115TH CONGRESS 1ST SESSION H.R. 3551

AUTHENTICATED U.S. GOVERNMENT INFORMATION

GPO

To amend the Security and Accountability for Every Port Act of 2006 to reauthorize the Customs-Trade Partnership Against Terrorism Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2017

Ms. McSALLY (for herself, Mr. REICHERT, Mr. MCCAUL, Mr. KING of New York, Mr. HURD, and Mr. GARRETT) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

- To amend the Security and Accountability for Every Port Act of 2006 to reauthorize the Customs-Trade Partnership Against Terrorism Program, and for other purposes.
 - 1 Be it enacted by the Senate and House of Representa-
 - 2 tives of the United States of America in Congress assembled,

3 SECTION 1. CUSTOMS-TRADE PARTNERSHIP AGAINST TER-

- 4 RORISM.
- 5 (a) IN GENERAL.—Subtitle B of title II of the Secu-
- 6 rity and Accountability for Every Port Act of 2006 (6
- 7 U.S.C. 961 et seq.) is amended to read as follows:

Partnership Against Terrorism 2 3 "SEC. 211. ESTABLISHMENT OF THE CUSTOMS-TRADE 4 PARTNERSHIP AGAINST TERRORISM PRO-5 GRAM. 6 "(a) IN GENERAL.—There is established within U.S. Customs and Border Protection a voluntary government-7 8 private sector partnership program to be known as the 9 Customs-Trade Partnership Against Terrorism (C-10 TPAT). 11 "(b) PURPOSE.—The purposes of the C-TPAT pro-12 gram are to-13 "(1) strengthen and improve the overall secu-14 rity of the international supply chain and United 15 States border security; 16 "(2) facilitate the movement of secure cargo 17 through the international supply chain; 18 "(3) ensure compliance with applicable law; and "(4) serve as the Authorized Economic Oper-19 20 ator program for the United States. 21 "(c) DIRECTOR.—There shall be at the head of the 22 C-TPAT program a Director, who shall report to the Ex-23 ecutive Assistant Commissioner of the Office of Field Op-24 erations (in this subtitle referred to as the 'Executive As-

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"Subtitle B—Customs-Trade

sistant Commissioner') of U.S. Customs and Border Pro tection.

3 "(d) DUTIES.—The Director of the C–TPAT pro-4 gram shall—

5 "(1) oversee the activities of the C-TPAT pro6 gram, including certification of C-TPAT partici7 pants;

8 "(2) evaluate and make revisions to security
9 criteria pursuant to subsections (c) and (d) of sec10 tion 213;

11 "(3) ensure that participants receive a tangible12 and measurable benefit for participation; and

13 "(4) carry out other duties and powers pre-14 scribed by the Executive Assistant Commissioner.

15 "SEC. 212. ELIGIBLE ENTITIES AND NOTICE OF BENEFITS.

16 "(a) ELIGIBLE ENTITIES.—Importers, exporters,
17 customs brokers, forwarders, air, sea, and land carriers,
18 contract logistics providers, and other entities in the inter19 national supply chain and intermodal transportation sys20 tem are eligible to apply for participation in the C–TPAT
21 program.

22 "(b) TIERED PARTICIPATION.—

23 "(1) IN GENERAL.—Applicants may be eligible
24 to participate as Tier 1 or Tier 2 participants.

"(2) IMPORTERS.—Importers may be eligible to
 participate as Tier 3 participants.

3 "(3) EXTENSION.—The Executive Assistant
4 Commissioner may, in his or her discretion, extend
5 Tier 3 participation to other entity types, if appro6 priate.

7 "(c) NOTICE OF BENEFITS.—

8 "(1) IN GENERAL.—The Commissioner of U.S. 9 Customs and Border Protection shall publish, on the 10 U.S. Customs and Border Protection website or 11 through other appropriate online publication, infor-12 mation about benefits to C–TPAT program partici-13 pants.

"(2) CHANGES.—The Commissioner of U.S.
Customs and Border Protection shall publish, on the
U.S. Customs and Border Protection website or
through other appropriate online publication, notice
of any changes to benefits to C–TPAT program participants not later than 30 days before any such
changes take effect.

