

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 251 of this title takes effect.

(4) Establishing and administering rules, in accordance with section 236 of this title, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in part C of this subchapter, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 231 of this title.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

(Pub. L. 107–296, title IV, § 402, Nov. 25, 2002, 116 Stat. 2177.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in par. (6), was in the original “subtitle C”, meaning subtitle C (§ 421 et seq.) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2182, which enacted part C (§ 231 et seq.) of this subchapter and amended sections 2279e and 2279f of Title 7, Agriculture, and sections 115, 44901, and 47106 of Title 49, Transportation. For complete classification of subtitle C to the Code, see Tables.

§ 203. Functions transferred

In accordance with subchapter XII (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(Pub. L. 107–296, title IV, § 403, Nov. 25, 2002, 116 Stat. 2178.)

PART B—UNITED STATES CUSTOMS SERVICE

§ 211. Establishment; Commissioner of Customs

(a) Establishment

There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 215(7) of this title, and the personnel, assets, and liabilities attributable to those functions.

(b) Commissioner of Customs

(1) In general

There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Omitted

(3) Continuation in office

The individual serving as the Commissioner of Customs on the day before the effective date of this chapter may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

(Pub. L. 107–296, title IV, § 411, Nov. 25, 2002, 116 Stat. 2178.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(3), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

CODIFICATION

Section is comprised of section 411 of Pub. L. 107–296. Subsec. (b)(2) of section 411 of Pub. L. 107–296 amended section 5314 of Title 5, Government Organization and Employees.

CHANGE OF NAME

Customs Service, referred to in subsecs. (a) and (b)(1), changed to Bureau of Customs and Border Protection by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

PORT OF ENTRY PARTNERSHIP PILOT PROGRAM

Pub. L. 113–76, div. F, title V, § 559, Jan. 17, 2014, 128 Stat. 279, provided that:

“(a) IN GENERAL.—In addition to existing authorities, the Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, is authorized to conduct a pilot program in accordance with this section to permit U.S. Customs and Border Protection to enter into partnerships with private sector and government entities at ports of entry for certain services and to accept certain donations.

“(b) RULE OF CONSTRUCTION.—Except as otherwise provided in this section, nothing in this section may be construed as affecting in any manner the responsibilities, duties, or authorities of U.S. Customs and Border Protection or the General Services Administration.

“(c) DURATION.—The pilot program described in subsection (a) shall be for five years. A partnership entered

into during such pilot program may last as long as required to meet the terms of such partnership. At the end of such five year period, the Commissioner may request that such pilot program be made permanent.

“(d) COORDINATION.—

“(1) IN GENERAL.—The Commissioner, in consultation with participating private sector and government entities in a partnership under subsection (a), shall provide the Administrator with information relating to U.S. Customs and Border Protection’s requirements for new facilities or upgrades to existing facilities at land ports of entry.

“(2) CRITERIA.—The Commissioner and the Administrator shall establish criteria for entering into a partnership under subsection (a) that include the following:

“(A) Selection and evaluation of potential partners.

“(B) Identification and documentation of roles and responsibilities between U.S. Customs and Border Protection, General Services Administration, and private and government partners.

“(C) Identification, allocation, and management of explicit and implicit risks of partnering between U.S. Customs and Border Protection, General Services Administration, and private and government partners.

“(D) Decision-making and dispute resolution processes in partnering arrangements.

“(E) Criteria and processes for U.S. Customs and Border Protection and General Services Administration to terminate agreements if private or government partners are not meeting the terms of such a partnership, including the security standards established by U.S. Customs and Border Protection.

“(3) EVALUATION PLAN.—The Commissioner, in collaboration with the Administrator, shall submit to the Committee on Homeland Security, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate, an evaluation plan for the pilot program described in subsection (a) that includes the following:

“(A) Well-defined, clear, and measurable objectives.

“(B) Performance criteria or standards for determining the performance of such pilot program.

