

Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

PART G—U.S. CUSTOMS AND BORDER
PROTECTION PUBLIC PRIVATE PARTNERSHIPS

§ 301. Fee agreements for certain services at ports of entry

(a) In general

Notwithstanding section 58c(e) of title 19 and section 1451 of title 19, the Commissioner of U.S. Customs and Border Protection, upon the request of any entity, may enter into a fee agreement with such entity under which—

(1) U.S. Customs and Border Protection shall provide services described in subsection (b) at a United States port of entry or any other facility at which U.S. Customs and Border Protection provides or will provide such services;

(2) such entity shall remit to U.S. Customs and Border Protection a fee imposed under subsection (h) in an amount equal to the full costs that are incurred or will be incurred in providing such services; and

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

(b) Services described

The services described in this subsection are any activities of any employee or Office of Field Operations contractor of U.S. Customs and Border Protection (except employees of the U.S. Border Patrol, as established under section 211(e) of this title) pertaining to, or in support of, customs, agricultural processing, border security, or immigration inspection-related matters at a port of entry or any other facility at which U.S. Customs and Border Protection provides or will provide services.

(c) Modification of prior agreements

The Commissioner of U.S. Customs and Border Protection, at the request of an 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, may modify such agreement to implement any provisions of this section.

(d) Limitations

(1) Impacts of services

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

(A) may enter into fee agreements under this section only for services that—

(i) will increase or enhance the operational capacity of U.S. Customs and Border Protection based on available staffing and workload; and

(ii) will not shift the cost of services funded in any appropriations Act, or provided from any account in the Treasury of the United States derived by the collection of fees, to entities under this chapter; and

(B) may not enter into a fee agreement under this section if such agreement would unduly and permanently impact services funded in any appropriations Act, or provided from any account in the Treasury of the United States, derived by the collection of fees.

(2) Number

There shall be no limit to the number of fee agreements that the Commissioner of U.S. Customs and Border Protection may enter into under this section.

(e) Air ports of entry

(1) Fee agreement

Except as otherwise provided in this subsection, a fee agreement for U.S. Customs and Border Protection services at an air port of entry may only provide for the payment of overtime costs of U.S. Customs and Border Protection officers and salaries and expenses of U.S. Customs and Border Protection employees to support U.S. Customs and Border Protection officers in performing services described in subsection (b).

(2) Small airports

Notwithstanding paragraph (1), U.S. Customs and Border Protection may receive reimbursement in addition to overtime costs if the fee agreement is for services at an air port of entry that has fewer than 100,000 arriving international passengers annually.

(3) Covered services

In addition to costs described in paragraph (1), a fee agreement for U.S. Customs and Border Protection services at an air port of entry referred to in paragraph (2) may provide for the reimbursement of—

(A) salaries and expenses of not more than five full-time equivalent U.S. Customs and Border Protection Officers beyond the number of such officers assigned to the port of entry on the date on which the fee agreement was signed;

(B) salaries and expenses of employees of U.S. Customs and Border Protection, other than the officers referred to in subparagraph (A), to support U.S. Customs and Border Protection officers in performing law enforcement functions; and

(C) other costs incurred by U.S. Customs and Border Protection relating to services described in subparagraph (B), such as temporary placement or permanent relocation of employees, including incentive pay for relocation, as appropriate.

(f) Port of entry size

The Commissioner of U.S. Customs and Border Protection shall ensure that each fee agreement

proposal is given equal consideration regardless of the size of the port of entry.

(g) Denied application

(1) In general

If the Commissioner of U.S. Customs and Border Protection denies a proposal for a fee agreement under this section, the Commissioner shall provide the entity submitting such proposal with the reason for the denial unless—

(A) the reason for the denial is law enforcement sensitive; or

(B) withholding the reason for the denial is in the national security interests of the United States.

(2) Judicial review

Decisions of the Commissioner of U.S. Customs and Border Protection under paragraph (1) are in the discretion of the Commissioner and are not subject to judicial review.

(h) Fee

(1) In general

The amount of the fee to be charged under an agreement authorized under subsection (a) shall be paid by each entity requesting U.S. Customs and Border Protection services, and shall be for the full cost of providing such services, including the salaries and expenses of employees and contractors of 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 employees and contractors.

(2) Timing

The Commissioner of U.S. Customs and Border Protection may require that the fee referred to in paragraph (1) be paid by each entity that has entered into a fee agreement under subsection (a) with U.S. Customs and Border Protection in advance of the performance of U.S. Customs and Border Protection services.

(3) Oversight of fees

The Commissioner of U.S. Customs and Border Protection shall develop a process to oversee the services for which fees are charged pursuant to an agreement under subsection (a), including—

(A) a determination and report on the full costs of providing such services, and a process for increasing such fees, as necessary;

(B) the establishment of a periodic remittance schedule to replenish appropriations, accounts, or funds, as necessary; and

(C) the identification of costs paid by such fees.

(i) Deposit of funds

(1) Account

Funds collected pursuant to any agreement entered into pursuant to subsection (a)—

(A) shall be deposited as offsetting collections;

(B) shall remain available until expended without fiscal year limitation; and

(C) shall be credited to the applicable appropriation, account, or fund for the amount

paid out of such appropriation, account, or fund for any expenses incurred or to be incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services under any such agreement and any other costs incurred or to be incurred by U.S. Customs and Border Protection relating to such services.

(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 Protection¹ 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;

¹ So in original. Probably should be "Protection".

(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.

(I) 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.)

Editorial Notes

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 or -leased land port of entry.

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

(i) the fair market value of the donation is \$75,000,000 or less; and

(ii) the fair market value of donations with respect to the land port of entry total \$75,000,000 or less over the preceding five years.

(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 or -leased 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.

(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 General Services, 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 \$75,000,000 or less; and

(ii) the fair market value of donations with respect to the land port of entry total \$75,000,000 or less over the preceding five years.

(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 a¹ 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 December 31, 2026.

(B) Rule of construction

The termination date referred to in subparagraph (A) shall not apply to a proposal

¹ So in original.