboard on its arrival in Canada no more than 15 persons, including the crew. (*aéronef d'affaires*)
  - “designated customs office” means a customs office designated under section 5 of the Act as a customs office where a person may present himself pursuant to section 11 of the Act, or in an alternative manner if the person is so authorized. (*bureau de douane établi*)

“designated holding area” means an area designated by the President for the use of persons arriving in Canada who are in transit to another place in Canada or to a place outside Canada. (*zone d’attente désignée*)

“marine pleasure craft” means a vessel, however propelled, other than a seaplane or other similar conveyance, that is used exclusively for pleasure and that does not carry passengers who have paid for passage. (*embarcation de plaisance*)

“non-commercial passenger conveyance” means a conveyance that does not carry passengers who have paid for passage, and includes corporate aircraft, private aircraft and marine pleasure craft. (*moyen de transport non commercial de passagers*)

“private aircraft” means an aircraft other than a corporate aircraft that does not carry passengers who have paid for passage and that has aboard on its arrival in Canada no more than 15 persons, including the crew. (*aéronef privé*)

## PART 1

### EXCEPTIONS

#### EXCEPTIONS TO PRESENTATION UNDER SUBSECTION 11(1) OF THE ACT

2.(1) Persons who arrive in Canada aboard a commercial passenger conveyance, who do not disembark in Canada and who have as their destination a place outside Canada are not required to present themselves in accordance with subsection 11(1) of the Act.

(2) The following persons, in the following circumstances and conditions, are not required to present themselves in accordance with subsection 11(1) of the Act:

(a) persons who arrive in Canada aboard a commercial passenger conveyance if they do not disembark at the place of their arrival and have as their destination another place in Canada at which there is a designated customs office, and on arrival at their destination they present themselves without delay at that customs office or if the designated customs office is not open for business, at the nearest one that is open for business;

(b) persons who arrive in Canada aboard a commercial passenger conveyance if they are transferred under customs control from a designated holding area to another commercial passenger conveyance for departure

(i) to a place outside Canada and they do not leave the designated holding area except to board that other commercial passenger conveyance, or

(ii) to another place in Canada and at which there is a designated customs office, and on arrival at

that place they present themselves without delay at that customs office or, if it is not open for business, at the nearest designated customs office that is open for business.

(c) persons arriving in Canada aboard a non-commercial passenger conveyance at a designated customs office where the person in charge of the conveyance may present themselves and their passengers by radio or telephone, and the person informs an officer by radio or telephone of their arrival and, if required to do so by the officer, presents themselves and their passengers at the time and place specified by the officer;

(d) any crew member arriving in Canada aboard a freight train at a designated customs office where presentation may be done by radio or telephone, and the crew member informs an officer by radio or telephone of their arrival and, if required to do so by the officer, presents themselves at the time and place specified by the officer; and

(e) any person entering Canadian waters, including the inland waters, or the airspace over Canada in circumstances in which none of paragraphs (a) to (d) applies, and who has as their destination a place in Canada at which there is a designated customs office, and on arrival at their destination they present themselves without delay at that office.

(3) For greater certainty, every person who presents themselves in accordance with any of paragraphs (2)(a) to (e) is required to answer truthfully any questions asked by an officer in the performance of the officer’s duties under the Act or any other Act of Parliament.

#### EXCEPTIONS TO SUBSECTION 11(3) OF THE ACT

3.(1) The person in charge of a commercial passenger conveyance arriving in Canada is not required to ensure that the following persons, in the following circumstances and conditions, are forthwith on arrival transported to a customs office as required by subsection 11(3) of the Act:

(a) passengers and crew who do not disembark in Canada and who have as their destination a place outside Canada, if only passengers or goods that have come from a designated holding area are taken aboard the conveyance while it is in Canada;

(b) passengers and crew who do not disembark at the place of arrival in Canada and who have as their destination another place in Canada at which there is a designated customs office, if

(i) only passengers or goods that have come from a designated holding area are taken aboard the conveyance while it is in Canada, and