21 "SEC. 213. PARTICIPATION ELIGIBILITY.

"(a) IN GENERAL.—The Executive Assistant Commissioner shall review all documentation submitted by an
applicant pursuant to subsection (b)(2), conduct a back-

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ground investigation of such applicant, and vet such appli cant.

3 "(b) GENERAL REQUIREMENTS.—To be eligible for
4 participation in the C-TPAT program, an entity shall, at
5 a minimum—

6 "(1) have a designated company employee au7 thorized to bind such entity that will serve as the
8 primary cargo security officer responsible for partici9 pation of such entity in the C-TPAT program;

10 "(2) at the time of initial application and annu-11 ally thereafter, including in advance of any recertifi-12 cation or revalidation, submit an international sup-13 ply chain security profile, which shall identify how 14 such entity meets the minimum security criteria of 15 the C–TPAT program established by the Commis-16 sioner of U.S. Customs and Border Protection and 17 how such entity will maintain and enhance internal 18 policies, procedures, and practices related to inter-19 national supply chain security; and

20 "(3) meet any specific requirements for eligible
21 entities, as established by the Commissioner.

"(c) MINIMUM SECURITY CRITERIA.—The Commissioner of U.S. Customs and Border Protection shall establish minimum security criteria for participants in the CTPAT program, review such minimum security criteria

not less than once each year, and update such minimum
 security criteria as necessary. Such minimum security cri teria shall seek to address security vulnerabilities in the
 international supply chain.

5 "(d) ADDITIONAL AND UPDATED CRITERIA.—The 6 Commissioner of U.S. Customs and Border Protection 7 may establish additional and updated security criteria for 8 individual C-TPAT program participants, categories of 9 C-TPAT program participants, or particular entity types 10 to meet in order to address a security vulnerability in the 11 international supply chain.

12 "(e) CONSULTATION.—When establishing or updat-13 ing security criteria in accordance with subsection (c), and 14 when establishing additional or updated security criteria 15 in accordance subsection (d), the Commissioner of U.S. 16 Customs and Border Protection shall consult with C– 17 TPAT program participants and other interested parties, 18 and shall—

"(1) conduct a cost benefit analysis of such proposed new, additional, or updated security criteria in
consultation with the Commercial Customs Operations Advisory Committee established under section
109 of the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114–125; 19 U.S.C.
4316);

"(2) determine operational feasibility and con-1 2 duct a phased implementation of such proposed additional or updated security criteria; and 3 "(3) provide C-TPAT program participants 4 5 and other interested parties a 90-day comment pe-6 riod to review and comment on such proposed addi-7 tional or updated security criteria. "(f) WAIVER.—The Commissioner of U.S. Customs 8 9 and Border Protection may waive the requirements of sub-10 section (e) if the Commissioner determines there is a significant and imminent risk to the national security of the 11 12 United States and such a waiver is necessary to protect 13 such national security. 14 "SEC. 214. BENEFITS FOR C-TPAT PROGRAM PARTICI-15 PANTS. "(a) IN GENERAL.—The Executive Assistant Com-16 missioner shall extend certain benefits to each C-TPAT 17 program participant. Minimum benefits for all such par-18 19 ticipants shall include the following: 20 "(1) Assignment of a U.S. Customs and Border 21 Protection Supply Chain Security Specialist to each 22 participant. 23 "(2) Access to the C-TPAT program's web-

24 based Portal system and training materials.

"(3) A periodic and unclassified update on
 threats to the international supply chain.

"(b) PUBLIC AVAILABILITY.—The Executive Assist4 ant Commissioner shall make publicly available on the C–
5 TPAT portal an annual assessment of the tangible bene6 fits being realized by C–TPAT program participants.

7 "SEC. 215. TIER 1 PARTICIPANTS.

