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## BUILDING A **SAFE AND RESILIENT CANADA**



# Canadian Preclearance Legal Framework

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# Preclearance Overview



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- Background
- New Legal Framework
- Benefits of Preclearance
- Governance
- Prospective Preclearance Sites
- Next Steps



# Background – Preclearance in Canada



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- Preclearance operating successfully in the air mode in Canada since the 1950s
- Preclearance currently exists at 8 major Canadian airports
- Pre-inspection (preclearance mostly for immigration purposes) exists at five sites in B.C.



# New Legal Framework: Ratification



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- On August 15, 2019 the new preclearance Canada-US treaty was ratified. The LRMA and the enabling domestic legislation came into force in both countries including:
  - Canadian legislation (*Preclearance Act, 2016*)
  - Canadian Part 1 regulations and other legal instruments (orders in council necessary to support preclearance implementation)
  - American legislation (*Promoting Travel, Commerce and National Security Act of 2016*)



# New Legal Framework: Key Elements



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- The LRMA is a fully reciprocal agreement that:
  - Modernizes the preclearance legal framework to improve the efficiency and security of the border
  - Creates opportunities for market-driven expansion of passenger and cargo preclearance in all modes of transportation in Canada and the U.S.
  - Permits co-location of border processing, which may be of most use at small and remote ports of entry
- Other key elements of the LRMA:
  - Criminal liability framework
  - Cost recovery
  - Defensive equipment reciprocity
  - Police presence (when U.S. preclearance officers are not armed)



# *Preclearance Act, 2016*



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- Canada's *Preclearance Act, 2016*, is divided into four parts:
  - **Part I:** Preclearance by U.S. in Canada
  - **Part II:** Preclearance by Canada in U.S.
  - **Part III:** Amendments to the *Criminal Code* (criminal liability framework and enable carriage of firearms)
  - **Part IV:** Miscellaneous items such as repealing and coming into force provisions and consequential amendments



# PCA 2016 Part 1 Regulations



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The *Preclearance in Canada Regulations* address the following substantive areas:

- Handling of goods seized within a preclearance area
- Who may enter a preclearance area, and conditions under which a facility may authorize a person to access a preclearance area
- Obligations of the facility operator for armed police presence if U.S. preclearance officers are not permitted to be armed
- Actions of non-travellers within a preclearance area
- Means through which a traveller may inform senior Canadian officials of the Preclearance Consultative Group of concerns regarding interactions with border services officers conducting preclearance activities



# Application of Preclearance Regulations



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- These regulations apply to all preclearance facilities in Canada (in all modes of transportation; land, rail, marine and air).
- With the recent entry into force, the eight existing preclearance air facilities were automatically transitioned to the new regime
  - Further work will be conducted in order to operationalize land, rail and marine preclearance, which may potentially require additional regulations led by Transport Canada
- Land, rail and marine preclearance will be rolled out in Canada as they become operationally feasible based on an assessment of benefits and costs





# Benefits of Preclearance



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- Proven **trade and travel benefits** for Canada and the U.S.:
  - Expedited transiting of borders and airport transfers
  - Access to non-international U.S. airports and more destinations
  - Moves border processing away from congested entry points
  - Increased efficiencies in logistics; just-in-time manufacturing
- Enhances **security** by addressing security threats at the point of departure rather than upon arrival





- Moving forward, there will be both national and bi-national governance:
  - In Canada, Public Safety is the lead department responsible for preclearance, with support from Transport Canada, CBSA, Global Affairs Canada, and other departments
  - The Canada – U.S. preclearance regime is governed through the Preclearance Consultative Group (PCG), that meets annually to discuss issues related to preclearance operations
- PCG is chaired by Public Safety Canada and Transport Canada on behalf of Canada, and the Department of Homeland Security and Department of State on behalf of the U.S.

# Prospective Preclearance Sites



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- Establishing new preclearance sites in Canada will be based on industry stakeholder assessments of the **benefits** and **costs**, based on passenger/cargo volumes at each interested facility
- New preclearance sites in Canada are subject to costs associated with conducting preclearance (e.g. infrastructure costs, and operational costs such as U.S. preclearance officer salaries).
  - Cost recovery agreement must be negotiated between the facility and U.S. CBP.
- We encourage sites in Canada considering adopting preclearance to contact Public Safety Canada so that we can provide guidance and assistance.
- New sites in Canada require agreement from both the governments of Canada and the U.S.



# Next Steps



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- The Government of Canada is continuing to work toward expanding preclearance to all modes for passengers and cargo, including the conversion of B.C. pre-inspection sites to full preclearance at those facilities that choose to convert
- The Government of Canada will continue working closely with prospective new sites and other stakeholders to continue to expand preclearance where viable
- Looking ahead, both governments will continue working with stakeholders to further improve the efficiency and security of the Canada – U.S. border





# Questions?

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