

**(2) Return of unused funds**

The Commissioner of U.S. Customs and Border Protection shall return any unused funds collected and deposited into the account described in paragraph (1) if a fee agreement entered into pursuant to subsection (a) is terminated for any reason or the terms of such fee agreement change by mutual agreement to cause a reduction of U.S. Customs and Border Protections<sup>1</sup> services. No interest shall be owed upon the return of any such unused funds.

**(j) Termination****(1) In general**

The Commissioner of U.S. Customs and Border Protection shall terminate the services provided pursuant to a fee agreement entered into under subsection (a) with an entity that, after receiving notice from the Commissioner that a fee under subsection (h) is due, fails to pay such fee in a timely manner. If such services are terminated, all costs incurred by U.S. Customs and Border Protection that have not been paid shall become immediately due and payable. Interest on unpaid fees shall accrue based on the rate and amount established under sections 6621 and 6622 of title 26.

**(2) Penalty**

Any entity that, after notice and demand for payment of any fee under subsection (h), 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 such amount collected under this paragraph shall be deposited into the appropriate account specified under subsection (i) and shall be available as described in such subsection.

**(3) Termination by the entity**

Any entity who has previously entered into an agreement with U.S. Customs and Border Protection for the reimbursement of fees in effect on December 16, 2016, or under the provisions of this section, may request that such agreement be amended to provide for termination upon advance notice, length, and terms that are negotiated between such entity and U.S. Customs and Border Protection.

**(k) Annual report**

The Commissioner of U.S. Customs and Border Protection shall—

(1) submit an annual report identifying the activities undertaken and the agreements entered into pursuant to this section to—

(A) the Committee on Appropriations of the Senate;

(B) the Committee on Finance of the Senate;

(C) the Committee on Homeland Security and Governmental Affairs of the Senate;

(D) the Committee on the Judiciary of the Senate;

(E) the Committee on Appropriations of the House of Representatives;

(F) the Committee on Homeland Security of the House of Representatives;

(G) the Committee on the Judiciary of the House of Representatives; and

(H) the Committee on Ways and Means of the House of Representatives; and

(2) not later than 15 days before entering into a fee agreement, notify the members of Congress that represent the State or Congressional District in which the affected port of entry or facility is located of such agreement.

**(l) Rule of construction**

Nothing in this section may be construed as imposing on U.S. Customs and Border Protection any responsibilities, duties, or authorities relating to real property.

(Pub. L. 107-296, title IV, § 481, as added Pub. L. 114-279, § 2(a), Dec. 16, 2016, 130 Stat. 1413.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1)(A)(ii), 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.

**§ 301a. Port of entry donation authority****(a) Personal property donation authority****(1) In general**

The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, may enter into an agreement with any entity to accept a donation of personal property, money, or non-personal services for the uses described in paragraph (3) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

(A) A new or existing sea or air port of entry.

(B) An existing Federal Government-owned land port of entry.

(C) A new Federal Government-owned land port of entry if—

(i) the fair market value of the donation is \$50,000,000 or less; and

(ii) the fair market value, including any personal and real property donations in total, of such port of entry when completed, is \$50,000,000 or less.

**(2) Limitation on monetary donations**

Any monetary donation accepted pursuant to this subsection may not be used to pay the salaries of U.S. Customs and Border Protection employees performing inspection services.

**(3) Uses**

Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in subparagraphs (A) through (F) of section 211(g)(3) of this title, which are related to a new or existing sea or air port of entry or a new or existing Federal Government-owned land port of entry described in paragraph (1), including expenses related to—

(A) furniture, fixtures, equipment, or technology, including the installation or deployment of such items; and

(B) the operation and maintenance of such furniture, fixtures, equipment, or technology.

<sup>1</sup> So in original. Probably should be “Protection”.

**(b) Real property donation authority****(1) In general**

Subject to paragraph (3), the Commissioner of U.S. Customs and Border Protection, and the Administrator of the General Services Administration, as applicable, may enter into an agreement with any entity to accept a donation of real property or money for uses described in paragraph (2) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

(A) A new or existing sea or air port of entry.

(B) An existing Federal Government-owned land port of entry.

(C) A new Federal Government-owned land port of entry if—

(i) the fair market value of the donation is \$50,000,000 or less; and

(ii) the fair market value, including any personal and real property donations in total, of such port of entry when completed, is \$50,000,000 or less.

**(2) Use**

Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in section 211(g) of this title, which are related to the construction, alteration, operation, or maintenance of a new or existing sea or air port of entry or a new or existing a<sup>1</sup> Federal Government-owned land port of entry described in paragraph (1), including expenses related to—

(A) land acquisition, design, construction, repair, or alteration; and

(B) operation and maintenance of such port of entry facility.

**(3) Limitation on real property donations**

A donation of real property under this subsection at an existing land port of entry owned by the General Services Administration may only be accepted by the Administrator of General Services.

**(4) Sunset****(A) In general**

The authority to enter into an agreement under this subsection shall terminate on the date that is 4 years after December 16, 2016.

**(B) Rule of construction**

The termination date referred to in subparagraph (A) shall not apply to carrying out the terms of an agreement under this subsection if such agreement is entered into before such termination date.

**(c) General provisions****(1) Duration**

An agreement entered into under subsection (a) or (b) (and, in the case of such subsection (b), in accordance with paragraph (4) of such subsection) may last as long as required to meet the terms of such agreement.

**(2) Criteria**

In carrying out an agreement entered into under subsection (a) or (b), the Commissioner

of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, shall establish criteria regarding—

(A) the selection and evaluation of donors;

(B) the identification of roles and responsibilities between U.S. Customs and Border Protection, the General Services Administration, and donors;

(C) the identification, allocation, and management of explicit and implicit risks of partnering between the Federal Government and donors;

(D) decision-making and dispute resolution processes; and

(E) processes for U.S. Customs and Border Protection, and the General Services Administration, as applicable, to terminate agreements if selected donors are not meeting the terms of any such agreement, including the security standards established by U.S. Customs and Border Protection.

**(3) Evaluation procedures****(A) In general**

The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, as applicable, shall—

(i) establish criteria for evaluating a proposal to enter into an agreement under subsection (a) or (b); and

(ii) make such criteria publicly available.

**(B) Considerations**

Criteria established pursuant to subparagraph (A) shall consider—

(i) the impact of a proposal referred to in such subparagraph on the land, sea, or air port of entry at issue and other ports of entry or similar facilities or other infrastructure near the location of the proposed donation;

(ii) such proposal's potential to increase trade and travel efficiency through added capacity;

(iii) such proposal's potential to enhance the security of the port of entry at issue;

(iv) the impact of the proposal on reducing wait times at that port of entry or facility and other ports of entry on the same border;

(v) for a donation under subsection (b)—

(I) whether such donation satisfies the requirements of such proposal, or whether additional real property would be required; and

(II) how such donation was acquired, including if eminent domain was used;

(vi) the funding available to complete the intended use of such donation;

(vii) the costs of maintaining and operating such donation;

(viii) the impact of such proposal on U.S. Customs and Border Protection staffing requirements; and

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

<sup>1</sup> So in original.

**(C) Determination and notification****(i) Incomplete proposals****(I) In general**

Not later than 60 days after receiving the proposals for a donation agreement from an entity, the Commissioner of U.S. Customs and Border Protection shall notify such entity as to whether such proposal is complete or incomplete.

**(II) Resubmission**

If the Commissioner of U.S. Customs and Border Protection determines that a proposal is incomplete, the Commissioner shall—

(aa) notify the appropriate entity and provide such entity with a description of all information or material that is needed to complete review of the proposal; and

(bb) allow the entity to resubmit the proposal with additional information and material described in item (aa) to complete the proposal.

**(ii) Complete proposals**

Not later than 180 days after receiving a completed proposal to enter into an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, with the concurrence of the Administrator of General Services, as applicable, shall—

(I) determine whether to approve or deny such proposal; and

(II) notify the entity that submitted such proposal of such determination.

**(4) Supplemental funding**

Except as required under section 3307 of title 40, real property donations to the Administrator of General Services made pursuant to subsection<sup>1</sup> (a) and<sup>1</sup> (b) at a GSA-owned land port of entry may be used in addition to any other funding for such purpose, including appropriated funds, property, or services.

**(5) Return of donations**

The Commissioner of U.S. Customs and Border Protection, or the Administrator of General Services, as applicable, may return any donation made pursuant to subsection (a) or (b). No interest shall be owed to the donor with respect to any donation provided under such subsections that is returned pursuant to this subsection.

**(6) Prohibition on certain funding****(A) In general**

Except as provided in subsections (a) and (b) regarding the acceptance of donations, the Commissioner of U.S. Customs and Border Protection and the Administrator of General Services, as applicable, may not, with respect to an agreement entered into under either of such subsections, obligate or expend amounts in excess of amounts that have been appropriated pursuant to any appropriations Act for purposes specified in either of such subsections or otherwise made available for any of such purposes.

**(B) Certification requirement**

Before accepting any donations pursuant to an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection shall certify to the congressional committees set forth in paragraph (7) that the donation will not be used for the construction of a detention facility or a border fence or wall.

**(7) Annual reports**

The Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, as applicable, shall submit an annual report identifying the activities undertaken and agreements entered into pursuant to subsections (a) and (b) to—

(A) the Committee on Appropriations of the Senate;

(B) the Committee on Environment and Public Works of the Senate;

(C) the Committee on Finance of the Senate;

(D) the Committee on Homeland Security and Governmental Affairs of the Senate;

(E) the Committee on the Judiciary of the Senate;

(F) the Committee on Appropriations of the House of Representatives;

(G) the Committee on Homeland Security of the House of Representatives;

(H) the Committee on the Judiciary of the House of Representatives;

(I) the Committee on Transportation and Infrastructure of the House of Representatives; and

(J) the Committee on Ways and Means of the House of Representatives.

