

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-180

PRECLEARANCE AUTHORIZATION ACT OF
2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 998

TO ESTABLISH THE CONDITIONS UNDER WHICH THE SECRETARY
OF HOMELAND SECURITY MAY ESTABLISH PRECLEARANCE
FACILITIES, CONDUCT PRECLEARANCE OPERATIONS, AND
PROVIDE CUSTOMS SERVICES OUTSIDE THE UNITED STATES, AND
FOR OTHER PURPOSES



DECEMBER 15, 2015.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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PRECLEARANCE AUTHORIZATION ACT OF 2015

DECEMBER 15, 2015.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 998]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 998), to establish the conditions under which the Secretary of Homeland Security may establish preclearance facilities, conduct preclearance operations, and provide customs services outside the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

CONTENTS

| | |
|---|------|
| | Page |
| I. Purpose and Summary | 1 |
| II. Background and Need for the Legislation | 2 |
| III. Legislative History | 4 |
| IV. Section-by-Section Analysis | 5 |
| V. Evaluation of Regulatory Impact | 7 |
| VI. Congressional Budget Office Cost Estimate | 7 |
| VII. Changes in Existing Law Made by the Act, as Reported | 8 |

I. PURPOSE AND SUMMARY

The purpose of H.R. 998, the Preclearance Authorization Act of 2015, is to authorize the operation and expansion of United States Customs and Border Protection (CBP) preclearance operations abroad. Preclearance operations, under which passengers and their luggage undergo screening by CBP officers prior to boarding a U.S.-bound flight, have been in place in some foreign airports for years and DHS is currently seeking to expand the program. This act would establish certain guidelines for the program to help capture the benefits of the program without jeopardizing security or nega-

tively impacting screening at U.S. ports of entry and provide for enhanced congressional oversight. First, the act directs the Secretary of the Department of Homeland Security (DHS or “the Department”) to certify that new or modified preclearance operations in foreign airports do not negatively affect CBP processing times in domestic ports of entry. Second, the act requires foreign governments with a preclearance agreement with the United States to routinely submit information about lost and stolen passports of its citizens and nationals to INTERPOL’s Stolen and Lost Travel Document database or make such information available to the United States. Third, the act authorizes CBP to enter into cost-sharing agreements to cover operational costs, preparing the agency for current and future processing and security screening demands.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Under Federal law, CBP has primary responsibility for determining a traveler’s admissibility into the United States.¹ To intercept potentially inadmissible travelers before they enter the United States and facilitate processing for all passengers, the United States operates a number of preclearance facilities at airports in foreign countries. According to DHS, “[p]reclearance is the process by which CBP officers stationed abroad screen and make admissibility decisions about passengers and their accompanying goods or baggage heading to the U.S. before they leave a foreign port.”² By deploying over 600 customs, immigration, and agriculture specialists to foreign airports, CBP is able to conduct interviews to determine admissibility, capture biometric information for vetting purposes, and thoroughly inspect passengers to prevent terrorists and criminals from boarding planes to the United States.³ Once a traveler arrives in the United States, they can proceed directly to their destination or connecting flight without further inspection.

Preclearance facilities are established by a formal agreement between the United States and the host country. CBP currently covers the staffing and operational costs of the program, with the exception of the preclearance facility at Abu Dhabi airport. For the Abu Dhabi preclearance program, the host facility pays most of the operational costs as well.

DHS asserts that by intercepting 10,624 inadmissible individuals at preclearance locations during F.Y. 2014, CBP saved taxpayers approximately \$26.7 million in detention and processing costs.⁴ The program also has value in deterring smugglers and prospective terrorists by requiring advanced security screening abroad. For example, the attempted terrorist attack on Northwest Airlines Flight 253 from Amsterdam to Detroit on December 25, 2009 and similar incidents, demonstrate that terrorists have sought to carry out attacks on U.S.-bound aircraft before arrival in the United States. In addition, preclearance can intercept dangerous pests that represent a significant threat to the American economy.⁵

¹ U.S. Customs and Border Protection, At Ports of Entry, <http://www.cbp.gov/border-security/ports-entry>.