8 "(a) CERTIFICATION.—The Executive Assistant 9 Commissioner shall certify the security measures and 10 international supply chain security practices of all applicants to and participants in the C-TPAT program in ac-11 12 cordance with section 213(b)(2) and the guidelines re-13 ferred to in subsection (c) of this section. Certified participants shall be Tier 1 participants. 14

15 "(b) BENEFITS FOR TIER 1 PARTICIPANTS.—Upon
16 completion of the certification under subsection (a), a C17 TPAT program participant shall be certified as a Tier 1
18 participant. The Executive Assistant Commissioner shall
19 extend limited benefits to a Tier 1 participant.

20 "(c) GUIDELINES.—Not later than 180 days after the 21 date of the enactment of this subtitle, the Commissioner 22 of U.S. Customs and Border Protection shall update the 23 guidelines and criteria for certifying a C–TPAT program 24 participant's security measures and supply chain security 25 practices under this section. Such guidelines shall include a background investigation and review of appropriate doc umentation, as determined by the Commissioner.

3 "(d) TIMEFRAME.—To the extent practicable, the
4 Executive Assistant Commissioner shall complete the Tier
5 1 certification process within 90 days of receipt of an ap6 plication for participation in the C–TPAT program.

7 "SEC. 216. TIER 2 PARTICIPANTS.

"(a) VALIDATION.—The Executive Assistant Com-8 9 missioner shall validate the security measures and inter-10 national supply chain security practices of a Tier 1 C-TPAT program participant in accordance with the guide-11 lines referred to in subsection (c) to validate such partici-12 13 pant as a Tier 2 participant. Such validation shall include on-site assessments at appropriate foreign and domestic 14 15 locations utilized by such Tier 1 participant in its international supply chain. 16

17 "(b) BENEFITS FOR TIER 2 PARTICIPANTS.—The
18 Executive Assistant Commissioner, shall extend benefits
19 to each C-TPAT participant that has been validated as
20 a Tier 2 participant under this section. Such benefits may
21 include the following:

22 "(1) Reduced scores in U.S. Customs and Bor23 der Protection's Automated Targeting System.

24 "(2) Reduced number of security examinations
25 by U.S. Customs and Border Protection.

"(3) Priority examinations of cargo.

2 "(4) Access to the Free and Secure Trade
3 (FAST) Lanes at United States ports of entry.

4 "(5) Recognition as a trusted trade partner by
5 foreign customs administrations that have signed
6 Mutual Recognition Agreements with U.S. Customs
7 and Border Protection.

8 "(c) GUIDELINES.—Not later than 180 days after the 9 date of the enactment of this subtitle, the Commissioner 10 shall develop a schedule and update the guidelines and cri-11 teria for validating a C-TPAT participant's security 12 measures and supply chain security practices under this 13 section.

14 "(d) TIMEFRAME.—To the extent practicable, the
15 Executive Assistant Commissioner shall complete the Tier
16 2 validation process for a C-TPAT program participant
17 under this section within one year after certification of
18 such participant as a Tier 1 participant.

19 "SEC. 217. TIER 3 PARTICIPANTS.

20 "(a) IN GENERAL.—The Commissioner shall estab-21 lish a third tier of C-TPAT program participation that 22 offers additional benefits to C-TPAT program partici-23 pants that are importers or other entity types, in accord-24 ance with section 212(b), that demonstrate a sustained 25 commitment to maintaining security measures and inter-

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national supply chain security practices that exceed the
 guidelines established for validation as a Tier 2 partici pant in the C-TPAT program under section 216.

4 "(b) BEST PRACTICES.—The Executive Assistant 5 Commissioner may designate a Tier 2 C–TPAT program 6 participant as a Tier 3 participant based on a review of 7 best practices in such participant's international supply 8 chain that reflect a continued approach to enhanced inter-9 national supply chain security, including—

"(1) compliance with any additional or updated
criteria established by the Commissioner of U.S.
Customs and Border Protection under section
213(d) that exceed the guidelines established pursuant to section 216 for validating a C-TPAT program participant as a Tier 2 participant; and

16 "(2) any other factors that the Executive As-17 sistant Commissioner determines appropriate.