(ii) on arrival at their destination the passengers and crew present themselves without delay at that customs office or, if it is not open for business, at the nearest designated customs office that is open for business;

(c) passengers and crew who are transferred under customs control to another commercial passenger conveyance for departure

(i) to a place outside Canada and the passengers and crew comply with subparagraph 2(2)(b)(i); or

(ii) to another place in Canada at which there is a designated customs office, and the passengers and crew comply with subparagraph 2(2)(b)(ii); and

(d) passengers and crew who arrive at a designated customs office where persons may present themselves by radio or telephone, and the person in charge of the commercial passenger conveyance

(i) notifies an officer by radio or telephone of the arrival of the conveyance and advises the officer of the number and names of the passengers and crew who disembark at the place, and

(ii) if required to do so by an officer, ensures that the passengers and crew who disembark at the place are transported at the time and to the place specified by the officer for the purpose of presenting themselves and answering truthfully any questions asked by an officer in accordance with subsection 11(1) of the Act.

(2) On the arrival in Canada of a freight train, the person in charge of it is not required to ensure that the crew members aboard it are forthwith transported to a customs office as is required by subsection 11(3) of the Act if those crew members arrive at a designated customs office where persons may present themselves by radio or telephone, and the person in charge of the freight train

(a) notifies an officer by radio or telephone of the arrival of the train and advises the officer of the number and names of the crew members who disembark at the place; and

(b) if required to do so by an officer, ensures that the crew members who disembark at the place are transported at the time and to the place specified by the officer for the purpose of presenting themselves and answering truthfully any questions asked by an officer in accordance with subsection 11(1) of the Act.

#### ADVANCE NOTIFICATION

4.(1) Every person in charge of a non-commercial passenger conveyance, other than a marine pleasure craft, that has as its destination a place in Canada and who intends to present himself and any persons aboard the conveyance

by means of telephone shall give notice by telephone to an officer at a designated customs office at least two hours but no more than 48 hours before arriving in Canada of the expected time and place of arrival and destination in Canada of the conveyance.

(2) If required by an officer, the person in charge of a non-commercial passenger conveyance shall

(a) provide any information relating to the other persons aboard the non-commercial passenger conveyance; and

(b) notify an officer of the arrival of the conveyance in Canada.

(3) The person in charge of a non-commercial passenger conveyance shall notify an officer at a designated customs office of any changes to information given under subsection (1) or (2) before the time of the arrival of the conveyance in Canada, unless there are emergency circumstances, in which case the person in charge shall notify an officer at a designated customs office of any changes and of those circumstances at the time of arrival.

## PART 2

### PRESENTATION IN ALTERNATIVE MANNERS

#### AUTHORIZATIONS

5. [Repealed, SOR/2005-385, s. 5]

6. The Minister may issue an authorization to a person to present himself in an alternative manner described in paragraph 11(a), (b), (c) or (e) if the person

(a) is

(i) a permanent resident, within the meaning of the *Immigration and Refugee Protection Act*, or a Canadian citizen, or

(ii) a citizen or permanent resident of the United States;

(iii) [Repealed, SOR/2005-385, s. 6]

(b) is of good character;

(c) is not inadmissible to Canada under the *Immigration and Refugee Protection Act* or its regulations;

(d) provides their consent in writing to the use by the Minister of biometric data concerning the person for the purposes set out in section 6.3;

(e) has provided true, accurate and complete information in respect of their application for the authorization; and

(f) has resided in one or more of the following countries during the three-year period preceding the day on which the application was received:

- (i) Canada or the United States, and
- (ii) if the person is a citizen of Canada or the United States and is serving at a Canadian or American diplomatic mission or consular post in a foreign country, that foreign country.

