

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.

(d) Certification of third party entities

The Secretary shall certify a third party entity to conduct validations under subsection (c) if the entity—

(1) demonstrates to the satisfaction of the Secretary that the entity has the ability to perform validations in accordance with standard operating procedures and requirements designated by the Secretary; and

(2) agrees—

(A) to perform validations in accordance with such standard operating procedures and requirements (and updates to such procedures and requirements); and

(B) to maintain liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary; and

(3) signs an agreement to protect all proprietary information of C-TPAT participants with respect to which the entity will conduct validations.

(e) Information for establishing limits of liability insurance

A third party entity seeking a certificate under subsection (d) shall submit to the Secretary necessary information for establishing the limits of liability insurance required to be maintained by the entity under this Act.

(f) Additional requirements

The Secretary shall ensure that—

(1) any third party entity certified under this section does not have—

(A) any beneficial interest in or any direct or indirect control over the C-TPAT participant for which the validation services are performed; or

(B) any other conflict of interest with respect to the C-TPAT participant; and

(2) the C-TPAT participant has entered into a contract with the third party entity under which the C-TPAT participant agrees to pay all costs associated with the validation.

(g) Monitoring**(1) In general**

The Secretary shall regularly monitor and inspect the operations of a third party entity conducting validations under subsection (c) to ensure that the entity is meeting the minimum standard operating procedures and requirements for the validation of C-TPAT participants established by the Secretary and all other applicable requirements for validation services.

(2) Revocation

If the Secretary determines that a third party entity is not meeting the minimum standard operating procedures and requirements designated by the Secretary under subsection (d)(1), the Secretary shall—

(A) revoke the entity's certificate of conformance issued under subsection (d)(1); and

(B) review any validations conducted by the entity.

(h) Limitation on authority

The Secretary may only grant a C-TPAT validation by a third party entity pursuant to sub-

section (c) if the C-TPAT participant voluntarily submits to validation by such third party entity.

(i) Report

Not later than 30 days after the completion of the pilot program conducted pursuant to subsection (c), the Secretary shall submit a report to the appropriate congressional committees that contains—

(1) the results of the pilot program, including the extent to which the pilot program ensured sufficient protection for proprietary commercial information;

(2) the cost and efficiency associated with validations under the pilot program;

(3) the impact of the pilot program on the rate of validations conducted under C-TPAT;

(4) any impact on national security of the pilot program; and

(5) any recommendations by the Secretary based upon the results of the pilot program.

(Pub. L. 109-347, title II, § 218, Oct. 13, 2006, 120 Stat. 1912.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 109-347, Oct. 13, 2006, 120 Stat. 1884, known as the Security and Accountability For Every Port Act of 2006 or the SAFE Port Act. For complete classification of this Act to the Code, see Tables.

§ 969. Revalidation

The Secretary, acting through the Commissioner, shall develop and implement—

(1) a revalidation process for Tier 2 and Tier 3 participants;

(2) a framework based upon objective criteria for identifying participants for periodic revalidation not less frequently than once during each 4-year period following the initial validation; and

(3) an annual plan for revalidation that includes—

(A) performance measures;

(B) an assessment of the personnel needed to perform the revalidations; and

(C) the number of participants that will be revalidated during the following year.

(Pub. L. 109-347, title II, § 219, Oct. 13, 2006, 120 Stat. 1913.)

§ 970. Noncontainerized cargo

The Secretary, acting through the Commissioner, shall consider the potential for participation in C-TPAT by importers of noncontainerized cargoes that otherwise meet the requirements under this part.

(Pub. L. 109-347, title II, § 220, Oct. 13, 2006, 120 Stat. 1914.)

§ 971. C-TPAT program management**(a) In general**

The Secretary, acting through the Commissioner, shall establish sufficient internal quality controls and record management to support the management systems of C-TPAT. In managing the program, the Secretary shall ensure that the program includes: