



U.S. Customs and Border Protection

May 16, 2019

In response to recent flight diversions and industry requests for policy clarification, U.S. Customs and Border Protection (CBP) is posting consolidated diversion guidance. This will ensure that commercial carriers and the airline industry have a single source that provides critical information on proper procedures for flight diversions. The below summarizes CBP's current policies and procedures for international flight diversions. CBP will issue a Pipeline notification should any changes be made to these procedures; carriers should be alert to any such notifications.

This document is intended as clarifying guidance for air carriers. It reflects the position of CBP as of the date of issuance. It does not in any way replace or supersede applicable laws and regulations with which the carrier must comply.

International flight diversions can occur for a variety of reasons. These may include, but are not limited to, emergency fuel stops, weather-related stops (inclement weather), mechanical-related stops, a stop due to illness onboard, or other emergency stops to include a stop for terrorist-related incidents, or other exigent circumstances. When an international flight is diverted to a United States destination other than the planned destination, CBP must be notified. Coordination with the appropriate stakeholders is essential to avoid delays that would require travelers to remain on the plane longer than four hours.

For international diversions, CBP managers at airports with CBP facilities must establish contingency plans for the following scenarios:

- 1) CBP traveler processing procedures for diverted flights;
- 2) CBP procedures when the carrier elects not to disembark its passengers due to imminent flight departure within three hours of arrival; and,
- 3) CBP procedures for deplaning of passengers to secure areas while passengers await re-boarding in lieu of CBP processing. CBP managers and supervisors must be familiar with these contingency plans and review these plans annually.

After assessing the individual circumstances, CBP managers have the discretion to allow passengers to deplane and remain in a secure area until the flight is cleared to depart for the original or alternate final destination, or to fully process the passengers and their baggage. CBP port management is required to closely monitor all flight diversions to ensure that CBP begins passenger processing within three (3) hours of arrival, or otherwise allows deplaning of the passengers to a secure area. However, if the carrier's representative or the aircraft's pilot state that the aircraft will depart the airport before three hours, or within 30 minutes after the third

hour on the ground, or determines that deplaning would jeopardize passenger safety or security, then CBP processing can be postponed at the discretion of CBP management. This statement should be in writing from either the carrier representative or the commander of the aircraft.

CBP (through local CBP management) retains the authority to require that carriers have passengers remain on board the aircraft longer than the three-hour guideline, until CBPOs can arrive at the airport for processing, or to ensure the passengers' physical security. In the event that CBP cannot be contacted, or that CBP is contacted and CBP authorizes the crew and passengers to disembark before CBPOs have arrived for processing, the aircraft commander or the other person(s) in charge shall be responsible to keep all passengers and crew in a separate place at the landing area until CBP arrives (see 19 CFR 122.35(c)).

Crew changes and servicing aboard an aircraft undergoing a technical stop are permitted, without full inspection of the passengers and baggage, provided the following conditions are met:

- The carrier must provide 100% Advance Passenger Information (API) electronic data in advance of the aircraft's arrival if the aircraft was scheduled to arrive or stop in the United States.
- All passengers remain on board, except for protracted stays. A “protracted stay” is generally defined as the aircraft remaining on the tarmac in excess of 2 hours at a location where CBP personnel are stationed.
- No passengers or cargo are added or removed at the technical stop.

CBP retains the discretion to require all passengers, crew and baggage to disembark and clear through CBP passport and baggage control. If processed by CBP, travelers not in possession of the proper documents on flights diverted to the U.S. may be considered for port of entry paroles in accordance with outstanding instructions. CBP has the discretion to allow the travelers to deplane and remain in a secure area until the flight is cleared to depart for the original or alternate final destination.

For scheduled technical fuel stops, if the carrier transmits less than 100% API data, the carrier shall present for full CBP processing all travelers for whom complete data was not transmitted, including the passengers' baggage.

Passengers and crew on flights departing the United States for foreign destinations that make an unscheduled stop in the United States due to any emergency, including but not limited to fuel-related, weather-related, mechanical-related, illness on board, or other emergency reason, generally are not be processed by CBP, but treated as a domestic arrival. Please see below for additional information related to the departure for foreign destinations.

In the event of a flight diversion, CBP requirements differ depending on the flight and diversion type. CBP requirements are outlined in bold print below for each situation.

Flights within the US

1. U.S. Outbound – Diversion to another city in the U.S.

Example: ORD/YVR diverts to SEA

- While in SEA, aircraft is refueled and takes off again for YVR (gas-and-go)
- While in SEA, an ill passenger is deplaned, and then aircraft takes off again for YVR
- While in SEA, the crew is changed (no passenger movement), and then aircraft takes off again for YVR

Which CBP port needs to be notified in each of these three cases, if any? If notification is required, how should notification be made (call, email, complete a form)? What information needs to be communicated?

In the case of a U.S.-registered aircraft that has been granted permission to depart the U.S. from CBP, departure clearances must be updated when a diversion occurs after departure that causes the aircraft to land at an intermediate location in the United States. CBP at both the port of original departure and the new U.S. port of departure shall be notified of the change. This notification may be telephonic or on a CBP 7507 General Declaration.

In the event the carrier is a participant in the Paperless General Declaration program, OAG updates must be made. A request for permission to depart must be received with sufficient time remaining before departure to ensure that CBP may undertake any necessary examination of the aircraft and cargo. (19 CFR 122 Subparts G and H).

For foreign-registered aircraft that were traveling from U.S. airport to U.S. airport under a permit to proceed or a CBP 7509, an additional step, as articulated in 19 CFR § 122.35, must be taken. CBP at the port of original departure must also be notified of the updates that need to be made to the permit to proceed paperwork as there has been an additional stop and a change to the final airport of departure.

Carriers who remove a traveler on an outbound diverted flight should immediately contact the local CBP port of departure. In addition, they must re-transmit that traveler's information through APIS indicating the traveler is no longer onboard. If a carrier lacks the technical ability to re-transmit a manifest, they must contact their assigned National APIS Account Manager via email within three days to ensure that accurate border crossing information is recorded.

2. U.S. Inbound - Diversion to a U.S. city which is not the original destination

Example: LHR/ORD diverts to BOS

- While in BOS, aircraft is refueled and takes off again for ORD (gas-and-go)
- While in BOS, an ill passenger is deplaned, and then aircraft takes off again for ORD
- While in BOS, the crew is changed (no passenger movement), and then aircraft takes off again for ORD

Which CBP port needs to be notified in each of these three cases, if any? If notification is required to the scheduled destination port (ORD in this example), how should notification be made (call, email, complete form)? What information needs to be communicated? It is assumed that any sort of passenger or crew change/movement will

be coordinated with CBP at the diversion airport (BOS in this example).

When an emergency or forced landing (diversion) is made by an aircraft coming into the U.S. from a foreign area, notice shall be given to CBP at the intended place of first landing, nearest international airport, or nearest port of entry, in the U.S., as soon as possible. This notice shall include a full report of the flight along with the details of the diversion. The CBP notification should provide as much information about the diversion as possible to include, but not limited to, reason for diversion, estimated time of arrival, flight number, original destination/flight plan, number of passengers, and any estimated resolution timeframes. All passengers, crew-members, merchandise, and baggage shall be kept at a separate place at the landing area until CBP officers arrive at the location. If there is a safety issue, people and/or property may be moved to a safe location, but should always be kept separate from other persons and merchandise if at all possible. (19 CFR 122.35)

To allow for the most rapid arrival processing possible by CBP at the aircraft's location, a phone call to CBP nearest the location of the aircraft is the first step. All airport operators should have an updated list of CBP contacts. In addition, in order to avoid the unnecessary use of resources, the carrier shall contact CBP at the intended place of first landing in the manner that has previously been determined during the landing rights application process. This method of contact may vary by location.

If required, a permit to proceed shall be filed at the diversion airport.

Preclearance

Preclearance provides for the inspection and clearance of commercial air passengers prior to departure from foreign locations in support of CBP's extended border strategy. This Preclearance effort processes a significant portion of the total international air travelers arriving into the United States every day. CBP is aware of the fast-paced and ever-changing environment in which air carriers, airport operators, and ground service agents operate. Managing diverted precleared international flights constitutes a small portion of those operations.

Through open lines of communication, partnership, and the below guidance CBP hopes to streamline the process and avoid problematic scenarios. Reaching these objectives will help the travel industry and CBP reach our mutual goals of traveler facilitation and aviation security.

Once CBP Preclearance completes processing travelers and the flight is boarded, the aircraft is cleared to proceed to the port of destination in the United States, typically with no exceptions; however, CBP does have the authority to reinspect any precleared flight upon arrival in the United States. Any change in circumstance after pushback from the gate must be reported to CBP immediately. CBP recognizes the host of situations that may result in a precleared flight (aircraft) returning to the gate. Local stations already report any change in circumstances to CBP. If a flight is cancelled, or requires passengers to disembark, it must return to the preclearance area, and further coordination with host country immigration may require

passengers to reprocess through host country immigration. In these instances, the carrier is responsible for notifying CBP at the Preclearance location.

After the decision to divert the aircraft is made, the air carrier or its designated representative must notify CBP at the Preclearance Port of Departure as soon as possible. Notification to CBP at the preclearance departure port is essential to allow for communication and coordination of any relevant information between the preclearance port, original port of arrival, and diversion ports. Having travelers on the diverted aircraft disembark at the carrier's discretion would adversely impact the ability to ensure the sterility of the arriving travelers and baggage. This notification should, at a minimum, consist of air carrier, flight number, number of crewmembers, number of passengers, reason for diversion, if commercial cargo is on board, and intent after arrival (i.e., gas and go, disembark, etc.). Immediate notification by the carrier will allow CBP to assess and monitor the situation in an effort to determine whether sterility of the precleared flight was breached. Failure to provide timely notification to CBP when there is a change in circumstance could require the aircraft and all the passengers to be re-cleared at the preclearance location or upon arrival in the United States.

Coordination between CBP at the Preclearance Port of Departure and the air carriers assist CBP in determining if any further action will be required. Generally, most precleared diverted flights are cleared and released by CBP prior to landing at the new arrival location without further inspection. The authority and final decision in determining if a precleared diverted flight maintains its precleared designation will be with the Port Director at the Preclearance Port of Departure. After landing, any foreign-flagged aircraft must obtain a permit to proceed from the Preclearance Port of Departure if required. Flights that are diverted to an airport that does not have a CBP presence or an internationally regulated garbage handling capability must obtain an Aircraft Clearance or Safeguard Order for Commercial Flights (CBP Form AI-250) from the Preclearance Port of Departure.

Carrier assistance in ensuring that change in circumstance notification protocols are in place will assist CBP in responding to emergency weather diversions, address security concerns, and ensure that the integrity of all precleared flights are maintained.

All airport managers should have the local and after hours contact numbers for CBP Port Directors, Chiefs, and Supervisors at their respective Preclearance locations. Should you require an update of these numbers, have any additional questions, or require additional information, please feel free to contact your CBP Preclearance Port Director.

Preclearance Examples:

3. Precleared flight – Diversion to a U.S. city which is not the original destination

Example: YUL/ORD diverts to IND

- While in IND, aircraft is refueled and takes off again for ORD (gas-and-go)
 - o **Airline is to contact departing CBP Port (YUL) and advise of situation.**
- While in IND, an ill passenger is deplaned, and then aircraft takes off again for ORD
 - o **Airline is to contact departing CBP Port (YUL) and advise of situation.**

- While in IND, the crew is changed (no passenger movement), and then aircraft takes off again for ORD
 - o **Airline is to contact departing CBP Port (YUL) and advise of situation.**
- CBP HQ guidance has directed carriers to seek permission (change of circumstance notification) only from the precleared origin port. Is the original port of departure the only port that requires notification? **Yes**
- Is notification required for a gas-and-go only? **Yes**
- How should carriers proceed if conflicting information is received? **The airline should follow instructions provided by the Preclearance Port of Departure.**
- YUL/ORD (IND) Preclearance port YUL states aircraft is clear and can deplane passengers at diversion point. ORD requests post clearance. **Follow instructions from YUL (preclearance port).**
- YUL/ORD (IND) Preclearance port YUL states aircraft requires post clear upon arrival in ORD. ORD disagrees and states clearance is not needed. **Follow instructions from YUL (preclearance port).**

If the Preclearance port is closed, the airline is to contact the appropriate CBP point of contact (i.e., Port Director) of the departing CBP Preclearance Port.

In addition, in the interest of efficiency and coordination, CBP strongly advises the carrier to contact the diversion port.

4. Precleared flight – Diversion to another preclearance airport

Example: DUB/ORD diverts to YUL

- While in YUL, aircraft is refueled and takes off again for ORD (gas-and-go)
 - o **Airline is to contact departing CBP Preclearance Port (DUB) and advise of situation. Airline may also want to check with arrival/diverted country's policy.**
- While in YUL, an ill passenger is deplaned, and then aircraft takes off again for ORD
 - o **Airline is to contact departing CBP Preclearance Port (DUB) and advise of situation. Airline may also want to check with arrival/diverted country's policy.**
- While in YUL, the crew is changed (no passenger movement) which is precleared by CBP in YUL, and then aircraft takes off again for ORD
 - o **Airline is to contact departing CBP Preclearance Port (DUB) and advise of situation. Airline may also want to check with arrival/diverted country's policy.**

If the Preclearance port is closed, the airline is to contact the appropriate CBP point of contact (i.e., Port Director) of the departing CBP Preclearance Port.

It is not required for the airline to contact the diversion port, however it may be in the best interest of the airline to contact the port as a courtesy in situations that may seem appropriate.

CBP HQ guidance has directed carriers to seek permission only from the precleared origin port. Is notification required for a gas-and-go only? **Yes.**

Is notification to the departure preclearance port required (DUB) if the diversion port is made aware due to a need for crew or passenger movement? **Yes.**

As with any emergency, communication is the key to successful and appropriate resolution. CBP has designated points of contact for use by air carriers and airport authorities. These contacts are CBP management officials at key locations and are available seven days a week, 24 hours a day. Through these contacts, CBP can effectively address any issues with flight delays, cancellations, on board emergencies, and diversions.