6.1 The Minister may issue an authorization that is recognized in both Canada and the United States to a person, other than a commercial driver, to present themselves at a land border crossing in an alternative manner described in subparagraph 11(d)(ii) if the person

- (a) meets the requirements set out in paragraphs 6(a) to (f); and
- (b) has their eligibility to obtain a dedicated commuter lane authorization from the United States Department of Homeland Security confirmed by that Department.
- (c) and (d) [Repealed, SOR/2006-154, s. 4]

6.2 The Minister may issue an authorization that is recognized in both Canada and the United States to a commercial driver who operates or will be aboard a commercial highway conveyance to present themselves at a land border crossing in an alternative manner described in subparagraph 11(d)(iii) at a designated customs office if the commercial driver

- (a) meets the requirements set out in paragraphs 6(a) to (e);
- (b) has their eligibility to obtain a dedicated commuter lane authorization from the United States Department of Homeland Security confirmed by that Department;
- (c) has not had an application for an authorization rejected or an authorization suspended or cancelled during the 90 days before the date of their current application;
- (d) is 18 years of age or older; and
- (e) holds a valid driver's licence.

6.21 The Minister may issue an authorization to a commercial driver who operates or will be aboard a commercial highway conveyance to present themselves at a land border crossing in an alternative manner described in subparagraph 11(d)(i) if the commercial driver

- (a) meets the requirements set out in paragraphs 6(a) to (e);
- (b) is 18 years of age or older; and
- (c) holds a valid driver's licence.

6.3 The Minister may require the following biometric data from the following persons for the following purposes:

- (a) in the case of a person who applies for an authorization, a photograph of themselves for the

purposes of identifying them and authenticating the use of their authorization at any border crossing;

(b) in the case of a person who applies for an authorization to present themselves in an alternative manner described in paragraph 11(a), the image of their irises for the purposes of identifying them and authenticating the use of their authorization at a commercial airport;

(c) in the case of a person who applies for an authorization referred to in section 6.1, a copy of their index fingerprints for the purposes of performing background checks and, if required for the purposes of confirming their identity, a copy of all their fingerprints; and

(d) in the case of a commercial driver who applies for an authorization referred to in section 6.2, a copy of their fingerprints for the purposes of identifying them and performing criminal record checks.

#### APPLICATIONS FOR AUTHORIZATIONS

7.(1) An application for the issuance, renewal or amendment of an authorization shall be made to the Minister in the prescribed form and manner and include the applicable fee set out in section 24.

(2) A person who is applying to be an authorized person or an authorized person may apply for an authorization on behalf of

- (a) [Repealed, SOR/2005-385, s. 8]
- (b) their child who is under 18 years of age; and
- (c) [Repealed, SOR/2005-385, s. 8]
- (d) any person who is wholly dependent for support on the applicant by reason of mental or physical infirmity and who is related, within the meaning of the *Income Tax Act*, to the applicant.

(2.1) Subsection (2) does not apply to a commercial driver who is applying to be an authorized person or to an authorized person who is a commercial driver.

(3) A person who is not an individual may apply for an authorization on behalf of an employee, contractor, consultant or other business associate of that person if the person conducts business in Canada or the United States and uses corporate aircraft to carry passengers into Canada for purposes related to the business.

8.(1) A person in charge of a corporate aircraft may apply by telephone to an officer at a designated customs office for the issuance of an authorization on behalf of an individual who is or is expected to be aboard a corporate aircraft that is to arrive in Canada.

(2) An application under subsection (1) shall include, if available, the individual's name, date of birth, citizenship and place of residence.

(3) The Minister may issue an authorization to an individual described in subsection (1) if all of the following conditions are met:

(a) the individual meets the requirements set out in paragraphs 6(a) to (e);

(a.1) the individual is an employee, contractor, consultant or other business associate of the corporation that is using the aircraft and is travelling for purposes related to the business of the corporation;

(b) the person in charge of the corporate aircraft has not applied on behalf of more than four individuals;

(c) the person in charge of a corporate aircraft confirms to the Minister that the individual on whose behalf the application is made is aboard the aircraft and provided, at that time, the information described in subsection (2) if it had not been given previously; and

(d) the individual is accompanied on the corporate aircraft by another person who is authorized to present himself by means of the person in charge of the corporate aircraft.

(4) No authorization may be issued after an aircraft has arrived in Canada.