**(d) GAO report**

The Comptroller General of the United States shall submit an annual report to the congressional committees referred to in subsection (c)(7) that evaluates—

(1) fee agreements entered into pursuant to section 301 of this title;

(2) donation agreements entered into pursuant to subsections (a) and (b); and

(3) the fees and donations received by U.S. Customs and Border Protection pursuant to such agreements.

**(e) Judicial review**

Decisions of the Commissioner of U.S. Customs and Border Protection and the Administrator of the General Services Administration under this section regarding the acceptance of real or personal property are in the discretion of the Commissioner and the Administrator and are not subject to judicial review.

**(f) 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.

(Pub. L. 107-296, title IV, § 482, as added Pub. L. 114-279, § 2(a), Dec. 16, 2016, 130 Stat. 1417.)

### § 301b. Current and proposed agreements

Nothing in this part or in section 4 of the Cross-Border Trade Enhancement Act of 2016 may be construed as affecting—

(1) any agreement entered into pursuant to section 560 of division D of the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6) or section 559 of title V of division F of the Consolidated Appropriations Act, 2014 (6 U.S.C. 211 note; Public Law 113-76), as in existence on the day before December 16, 2016, and any such agreement shall continue to have full force and effect on and after such date; or

(2) a proposal accepted for consideration by U.S. Customs and Border Protection pursuant to such section 559, as in existence on the day before December 16, 2016.

(Pub. L. 107-296, title IV, §483, as added Pub. L. 114-279, §2(a), Dec. 16, 2016, 130 Stat. 1421.)

#### REFERENCES IN TEXT

Section 4 of the Cross-Border Trade Enhancement Act of 2016, referred to in text, is section 4 of Pub. L. 114-279, Dec. 16, 2016, 130 Stat. 1422, which repealed section 560 of division D of Pub. L. 113-6 and section 559 of title V of division F of Pub. L. 113-76. Section 560 of Pub. L. 113-6, was not classified to the Code. Section 559 of Pub. L. 113-76 was classified as a note under section 211 of this title.

### § 301c. Definitions

In this part:

#### (1) Donor

The term “donor” means any entity that is proposing to make a donation under this chapter.

#### (2) Entity

The term “entity” means any—

- (A) person;
- (B) partnership, corporation, trust, estate, cooperative, association, or any other organized group of persons;
- (C) Federal, State or local government (including any subdivision, agency or instrumentality thereof); or
- (D) any other private or governmental entity.

(Pub. L. 107-296, title IV, §484, as added Pub. L. 114-279, §2(a), Dec. 16, 2016, 130 Stat. 1421.)

#### REFERENCES IN TEXT

This chapter, referred to in par. (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.

### SUBCHAPTER V—NATIONAL EMERGENCY MANAGEMENT

#### CODIFICATION

Pub. L. 109-295, title VI, §611(1), Oct. 4, 2006, 120 Stat. 1395, substituted “NATIONAL EMERGENCY MANAGEMENT” for “EMERGENCY PREPAREDNESS AND RESPONSE” in subchapter heading.

### § 311. Definitions

In this subchapter—

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “catastrophic incident” means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(4) the terms “credentialed” and “credentialing” mean having provided, or providing, respectively, documentation that identifies personnel and authenticates and verifies the qualifications of such personnel by ensuring that such personnel possess a minimum common level of training, experience, physical and medical fitness, and capability appropriate for a particular position in accordance with standards created under section 320 of this title;

(5) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 5143 of title 42;

(6) the term “interoperable” has the meaning given the term “interoperable communications” under section 194(g)(1) of this title;

(7) the term “National Incident Management System” means a system to enable effective, efficient, and collaborative incident management;

(8) the term “National Response Plan” means the National Response Plan or any successor plan prepared under section 314(a)(6)<sup>1</sup> of this title;

(9) the term “Regional Administrator” means a Regional Administrator appointed under section 317 of this title;

(10) the term “Regional Office” means a Regional Office established under section 317 of this title;

(11) the term “resources” means personnel and major items of equipment, supplies, and facilities available or potentially available for responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) the term “surge capacity” means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident;

(13) the term “tribal government” means the government of any entity described in section 101(13)(B) of this title; and

(14) the terms “typed” and “typing” mean having evaluated, or evaluating, respectively, a resource in accordance with standards created under section 320 of this title.

(Pub. L. 107-296, title V, §501, as added Pub. L. 109-295, title VI, §611(10), Oct. 4, 2006, 120 Stat. 1395; amended Pub. L. 110-53, title IV, §401(a), title V, §502(c)(1), Aug. 3, 2007, 121 Stat. 301, 311;

<sup>1</sup> See References in Text note below.