18 "(c) BENEFITS FOR TIER 3 PARTICIPANTS.—The Executive Assistant Commissioner, in consultation with 19 the Commercial Customs Operations Advisory Committee 20 established under section 109 of the Trade Facilitation 21 22 and Trade Enforcement Act of 2015 (Public Law 114-23 125; 19 U.S.C. 4316) and the National Maritime Security 24 Advisory Committee established under section 70112 of 25 title 46, United States Code, shall extend benefits to each

1	C–TPAT program participant that has been validated as
2	a Tier 3 participant under this section, which may include
3	the following:
4	"(1) Further reduction in the number of exami-
5	nations by U.S. Customs and Border Protection.
6	"(2) Front of the line inspections and examina-
7	tions.
8	"(3) Exemption from Stratified Exams.
9	"(4) Shorter wait times at United States ports
10	of entry.
11	"(5) Access to the Free and Secure Trade
12	(FAST) Lanes at United States ports of entry.
13	"(6) Recognition as a trusted trade partner by
14	foreign customs administrations that have signed
15	Mutual Recognition Agreements with U.S. Customs
16	and Border Protection.
17	"(7) In the case of importers, eligibility to par-
18	ticipate in the Importer Self-Assessment Program
19	(ISA).
20	"SEC. 218. CONSEQUENCES FOR LACK OF COMPLIANCE.
21	"(a) IN GENERAL.—If at any time the Executive As-
22	sistant Commissioner determines that a C–TPAT pro-
23	gram participant's security measures or international sup-
24	ply chain security practices fail to meet any of the require-
25	ments under this subtitle, the Executive Assistant Com-

missioner may deny such participant benefits otherwise 1 2 made available pursuant to this subtitle, either in whole 3 or in part. The Executive Assistant Commissioner shall 4 develop procedures, in consultation with Commercial Cus-5 toms Operations Advisory Committee, established under 6 section 109 of the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114-125; 19 U.S.C. 4316), 7 8 that provide appropriate protections to C-TPAT program 9 participants, including advance notice and an opportunity 10 for such participants to provide additional information to U.S. Customs and Border Protection regarding any such 11 12 alleged failure, before any of such benefits are revoked. 13 Such procedures may not limit the ability of the Executive Assistant Commissioner to take actions to protect the na-14 15 tional security of the United States.

16 "(b) FALSE OR MISLEADING INFORMATION; LACK OF COMPLIANCE WITH LAW.—If a C-TPAT program partici-17 pant knowingly provides false or misleading information 18 to the Commissioner of U.S. Customs and Border Protec-19 20 tion, the Executive Assistant Commissioner, or any other 21 officers or officials of the United States Government, or 22 if at any time the Executive Assistant Commissioner de-23 termines that a C-TPAT program participant has com-24 mitted a serious violation of Federal law or customs regulations, or if a C-TPAT program participant has com-25

mitted a criminal violation relating to the economic activ-1 2 ity of such participant, the Executive Assistant Commis-3 sioner may suspend or expel such participant from the C-4 TPAT program for an appropriate period of time. The Ex-5 ecutive Assistant Commissioner, after the completion of the process described in subsection (d), may publish in the 6 7 Federal Register a list of C–TPAT program participants 8 that have been so suspended or expelled from the C-TPAT 9 program pursuant to this subsection.

10 "(c) NATIONAL SECURITY.—If at any time the Executive Assistant Commissioner determines that a C-TPAT 11 12 program participant poses a significant and imminent risk 13 to the national security of the United States or has committed a serious violation of Federal law or customs regu-14 15 lations, or if a C-TPAT program participant has committed a criminal violation relating to the economic activ-16 ity of such participant, the Executive Assistant Commis-17 sioner may suspend or expel such participant from the C-18 19 TPAT program for an appropriate period of time. The Ex-20 ecutive Assistant Commissioner, after the completion of 21 the process described in subsection (d), may publish in the 22 Federal Register a list of C–TPAT program participants 23 that have been so suspended or expelled from the C-TPAT 24 program pursuant to this subsection.

