

aviation security preclearance agreement (as defined in section 44901(d)(4)(B)¹ of title 49) is in effect, the Secretary may establish and maintain U.S. Customs and Border Protection preclearance operations in a foreign country—

- (1) to prevent terrorists, instruments of terrorism, and other security threats from entering the United States;
- (2) to prevent inadmissible persons from entering the United States;
- (3) to ensure that merchandise destined for the United States complies with applicable laws;
- (4) to ensure the prompt processing of persons eligible to travel to the United States; and
- (5) to accomplish such other objectives as the Secretary determines are necessary to protect the United States.

(Pub. L. 114–125, title VIII, § 813, Feb. 24, 2016, 130 Stat. 217.)

REFERENCES IN TEXT

Section 44901(d)(4)(B) of title 49, referred to in text, was redesignated section 44901(d)(2)(B) of title 49 by Pub. L. 115–254, div. K, title I, § 1991(d)(1)(C)(iii), Oct. 5, 2018, 132 Stat. 3628.

§ 4433. Notification and certification to Congress

(a) Initial notification

Not later than 60 days before an agreement with the government of a foreign country to establish U.S. Customs and Border Protection preclearance operations in such foreign country enters into force, the Secretary shall provide the appropriate congressional committees with—

- (1) a copy of the agreement to establish such preclearance operations, which shall include—
 - (A) the identification of the foreign country with which U.S. Customs and Border Protection intends to enter into a preclearance agreement;
 - (B) the location at which such preclearance operations will be conducted; and
 - (C) the terms and conditions for U.S. Customs and Border Protection personnel operating at the location;
- (2) an assessment of the impact such preclearance operations will have on legitimate trade and travel, including potential impacts on passengers traveling to the United States;
- (3) an assessment of the impacts such preclearance operations will have on U.S. Customs and Border Protection domestic port of entry staffing;
- (4) country-specific information on the anticipated homeland security benefits associated with establishing such preclearance operations;
- (5) information on potential security vulnerabilities associated with commencing such preclearance operations and mitigation plans to address such potential security vulnerabilities;
- (6) a U.S. Customs and Border Protection staffing model for such preclearance operations and plans for how such positions would be filled; and

(7) information on the anticipated costs over the 5 fiscal years after the agreement enters into force associated with commencing such preclearance operations.

(b) Further notification relating to preclearance operations established at airports

Not later than 45 days before an agreement with the government of a foreign country to establish U.S. Customs and Border Protection preclearance operations at an airport in such country enters into force, the Secretary, in addition to complying with the notification requirements under subsection (a), shall provide the appropriate congressional committees with—

- (1) an estimate of the date on which U.S. Customs and Border Protection intends to establish preclearance operations under such agreement, including any pending caveats that must be resolved before preclearance operations are approved;
- (2) the anticipated funding sources for preclearance operations under such agreement, and other funding sources considered;
- (3) a homeland security threat assessment for the country in which such preclearance operations are to be established;
- (4) information on potential economic, competitive, and job impacts on United States air carriers associated with establishing such preclearance operations;
- (5) details on information sharing mechanisms to ensure that U.S. Customs and Border Protection has current information to prevent terrorist and criminal travel; and
- (6) other factors that the Secretary determines to be necessary for Congress to comprehensively assess the appropriateness of commencing such preclearance operations.

(c) Certifications relating to preclearance operations established at airports

Not later than 60 days before an agreement with the government of a foreign country to establish U.S. Customs and Border Protection preclearance operations at an airport in such country enters into force, the Secretary, in addition to complying with the notification requirements under subsections (a) and (b), shall provide the appropriate congressional committees with—

- (1) a certification that preclearance operations under such preclearance agreement, after considering alternative options, would provide homeland security benefits to the United States through the most effective means possible;
- (2) a certification that preclearance operations within such foreign country will be established under such agreement only if—
 - (A) at least one United States passenger carrier operates at such airport; and
 - (B) any United States passenger carriers operating at such airport and desiring to participate in preclearance operations are provided access that is comparable to that of any non-United States passenger carrier operating at that airport;
- (3) a certification that the establishment of preclearance operations in such foreign country will not significantly increase customs processing times at United States airports;

¹ See References in Text note below.