“(C) Clearly articulated evaluation methodology, including—

“(i) sound sampling methods;

“(ii) a determination of appropriate sample size for the evaluation design;

“(iii) a strategy for tracking such pilot program’s performance; and

“(iv) an evaluation of the final results.

“(D) A plan detailing the type and source of data necessary to evaluate such pilot program, methods for data collection, and the timing and frequency of data collection.

“(e) AUTHORITY TO ENTER INTO AGREEMENTS FOR THE PROVISION OF CERTAIN SERVICES AT PORTS OF ENTRY.—

“(1) IN GENERAL.—Notwithstanding section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)) and section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the Commissioner may, during the pilot program described in subsection (a) and upon the request of a private sector or government entity with which U.S. Customs and Border Protection has entered into a partnership, enter into a reimbursable fee agreement with such entity under which—

“(A) U.S. Customs and Border Protection will provide services described in paragraph (2) at a port of entry;

“(B) such entity will pay a fee imposed under paragraph (4) to reimburse U.S. Customs and Border Protection for the costs incurred in providing such services; and

“(C) each facility at which U.S. Customs and Border Protection services are performed shall be provided, maintained, and equipped by such entity, without cost to the Federal Government, in accordance with U.S. Customs and Border Protection specifications.

“(2) SERVICES DESCRIBED.—Services described in this paragraph are any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs, agricultural processing, border security, and immigration inspection-related matters at ports of entry.

“(3) LIMITATIONS.—

“(A) IMPACTS OF SERVICES.—The Commissioner may not enter into a reimbursable fee agreement under this subsection if such agreement would unduly and permanently impact services funded in this or any other appropriations Act, or provided from any account in the Treasury of the United States derived by the collection of fees.

“(B) FOR CERTAIN COSTS.—The authority found in this subsection may not be used at U.S. Customs and Border Protection-serviced air ports of entry to enter into reimbursable fee agreements for costs other than payment of overtime.

“(C) The authority found in this subsection may not be used to enter into new preclearance agreements or begin to provide U.S. Customs and Border Protection services outside of the United States.

“(D) The authority found in this subsection shall be limited with respect to U.S. Customs and Border Protection-serviced air ports of entry to five pilots per year.

“(4) FEE.—

“(A) IN GENERAL.—The amount of the fee to be charged pursuant to an agreement authorized under paragraph (1) shall be paid by each private sector and government entity requesting U.S. Customs and Border Protection services, and shall include the salaries and expenses of individuals employed by U.S. Customs and Border Protection to provide such services and other costs incurred by U.S. Customs and Border Protection relating to such services, such as temporary placement or permanent relocation of such individuals.

“(B) OVERSIGHT OF FEES.—The Commissioner shall develop a process to oversee the activities reimbursed by the fees charged pursuant to an agreement authorized under paragraph (1) that includes the following:

“(i) A determination and report on the full costs of providing services, including direct and indirect costs, including a process for increasing such fees as necessary.

“(ii) Establishment of a monthly remittance schedule to reimburse appropriations.

“(iii) Identification of overtime costs to be reimbursed by such fees.

“(5) DEPOSIT OF FUNDS.—Funds collected pursuant to any agreement entered into under paragraph (1) shall be deposited as offsetting collections and remain available until expended, without fiscal year limitation, and shall directly reimburse each appropriation for the amount paid out of that appropriation for any expenses incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services.

“(6) TERMINATION.—The Commissioner shall terminate the provision of services pursuant to an agreement entered into under paragraph (1) with a private sector or government entity that, after receiving notice from the Commissioner that a fee imposed under paragraph (4) is due, fails to pay such fee in a timely manner. In the event of such termination, all costs incurred by U.S. Customs and Border Protection, which have not been reimbursed, will become immediately due and payable. Interest on unpaid fees will accrue based on current Treasury borrowing rates.

Additionally, any private sector or government entity that, after notice and demand for payment of any fee charged under paragraph (4), fails to pay such fee in a timely manner shall be liable for a penalty or liquidated damage equal to two times the amount of such fee. Any amount collected pursuant to any agreement entered into under paragraph (1) shall be deposited into the account specified under paragraph (5) and shall be available as described therein.