² U.S. Customs and Border Protection, Preclearance Locations, <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>.

³ U.S. Customs and Border Protection, Current Preclearance Operations: Fiscal Year 2015 Report to Congress 2 (2015), [hereinafter Current Preclearance Operations].

⁴ *Id.*

⁵ Current Preclearance Operations, *supra* note 3, at 5.

Preclearance also has economic benefits. Preclearance operations expedite passenger processing at United States airports by reducing the number of passengers that must be screened once a U.S.-bound flight lands. This not only saves passengers' time, but can be more efficient for CBP because it takes advantage of staggered arrival times at foreign airports rather than having to screen an entire planeload of passengers at once upon arrival.

History & Future of the Preclearance Program

CBP established its first preclearance operation in Toronto, Canada in 1952.⁶ Currently, CBP conducts preclearance inspections at 15 different airports in Aruba, Bermuda, the Bahamas, Canada, Ireland and, most recently, in the United Arab Emirates (UAE).⁷ In F.Y. 2014, CBP precleared 15.3 percent of all travelers flying on commercial airlines to the United States.⁸ CBP plans to expand preclearance to reach 33 percent of all passengers traveling to the United States by 2024.⁹

On May 29, 2015, DHS Secretary Johnson announced the United States' intention "to enter into negotiations to expand air preclearance options to ten new foreign airports, located in nine separate countries: Belgium, the Dominican Republic, Japan, the Netherlands, Norway, Spain, Sweden, Turkey, and the United Kingdom."¹⁰ CBP coordinated with the Transportation Security Administration (TSA) and the State Department to identify these new airports "and prioritized them based on the greatest potential to support security and travel facilitation."¹¹ Last year, approximately 20 million passengers traveled to the United States from these 10 airports.¹²

Concerns Regarding the Preclearance Program

DHS maintains that preclearance operations help enhance national security by extending the United States' virtual border to the last point of departure.¹³ However, to obtain some of the security benefits, foreign airports have to implement sound passenger security screening comparable to what TSA officers provide at domestic U.S. airports. That has not always been the case. In 2011, for example, the Government Accountability Office (GAO) reported that TSA identified serious security vulnerabilities at a number of foreign airports, particularly in access control and passenger and baggage screening.¹⁴ While DHS and GAO have not publicly stated whether any of the airports identified in the report are currently or slated to become preclearance airports, it is clear that serious security vulnerabilities exist at some airports abroad and those must

⁶*Id.* at 2.

⁷U.S. Customs and Border Protection, Preclearance Locations, <http://www.cbp.gov/border-security/ports-entry/operations/preclearance> (last visited Dec. 1, 2015).

⁸Current Preclearance Operations, *supra* note 3, at 2.

⁹*Id.* at 6.

¹⁰Press Release, *supra* note 3. The 10 airports are: Brussels Airport, Belgium; Punta Cana Airport, Dominican Republic; Narita International Airport, Japan; Amsterdam Airport Schiphol, Netherlands; Oslo Airport, Norway; Madrid-Barajas Airport, Spain; Stockholm Arlanda Airport, Sweden; Istanbul Ataturk Airport, Turkey; London Heathrow Airport, Manchester Airport, UK.

¹¹*Id.*

¹²*Id.*

¹³Current Preclearance Operations, *supra* note 3, at 5–6.

¹⁴Gov't Accountability Office, GAO-12-163, Aviation Security: TSA has Taken Steps to Enhance Its Foreign Airport Assessments, but Opportunities Exist to Strengthen the Program *passim* (2011), available at, <http://www.gao.gov/assets/590/585868.pdf>.

be fixed if we are to rely on their screening at those airports in lieu of domestic screening.

