

participation that offers additional benefits to participants who demonstrate a sustained commitment to maintaining security measures and supply chain security practices that exceed the guidelines established for validation as a Tier 2 participant in C-TPAT under section 965 of this title.

(b) Criteria

The Secretary, acting through the Commissioner, shall designate criteria for validating a C-TPAT participant as a Tier 3 participant under this section. Such criteria may include—

- (1) compliance with any additional guidelines established by the Secretary that exceed the guidelines established pursuant to section 965 of this title for validating a C-TPAT participant as a Tier 2 participant, particularly with respect to controls over access to cargo throughout the supply chain;
- (2) submission of additional information regarding cargo prior to loading, as determined by the Secretary;
- (3) utilization of container security devices, technologies, policies, or practices that meet standards and criteria established by the Secretary; and
- (4) compliance with any other cargo requirements established by the Secretary.

(c) Benefits

The Secretary, acting through the Commissioner, in consultation with the Commercial Operations Advisory Committee and the National Maritime Security Advisory Committee, shall extend benefits to each C-TPAT participant that has been validated as a Tier 3 participant under this section, which may include—

- (1) the expedited release of a Tier 3 participant's cargo in destination ports within the United States during all threat levels designated by the Secretary;
- (2) further reduction in examinations of cargo;
- (3) priority for examinations of cargo; and
- (4) further reduction in the risk score assigned pursuant to the Automated Targeting System; and
- (5) inclusion in joint incident management exercises, as appropriate.

(d) Deadline

Not later than 2 years after October 13, 2006, the Secretary, acting through the Commissioner, shall designate appropriate criteria pursuant to subsection (b) and provide benefits to validated Tier 3 participants pursuant to subsection (c).

(Pub. L. 109-347, title II, §216, Oct. 13, 2006, 120 Stat. 1910.)

§ 967. Consequences for lack of compliance

(a) In general

If at any time a C-TPAT participant's security measures and supply chain security practices fail to meet any of the requirements under this part, the Commissioner may deny the participant benefits otherwise available under this part, in whole or in part. The Commissioner shall develop procedures that provide appropriate protections to C-TPAT participants be-

fore benefits are revoked. Such procedures may not limit the ability of the Commissioner to take actions to protect the national security of the United States.

(b) False or misleading information

If a C-TPAT participant knowingly provides false or misleading information to the Commissioner during the validation process provided for under this part, the Commissioner shall suspend or expel the participant from C-TPAT for an appropriate period of time. The Commissioner, after the completion of the process under subsection (c), may publish in the Federal Register a list of participants who have been suspended or expelled from C-TPAT pursuant to this subsection, and may make such list available to C-TPAT participants.

(c) Right of appeal

(1) In general

A C-TPAT participant may appeal a decision of the Commissioner pursuant to subsection (a). Such appeal shall be filed with the Secretary not later than 90 days after the date of the decision, and the Secretary shall issue a determination not later than 180 days after the appeal is filed.

(2) Appeals of other decisions

A C-TPAT participant may appeal a decision of the Commissioner pursuant to subsection (b). Such appeal shall be filed with the Secretary not later than 30 days after the date of the decision, and the Secretary shall issue a determination not later than 180 days after the appeal is filed.

(Pub. L. 109-347, title II, §217, Oct. 13, 2006, 120 Stat. 1911.)

§ 968. Third party validations

(a) Plan

The Secretary, acting through the Commissioner, shall develop a plan to implement a 1-year voluntary pilot program to test and assess the feasibility, costs, and benefits of using third party entities to conduct validations of C-TPAT participants.

(b) Consultations

Not later than 120 days after October 13, 2006, after consulting with private sector stakeholders, including the Commercial Operations Advisory Committee, the Secretary shall submit a report to the appropriate congressional committees on the plan described in subsection (a).

(c) Pilot program

(1) In general

Not later than 1 year after the consultations described in subsection (b), the Secretary shall carry out the 1-year pilot program to conduct validations of C-TPAT participants using third party entities described in subsection (a).

(2) Authority of the Secretary

The decision to validate a C-TPAT participant is solely within the discretion of the Secretary, or the Secretary's designee.