25 "(d) RIGHT OF APPEAL.—

1 "(1) IN GENERAL.—The Commissioner of U.S. 2 Customs and Border Protection shall establish a process for a C-TPAT program participant to ap-3 4 peal a decision of the Executive Assistant Commissioner under subsection (a). Such appeal shall be 5 6 filed with the Commissioner not later than 90 days 7 after the date of such decision, and the Commis-8 sioner shall issue a determination not later than 90 9 days after such appeal is filed.

"(2) APPEALS OF OTHER DECISIONS.—The 10 11 Commissioner of U.S. Customs and Border Protec-12 tion shall establish a process for a C-TPAT pro-13 gram participant to appeal a decision of the Execu-14 tive Assistant Commissioner under subsections (b) 15 and (c). Such appeal shall be filed with the Commis-16 sioner not later than 30 days after the date of such 17 decision, and the Commissioner shall issue a deter-18 mination not later than 90 days after such appeal is 19 filed.

20 "SEC. 219. VALIDATIONS BY OTHER DHS COMPONENTS.

21 "(a) IN GENERAL.—The Commissioner of U.S. Cus-22 toms and Border Protection may recognize regulatory in-23 spections conducted by other components of the Depart-24 ment of Homeland Security of entities as sufficient to con-25 stitute validation for C–TPAT program participation. Such regulatory inspections shall not limit the ability of
 U.S. Customs and Border Protection to conduct a C–
 TPAT program validation.

4 "(b) REVALIDATION.—Nothing in this section may
5 limit the Commissioner of U.S. Customs and Border Pro6 tection's ability to require a revalidation by U.S. Customs
7 and Border Protection.

8 "(c) CERTIFICATION.—Nothing in this section may 9 be construed to authorize certifications of C–TPAT appli-10 cants to be performed by any party other than U.S. Cus-11 toms and Border Protection.

12 "SEC. 220. RECERTIFICATION AND REVALIDATION.

"(a) RECERTIFICATION.—The Commissioner of U.S.
Customs and Border Protection shall implement a recertification process for all C–TPAT program participants.
Such process shall occur annually, and shall require—

"(1) a review of the security profile and supporting documentation to ensure adherence to the
minimum security criteria under section 213; and
"(2) background checks and vetting.

"(b) REVALIDATION.—The Commissioner of U.S.
Customs and Border Protection shall implement a revalidation process for all Tier 2 and Tier 3 C–TPAT program participants. Such process shall require—

1	"(1) a framework based upon objective, risk
2	based criteria for identifying participants for peri-
3	odic revalidation at least once every four years fol-
4	lowing the initial validation of such participants;
5	((2) on-site assessments at appropriate foreign
6	and domestic locations utilized by such a participant
7	in its international supply chain; and
8	((3) an annual plan for revalidation that in-
9	cludes—
10	"(A) performance measures;
11	"(B) an assessment of the personnel need-
12	ed to perform such revalidations; and
13	"(C) the number of participants that will
14	be revalidated during the following year.
15	"(c) Revalidation Under a Mutual Recogni-
16	TION AGREEMENT.—
17	"(1) IN GENERAL.—Upon request from the
18	Commissioner of U.S. Customs and Border Protec-
19	tion, all Tier 2 and Tier 3 C-TPAT program par-
20	ticipants shall provide any revalidation report con-
21	ducted by a foreign government under a Mutual
22	Recognition Agreement.
23	"(2) Recognition.—The Commissioner of
24	U.S. Customs and Border Protection may recognize
25	revalidations of entities conducted by foreign govern-

ments under a Mutual Recognition Agreement as
 sufficient to constitute a revalidation for C-TPAT
 program participation under subsection (b).

4 "(3) NO LIMITATION.—Nothing in this sub5 section may be construed to limit the Commissioner
6 of U.S. Customs and Border Protection's ability to
7 require a revalidation by U.S. Customs and Border
8 Protection.

9 "(d) DESIGNATED COMPANY EMPLOYEES.—Only 10 designated company employees of a C-TPAT program 11 participant under section 213(b)(1) are authorized to re-12 spond to a revalidation report. Third-party entities are not 13 authorized to respond to a revalidation report.

14 "SEC. 221. NONCONTAINERIZED CARGO.