In a more recent example, several Members of Congress expressed concern in 2013 with DHS's decision to conduct preclearance operations at Abu Dhabi airport in the United Arab Emirates.¹⁵ CBP commenced operations in January 2014 without first having the TSA Administrator certify that the airport had United States-equivalent security screening procedures in place or addressing the competitive impact on United States carriers, as CBP selected an airport where U.S. carriers had no operations.¹⁶

This legislation seeks to ensure adequate security measures are in place, and also requires advance congressional notification of preclearance plans and negotiations to ensure that any security or economic concerns are identified and addressed.

Proposed Legislation

The Preclearance Authorization Act of 2015 would authorize and expedite expansion of the preclearance program while strengthening Congressional oversight. DHS Secretary Johnson recently explained, and the Committee agrees, that authorizing the program is an important step Congress can take to strengthen homeland security after the deadly Paris attacks in November 2015.¹⁷ While there is strong support to expand preclearance operations to enhance national security and meet increasing immigration and customs processing demands, the Secretary's intent to expand the program also makes it that much more important to conduct proper oversight to ensure that security checks are not neglected. This act would do both—authorize the program while strengthening Congressional oversight of preclearance agreements.

This act ensures that CBP's preclearance expansion process is transparent and holds DHS accountable by guaranteeing that security screening and other domestic concerns are duly taken into account as airports are added to the program. This legislation also assists CBP in meeting its inspection responsibilities under today's tough budgetary environment by authorizing cost-sharing agreements. Specifically, the act grants CBP the authority to enter into cost-sharing agreements with foreign airports to cover 85 percent of the costs associated with immigration and agriculture-related inspections. In addition, the act allows CBP to receive advance payment to cover initial costs associated with establishing preclearance operations. Preclearance operations established before 2012 are not affected by this provision unless the airports modify their agreements with CBP.

III. LEGISLATIVE HISTORY

Representative Patrick Meehan, along with Representatives Ryan Costello, Leonard Lance, Michael McCaul, Candice Miller, and Mike Rogers, introduced H.R. 998 on February 13, 2015, which

¹⁵ See *The Abu Dhabi Pre-Clearance Facility: Implications for U.S. Businesses and National Security: Hearing Before the House SubComm. on Terrorism, Nonproliferation, and Trade of the Comm. on Foreign Affairs*, 113th Cong (2013); see also Seghetti, *supra* note 5 at 11–12 (2015).

¹⁶ See *id.*

¹⁷ Press Release, Statement by Secretary Jeh C. Johnson on the Safety and Security of the Homeland, and How Congress Can Help, U.S. Dep't of Homeland Security (Nov. 23, 2015), available at <https://www.dhs.gov/news/2015/11/23/statement-secretary-jeh-c-johnson-safety-and-security-homeland-and-how-congress-can>.

was referred to the House Committee on Homeland Security and House Committee on Ways and Means. The House Committee on Homeland Security considered H.R. 998 at a business meeting on July 22, 2015. On the same day, the House Committee on Ways and Means discharged the bill. The bill passed the House by voice vote and under suspension of the rules on July 27, 2015.

The act was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs on July 28, 2015. The Committee considered H.R. 998 at a business meeting on October 7, 2015.

Chairman Ron Johnson offered one amendment in the nature of a substitute, which decreased the length of the notification and certification requirements, enhanced security oversight by TSA, amended the required implementation plan, and added cost-sharing agreements with relevant airport authorities. The Committee adopted the amendment as modified and ordered the bill, as amended, reported favorably, both by voice vote. Senators present for both the vote on the amendment and the vote on the bill were: Johnson, Portman, Lankford, Enzi, Ernst, Sasse, Carper, McCaskill, Baldwin, Heitkamp, and Booker. Consistent with the Committee's order on technical and conforming changes at the meeting, the Committee reports the bill with a technical amendment by mutual agreement of the full Committee majority and minority staff.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title

This section provides the act's short title, the "Preclearance Authorization Act of 2015."

Section 2. Definition

This section defines "appropriate Congressional committees," "CBP," and "Secretary."