9. The Minister shall issue an authorization in writing to every person who has been authorized, other than an individual who receives an authorization under section 8.

10.(1) An authorization referred to in section 6.1 or 6.2 and an authorization to present oneself in an alternative manner described in paragraph 11(b), (c) or (e) expire five years after the date of their issuance.

(1.1) [Repealed, SOR/206-154, s. 9]

(2) An authorization issued under section 8 may be used only once by the individual who is authorized to present himself by means of the person in charge of the corporate aircraft.

(3) An authorization referred to in section 6.21 expires four years after the date of its issuance.

(4) An authorization to present oneself in an alternative manner described in paragraph 11(a) expires one year after the date of its issuance.

#### *ALTERNATIVE MANNERS OF PRESENTATION*

11. Persons may present themselves in one of the following alternative manners if they have been authorized to do so:

(a) on arrival in Canada aboard a commercial aircraft at a commercial airport that is a designated customs office, by means of an electronic device;

(b) on arrival in Canada aboard a private aircraft at a public airport that is a designated customs office, by means of the person in charge of the aircraft if that person presents himself and those persons aboard by telephone to an officer at a designated customs office and all persons aboard the aircraft are authorized to present themselves in that manner;

(c) on arrival in Canada aboard a corporate aircraft at a public airport that is a designated customs office, by means of the person in charge of the corporate aircraft, if that person presents himself and any persons aboard by telephone to an officer at a designated customs office;

(d) on arrival in Canada at a land border crossing,

(i) if they are commercial drivers who are operating or aboard a commercial highway conveyance, by means of an electronic device at a designated customs office,

(ii) if they are operating or aboard a conveyance, by means of an electronic device at a designated customs office if every person aboard the conveyance is authorized to present himself in that manner, or

(iii) if they are commercial drivers who are operating or aboard a commercial highway conveyance, by means of an electronic device at a designated customs office if every person aboard the conveyance is authorized to present himself in that manner; and

(e) on arrival in Canada aboard a marine pleasure craft, by means of the person in charge of the marine pleasure craft if that person presents himself and those persons aboard by telephone to an officer at a designated customs office and all persons aboard the marine pleasure craft are authorized to present themselves in that manner.

12. Every authorized person, other than a person whose authorization was issued under section 8, shall carry their authorization on their person when presenting themselves in an alternate manner, and shall show it to an officer if so requested.

13. No authorized person shall

(a) transfer or assign their authorization;

(b) permit another person to use their authorization;

(c) use or attempt to use their authorization if it is expired, suspended or cancelled; or

(d) use or attempt to use their authorization to present themselves in a manner that is not authorized.

14. Every authorized person whose authorization is lost or stolen shall, without delay, inform the Minister of the loss or theft.

#### ADVANCE NOTIFICATION

15.(1) Every person in charge of a corporate aircraft or a private aircraft that has as its destination a place in Canada who intends to present themselves and any authorized persons aboard the aircraft in either alternative manner set out in paragraph 11(b) or (c) shall give notice by telephone to an officer at a designated customs office at least two hours but no more than 48 hours before arriving of the expected time and place of arrival and destination in Canada of the aircraft.

(2) If required by an officer, the person in charge of the corporate aircraft or private aircraft shall

(a) provide any information relating to the other persons aboard the aircraft; and

(b) notify an officer of the arrival of the aircraft in Canada.

16. [Repealed, SOR/2005-385, s. 12]

17. (1) Every authorized person in charge of a marine pleasure craft that has as its destination a place in Canada who intends to present themselves and any passengers aboard the craft who are authorized to present themselves in the manner described in paragraph 11(e) shall give notice within 4 hours of their expected arrival in Canada by telephone to an officer at a designated customs office of the expected time and place of arrival in Canada.

(2) Any information required by an officer relating to any person aboard the marine pleasure craft shall also be provided at that time.

18. A person shall, before the time of their arrival in Canada, notify an officer at a designated customs office of any changes to information given by them under section 15 or 17, unless there are emergency circumstances, in which case the person shall notify an officer at a designated customs office of any changes and of those circumstances at the time of their arrival.