(4) a certification that representatives from U.S. Customs and Border Protection consulted with stakeholders, including providers of commercial air service in the United States, employees of such providers, security experts, and such other parties as the Secretary determines to be appropriate; and

(5) a report detailing the basis for the certifications referred to in paragraphs (1) through (4).

(d) Amendment of existing agreements

Not later than 30 days before a substantially amended preclearance agreement with the government of a foreign country in effect as of February 24, 2016, enters into force, the Secretary shall provide to the appropriate congressional committees—

- (1) a copy of the agreement, as amended; and
- (2) the justification for such amendment.

(e) Implementation plan

(1) In general

The Commissioner shall report to the appropriate congressional committees, on a quarterly basis—

- (A) the number of U.S. Customs and Border Protection officers, by port, assigned from domestic ports of entry to preclearance operations; and
- (B) the number of the positions at domestic ports of entry vacated by U.S. Customs and Border Protection officers described in subparagraph (A) that have been filled by other hired, trained, and equipped U.S. Customs and Border Protection officers.

(2) Submission

If the Commissioner has not filled the positions of U.S. Customs and Border Protection officers that were reassigned to preclearance operations and determines that U.S. Customs and Border Protection processing times at domestic ports of entry from which U.S. Customs and Border Protection officers were reassigned to preclearance operations have significantly increased, the Commissioner, not later than 60 days after making such a determination, shall submit to the appropriate congressional committees an implementation plan for reducing processing times at the domestic ports of entry with such increased processing times.

(3) Suspension

If the Commissioner does not submit the implementation plan described in paragraph (2) to the appropriate congressional committees before the deadline set forth in such paragraph, the Commissioner may not commence preclearance operations at an additional port of entry in any country until such implementation plan is submitted.

(f) Classified report

The report required under subsection (c)(5) may be submitted in classified form if the Secretary determines that such form is appropriate. (Pub. L. 114–125, title VIII, §814, Feb. 24, 2016, 130 Stat. 218.)

§ 4434. Lost and stolen passports

The Secretary may not enter into an agreement with the government of a foreign country

to establish or maintain U.S. Customs and Border Protection preclearance operations at an airport in such country unless the Secretary certifies to the appropriate congressional committees that such government—

(1) routinely submits information about lost and stolen passports of its citizens and nationals to INTERPOL's Stolen and Lost Travel Document database; or

(2) makes such information available to the United States Government through another comparable means of reporting.

(Pub. L. 114–125, title VIII, §816, Feb. 24, 2016, 130 Stat. 220.)

§ 4435. Recovery of initial U.S. Customs and Border Protection preclearance operations costs

(a) Cost sharing agreements with relevant airport authorities

The Commissioner may enter into a cost sharing agreement with airport authorities in foreign countries at which preclearance operations are to be established or maintained if—

(1) an executive agreement to establish or maintain such preclearance operations pursuant to the authorities under section 1629 of this title and section 1103(a)(7) of title 8 has been signed, but has not yet entered into force; and

(2) U.S. Customs and Border Protection has incurred, or expects to incur, initial preclearance operations costs in order to establish or maintain preclearance operations under the agreement described in paragraph (1).

(b) Contents of cost sharing agreements

(1) In general

Notwithstanding section 58c(e) of this title and section 1356(g) of title 8, any cost sharing agreement with an airport authority authorized under subsection (a) may provide for the airport authority's payment to U.S. Customs and Border Protection of its initial preclearance operations costs.

(2) Timing of payments

The airport authority's payment to U.S. Customs and Border Protection for its initial preclearance operations costs may be made in advance of the incurrence of the costs or on a reimbursable basis.

(c) Account

(1) In general

All amounts collected pursuant to any cost sharing agreement authorized under subsection (a)—

(A) shall be credited as offsetting collections to the currently applicable appropriation, account, or fund of U.S. Customs and Border Protection;

(B) shall remain available, until expended, for the purposes for which such appropriation, account, or fund is authorized to be used; and

(C) may be collected and shall be available only to the extent provided in appropriations Acts.