“(7) NOTIFICATION.—The Commissioner shall notify the Congress 15 days prior to entering into any agreement under paragraph (1) and shall provide a copy of such agreement.

“(f) DONATIONS.—

“(1) IN GENERAL.—Subject to paragraph (2), the Commissioner and the Administrator may, during the pilot program described in subsection (a), accept a donation of real or personal property (including monetary donations) or nonpersonal services from any private sector or government entity with which U.S. Customs and Border Protection has entered into a partnership.

“(2) ALLOWABLE USES OF DONATIONS.—The Commissioner and the Administrator, with respect to any donation provided pursuant to paragraph (1), may—

“(A) use such donation for necessary activities related to the construction, alteration, operation, or maintenance of an existing port of entry facility under the jurisdiction, custody, and control of the Commissioner, including expenses related to—

“(i) land acquisition, design, construction, repair and alteration;

“(ii) furniture, fixtures, and equipment;

“(iii) the deployment of technology and equipment; and

“(iv) operations and maintenance; or

“(B) transfer such property or services to the Administrator for necessary activities described in subparagraph (A) related to a new or existing port of entry under the jurisdiction, custody, and control of the Administrator, subject to chapter 33 of title 40, United States Code.

“(3) CONSULTATION AND BUDGET.—

“(A) WITH THE PRIVATE SECTOR OR GOVERNMENT ENTITY.—To accept a donation described in paragraph (1), the Commissioner and the Administrator shall—

“(i) consult with the appropriate stakeholders and the private sector or government entity that is providing the donation and provide such entity with a description of the intended use of such donation; and

“(ii) submit to the Committee on Appropriations, the Committee on Homeland Security, and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Appropriations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Environment and Public Works of the Senate a report not later than one year after the date of enactment of this Act [Jan. 17, 2014], and annually thereafter, that describes—

“(I) the accepted donations received under this subsection;

“(II) the ports of entry that received such donations; and

“(III) how each donation helped facilitate the construction, alternation [sic], operation, or maintenance of a new or existing land port of entry.

“(B) SAVINGS PROVISION.—Nothing in this paragraph may be construed to—

“(i) create any right or liability of the parties referred to in subparagraph (A); or

“(ii) affect any consultation requirement under any other law.

“(4) EVALUATION PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Commissioner, in consultation with the Administrator, shall establish procedures for evaluating a

proposal submitted by a private sector or government entity to make a donation of real or personal property (including monetary donations) or nonpersonal services under paragraph (1) relating to a port of entry under the jurisdiction, custody and control of the Commissioner or the Administrator and make any such evaluation criteria publicly available.

“(5) CONSIDERATIONS.—In determining whether or not to approve a proposal referred to in paragraph (4), the Commissioner or the Administrator shall consider—

“(A) the impact of such proposal on the port of entry at issue and other ports of entry on the same border;

“(B) the potential of such proposal to increase trade and travel efficiency through added capacity;

“(C) the potential of such proposal to enhance the security of the port of entry at issue;

“(D) the funding available to complete the intended use of a donation under this subsection, if such donation is real property;

“(E) the costs of maintaining and operating such donation;

“(F) whether such donation, if real property, satisfies the requirements of such proposal, or whether additional real property would be required;

“(G) an explanation of how such donation, if real property, was secured, including if eminent domain was used;

“(H) the impact of such proposal on staffing requirements; and

“(I) other factors that the Commissioner or Administrator determines to be relevant.

“(6) UNCONDITIONAL MONETARY DONATIONS.—A monetary donation shall be made unconditionally, although the donor may specify—

“(A) the port of entry facility or facilities to be benefitted from such donation; and

“(B) the timeframe during which such donation shall be used.

“(7) SUPPLEMENTAL FUNDING.—Real or personal property (including monetary donations) or nonpersonal services donated pursuant to paragraph (1) may be used in addition to any other funding (including appropriated funds), property, or services made available for the same purpose.