Section 3. Establishment of Preclearance Operations

This section authorizes CBP to establish preclearance operations abroad for the purposes of preventing terrorism, preventing admission of inadmissible persons, ensuring merchandise to be imported to the United States complies with domestic laws, and expediting traveler processing. Further, the section conditions the commencement of preclearance operations at a foreign airport on TSA having certified that the passenger screening at the airport is equivalent to passenger screening in the United States.

Section 4. Notification and Certification to Congress

To improve Congressional oversight of preclearance operations, this section adds triggers for new Congressional notifications and associated reporting requirements.

Subsection (a) requires that the DHS Secretary provide appropriate Congressional committees with a copy of a preclearance agreement not later than 60 days before the agreement enters into force. Also by this deadline, the Secretary must provide appropriate Congressional committees with: assessments on the impact the preclearance operations will have on legitimate trade and travel and on CBP staffing at domestic ports of entry and information on

anticipated homeland security benefits, potential security vulnerabilities and mitigation plans, a CBP staffing model and plans to fill such positions, and anticipated costs over five fiscal years.

Subsection (b) requires that—not later than 45 days before a preclearance agreement with a foreign government enters into force—the DHS Secretary provide appropriate Congressional committees with: an estimated date CBP intends to establish preclearance operations; anticipated funding sources; a homeland security threat assessment for the foreign country; potential economic, competitive, and job impacts on United States air carriers; information sharing mechanisms to prevent terrorist and criminal travel; and other relevant factors.

Subsection (c) requires that—not later than 60 days before a preclearance agreement with a foreign government enters into force—the DHS Secretary certify to appropriate Congressional committees that: preclearance operations will provide homeland security benefits to the United States; at least one United States passenger carrier has access to the preclearance operations; a United States passenger carrier will have comparable access to non-United States passenger carriers operating at the same airport; commencing preclearance operations will not increase CBP processing times at domestic ports of entry; and CBP consulted with appropriate aviation industry stakeholders. The subsection also requires the Secretary to submit a report detailing the basis for the certifications listed above, which may be submitted in classified form, if appropriate.

Subsection (d) requires the DHS Secretary to notify appropriate Congressional Committees at least 30 days before a substantially amended preclearance agreement with a foreign government enters into force.

Subsection (e) requires that the Commissioner of CBP report quarterly to appropriate Congressional committees on: the number and posts of CBP officers from domestic ports of entry assigned to serve in an overseas preclearance location and the number of CBP officers from all other posts who were reassigned to fill in for those sent overseas. The subsection also requires the Commissioner to submit to appropriate Congressional committees an implementation plan to address any increased CBP processing times at domestic ports of entry that result from relocating CBP officers from those ports of entry to overseas preclearance locations. If the Commissioner fails to submit the implementation plan within 60 days, CBP is prohibited from commencing additional preclearance operations until the plan is submitted.

Section 5. Protocols

This section amends 49 U.S.C. 44901(d)(4) to require that TSA personnel rescreen passengers and their property arriving from foreign airports with preclearance operations if the airport has not maintained security standards and protocols comparable to those of the United States. The effect of this condition is to ensure that participating foreign airports meet United States aviation screening standards throughout the duration of the preclearance agreement.

Section 6. Lost and Stolen Passports

This section prohibits the DHS Secretary from entering into a preclearance agreement with a foreign government unless the Secretary certifies that the foreign government routinely notifies INTERPOL or the United States when its citizens' and nationals' passports are reported lost or stolen.

Section 7. Recovery of Initial U.S. Customs and Border Protections Preclearance Operations Costs

This section authorizes CBP to enter into a cost sharing agreement with an airport authority in a foreign country at which preclearance operations are in place or planned. The section allows CBP to collect payments, including advance payments to cover initial costs, apply collected funds to offset CBP costs until expended, and return unused funds to the relevant airport authority.

Section 8. Collection and Disposition of Funds Collected For Immigration Inspection Services and Preclearance Activities

This section conforms section 286(i) of the Immigration and Nationality Act and section 10412(b) of the Farm Security and Rural Investment Act of 2002 to reflect accounting changes established in Section 7.

Section 9. Application to New and Existing Preclearance Operations

This section provides that most provisions of the act apply only to the establishment of new preclearance operations in a country that does not currently have one. Sections 4(d), 5, 7, and 8 apply to both current and future preclearance operations.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this act and determined that the act will have no regulatory impact within the meaning of the rules. The act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

DECEMBER 8, 2015.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 998, the Preclearance Authorization Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 998—Preclearance Authorization Act of 2015

H.R. 998 would authorize Customs and Border Protection (CBP) in the Department of Homeland Security to establish preclearance (inspection) stations in foreign countries. CBP currently operates preclearance facilities in about 15 locations, mostly in Canada. The act would require the agency to notify the Congress before establishing preclearance stations in countries that currently have none. H.R. 998 also would authorize CBP to enter into cost sharing agreements with airport authorities in foreign countries to defray certain costs related to operating preclearance stations.

CBP anticipates opening new preclearance stations over the next several years and can do so under current law. The collection and subsequent spending of any amounts related to cost sharing agreements would be subject to future appropriation acts. Thus, CBO estimates that implementing H.R. 998 would have no significant net effect on CBP spending.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 998 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 998 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On July 13, 2015, CBO transmitted a cost estimate for H.R. 998 as ordered reported by the House Committee on Homeland Security on June 25, 2015. The two versions of the act are similar and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 998 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE 49—TRANSPORTATION, UNITED STATES
CODE**

* * * * *

CHAPTER 449—SECURITY**SEC. 44901. SCREENING PASSENGERS AND PROPERTY.**

* * * * *

(d) EXPLOSIVES DETECTION SYSTEMS.—**(1) * * ***

* * * * *

(4) PRECLEARANCE AIRPORTS.—

(A) * * *

* * * * *

(D) *RESCREENING REQUIREMENT.*—If the Administrator of the Transportation Security Administration determines that the government of a foreign country has not maintained security standards and protocols comparable to those of the United States at airports at which preclearance operations have been established in accordance with this paragraph, the Administrator shall ensure that Transportation Security Administration personnel rescreen passengers arriving from such airports and their property in the United States before such passengers are permitted into sterile areas of airports in the United States.

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IMMIGRATION AND NATIONALITY ACT

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CHAPTER 9—MISCELLANEOUS

* * * * *

DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS SUBCHAPTER.

SEC. 286.

(a) * * *

* * * * *

(i) *REIMBURSEMENT.*—Notwithstanding any other provision of law, the Attorney General is authorized to receive reimbursement from the owner, operator, or agent of a private or commercial aircraft or vessel, or from any airport or seaport authority for expenses incurred by the Attorney General in providing immigration inspection services which are rendered at the request of such person or authority (including the salary and expenses of individuals employed by the Attorney General to provide such immigration inspection services). [The Attorney General’s authority to receive such reimbursement shall terminate immediately upon the provision for such services by appropriation.] *Reimbursements under this subsection may be collected in advance of the provision of such immigration inspection services. Notwithstanding subparagraph (h)(1)(B), and only to the extent provided in appropriations Acts, any amounts collected under this subsection shall be credited as offsetting collections to the currently applicable appropriation, account, or fund of U.S. Customs and Border Protection, remain available until expended, and be available for the purposes for which such appropriation, account, or fund is authorized to be used.*

* * * * *

FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

* * * * *

TITLE X—MISCELLANEOUS

* * * * *

Subtitle E—Animal Health Protection

* * * * *

SEC. 10412. REIMBURSABLE AGREEMENTS.

(a) * * *

[(b) FUNDS COLLECTED FOR PRECLEARANCE.—Funds collected for preclearance activities shall—]

[(1) be credited to accounts that may be established by the Secretary for carrying out this section; and]

[(2) remain available until expended for the preclearance activities, without fiscal year limitation.]

(b) FUNDS COLLECTED FOR PRECLEARANCE.—Funds collected for preclearance activities—

(1) may be collected in advance of the provision of such activities;

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

(3) shall remain available until expended;

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

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

* * * * *