19. Every authorized person who is aboard a corporate aircraft, a private aircraft or a marine pleasure craft, and who intends to present themselves in an alternative manner, shall remain at the place of their arrival in Canada until

(a) the time of arrival that was stated in their advance notification under section 15, 16 or 17, as the case may be; or

(b) an earlier time if an officer authorizes them to leave the place of arrival.

#### AMENDMENTS TO AUTHORIZATIONS

20. On application, the Minister may amend an authorization

(a) to change the authorized person's address;

(b) to change the name of the authorized person;

(c) to add or remove a conveyance to which the authorization applies; or

(d) to change the authorized person's citizenship.

#### RENEWALS

21. On application, the Minister may renew an authorization if

(a) at the time of the application, the authorized person meets the requirements for the issuance of the authorization;

(b) the application is made before the authorization has expired; and

(c) the applicable fee set out in section 24 is paid.

#### SUSPENSIONS AND CANCELLATIONS OF AUTHORIZATIONS

22.(1) The Minister may suspend or cancel an authorization if the person

(a) no longer meets the requirements for the issuance of the authorization;

(b) has contravened the Act, the *Customs Tariff*, the *Export and Import Permits Act* or the *Special Import Measures Act*, or any regulations made under any of those Acts; or

(c) has provided information that was not true, accurate or complete for the purposes of obtaining an authorization.

(2) [Repealed, SOR/2006-154, s. 15]

(3) Immediately after cancelling or suspending an authorization of a person, the Minister shall send written notice of, and the reasons for, the cancellation or suspension to the person at their latest known address.

(4) A person whose authorization is cancelled or suspended shall

(a) on receiving a notice under subsection (3), immediately and in accordance with it, return to the Minister the written authorization and any other thing relevant to the authorization that is specified in the notice; or

(b) on being advised of the suspension or cancellation in person by an officer, immediately return to the

officer the written authorization and any other thing relevant to it that is specified by the officer.

(5) The suspension or cancellation of an authorization becomes effective on the earlier of the day on which an officer advises in person of the suspension or cancellation and 15 days after the day on which notice of the suspension or cancellation is sent.

23. A person whose application for an authorization is rejected or whose authorization is suspended or cancelled may request a review of the decision by sending written notice of their request to the Minister within 30 days after the day on which the application was rejected or the cancellation or suspension becomes effective.

#### *FEES*

24.(1) The fee for the issuance or renewal of an authorization referred to in section 6.1 or 6.2 is \$80.

(1.1) The fee for the issuance or renewal of an authorization to present oneself in an alternative manner described in paragraph 11(b), (c) or (e) is \$40.

(2) The fee for the issuance or renewal of an authorization for use at a commercial airport that is a designated customs office is \$50 per year.

(3) The fee for the issuance or renewal of any other authorization is \$25 per year.

(4) A person who is under 18 years of age at the time of making their application for an authorization is not required to pay a fee under this section.

(5) There is no fee for the issuance or renewal of an authorization referred to in section 6.21.

#### *PRESENTATION OF PERSONS (CUSTOMS) REGULATIONS*

25. The definition “designated customs office” in section 2 of the Presentation of Persons (Customs) Regulations is repealed.

26. The Presentation of Persons (Customs) Regulations are repealed.



## REFERENCES

<p><b>ISSUING OFFICE –</b></p> <p>Air and Marine Division          People Programs Directorate          Admissibility Branch</p>	<p><b>HEADQUARTERS FILE –</b></p> <p>7815-12</p>
<p><b>LEGISLATIVE REFERENCES –</b></p> <p><i>Customs Act</i>, section 11 and paragraphs 164(1)(b), (i) and (j) and 167.1(b)</p>	<p><b>OTHER REFERENCES –</b></p> <p>D2-5-1, D2-5-2, D2-5-3, D2-5-5, D2-5-6, D2-5-10 and D2-5-12</p>
<p><b>SUPERSEDED MEMORANDA “D” –</b></p> <p>D2-5-0, February 2, 2006</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