“(8) RETURN OF DONATIONS.—If the Commissioner or the Administrator does not use the real property or monetary donation donated pursuant to paragraph (1) for the specific port of entry facility or facilities designated by the donor or within the timeframe specified by the donor, such donated real property or money may be returned to the donor. No interest shall be owed to the donor with respect to any donation of funding provided under such paragraph (1) that is returned pursuant to this paragraph.

“(9) SAVINGS PROVISION.—Nothing in this subsection may be construed to affect or alter the existing authority of the Commissioner or the Administrator to construct, alter, operate, and maintain port of entry facilities.

“(g) ANNUAL REPORTS.—The Commissioner, in collaboration with the Administrator, shall annually submit to the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works of the Senate a report on the pilot program and activities undertaken pursuant thereto in accordance with this Act [div. F of Pub. L. 113-76, see Tables for classification].

“(h) DEFINITIONS.—In this section—

“(1) the term ‘private sector entity’ means any corporation, partnership, trust, association, or any other private entity, or any officer, employee, or agent thereof;

“(2) the term ‘Commissioner’ means the Commissioner of U.S. Customs and Border Protection; and

“(3) the term ‘Administrator’ means the Administrator of General Services.

“(i) ROLE OF GENERAL SERVICES ADMINISTRATION.—Under this section, collaboration with the Administrator of General Services is required only with respect to partnerships at land ports of entry.”

REDUCING PASSENGER PROCESSING TIMES

Pub. L. 113-76, div. F, title V, §571, Jan. 17, 2014, 128 Stat. 287, provided that:

“(a) The Commissioner of U.S. Customs and Border Protection shall develop metrics that support a goal of reducing passenger processing times at air, land, and sea ports of entry, taking into consideration the capacity of an air or land port’s physical infrastructure, airline arrival schedules, peak processing periods, and security requirements.

“(b) Not later than 240 days after the date of enactment of this Act [Jan. 17, 2014], the Commissioner of U.S. Customs and Border Protection shall develop and implement operational work plans to meet the goals of subsection (a) at United States air, land, and sea ports with the highest passenger volume and longest wait times. In developing such plans, the Commissioner of U.S. Customs and Border Protection shall consult with appropriate stakeholders, including, but not limited to, airlines and airport operators, port authorities, and importers.”

§ 212. Retention of Customs revenue functions by Secretary of the Treasury

(a) Retention of Customs revenue functions by Secretary of the Treasury

(1) Retention of authority

Notwithstanding section 203(a)(1)¹ of this title, authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this chapter under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this chapter, and on and after the effective date of this chapter, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) Statutes

The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930 [19 U.S.C. 1202 et seq.]; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974 [19 U.S.C. 2101 et seq.]; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.]; the Andean Trade Preference Act [19 U.S.C. 3201 et seq.]; the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.]; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

¹ So in original. Probably should be section “203(1)”.

(b) Maintenance of Customs revenue functions

(1) Maintenance of functions

Notwithstanding any other provision of this chapter, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 211 of this title) on or after the effective date of this chapter, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) Functions

The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this chapter: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) New personnel

The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

(Pub. L. 107-296, title IV, §412, Nov. 25, 2002, 116 Stat. 2179.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subssecs. (a)(1) and (b), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subssecs. (a)(1) and (b)(1), was in the original “this Act”, meaning Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The Tariff Act of 1930, referred to in subsec. (a)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Foreign Trade Zones Act, referred to in subsec. (a)(2), is act June 18, 1934, ch. 590, 48 Stat. 998, as amended, which is classified generally to chapter 1A (§81a et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Tables.

The Trade Act of 1974, referred to in subsec. (a)(2), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§2101 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

The Trade Agreements Act of 1979, referred to in subsec. (a)(2), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

The North American Free Trade Area Implementation Act, referred to in subsec. (a)(2), probably means the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, Dec. 8, 1993, 107 Stat. 2057, as amended. For complete classification of this Act to