15 "The Commissioner of U.S. Customs and Border 16 Protection shall consider the potential for participation in 17 the C-TPAT program by importers of noncontainerized 18 cargoes that otherwise meet the requirements under this 19 subtitle.

20 "SEC. 222. PROGRAM MANAGEMENT.

21 "(a) IN GENERAL.—The Commissioner of U.S. Cus-22 toms and Border Protection shall establish sufficient in-23 ternal quality controls and record management, including 24 recordkeeping (including maintenance of a record manage-25 ment system in accordance with subsection (b)) and monitoring staff hours, to support the management systems of
 the C-TPAT program. In managing the C-TPAT pro gram, the Commissioner shall ensure that the C-TPAT
 program includes the following:

5 "(1) A 5-year plan to identify outcome-based
6 goals and performance measures of the C-TPAT
7 program.

8 "(2) An annual plan for each fiscal year de9 signed to match available resources to the projected
10 workload.

"(3) A standardized work program to be used
by agency personnel to carry out the certifications,
validations, recertifications, and revalidations of C–
TPAT program participants.

"(b) DOCUMENTATION OF REVIEWS.—The Commissioner of U.S. Customs and Border Protection shall maintain a record management system to document determinations on the reviews of each C–TPAT program participant, including certifications, validations, recertifications,
and revalidations.

"(c) CONFIDENTIAL INFORMATION SAFEGUARDS.—
In consultation with the Commercial Customs Operations
Advisory Committee established under section 109 of the
Trade Facilitation and Trade Enforcement Act of 2015
(Public Law 114–125; 19 U.S.C. 4316), the Commis-

sioner of U.S. Customs and Border Protection shall de velop and implement procedures to ensure the protection
 of confidential data collected, stored, or shared with gov ernment agencies or as part of the application, certifi cation, validation, recertification, and revalidation proc esses.

7 "(d) RESOURCE MANAGEMENT STAFFING PLAN.—
8 The Commissioner of U.S. Customs and Border Protec9 tion shall—

"(1) develop a staffing plan to recruit and train
staff (including a formalized training program) to
meet the objectives identified in the 5-year strategic
plan under subsection (a)(1); and

"(2) provide cross-training in post incident
trade resumption for the C-TPAT Director and
other relevant personnel who administer the CTPAT program.

18 "(e) REPORT TO CONGRESS.—In connection with the 19 President's annual budget submission for the Department 20 of Homeland Security, the Commissioner of U.S. Customs 21 and Border Protection shall report to the appropriate con-22 gressional committees on the progress made by the Com-23 missioner to certify, validate, recertify, and revalidate C– 24 TPAT program participants. Each such report shall be due on the same date that the President's budget is sub mitted to Congress.".

- 3 (b) SAVING CLAUSE.—
- 4 (1) IN GENERAL.—The amendments made by
 5 this Act shall take effect and apply beginning on the
 6 date that is 30 days after the date of the enactment
 7 of this Act with respect to applicants for participa8 tion in the C–TPAT program.

9 (2)EXCEPTION.—Paragraph (1) shall not apply in case of C-TPAT program participants who 10 11 are such participants as of the date specified in such 12 paragraph. Such participants shall be subject to the 13 amendments made by this Act upon revalidation of 14 such participants to participate in such program. 15 Until such time, such participants shall be subject to 16 the requirements of the C–TPAT program as in ex-17 istence on the day before the date of the enactment 18 of this Act.

(c) CLERICAL AMENDMENTS.—The table of contents
in section 1(b) of the Security and Accountability for
Every Port Act of 2006 is amended by striking the items
relating to subtitle B of title II and inserting the following
new items:

"Subtitle B—Customs-Trade Partnership Against Terrorism

- "Sec. 211. Establishment of the Customs and Trade Partnership Against Terrorism program.
- "Sec. 212. Eligible entities and notice of benefits.

- "Sec. 213. Participation eligibility.
- "Sec. 214. Benefits for C–TPAT program participants.
- "Sec. 215. Tier 1 participants.
- "Sec. 216. Tier 2 participants.
- "Sec. 217. Tier 3 participants.
- "Sec. 218. Consequences for lack of compliance.
- "Sec. 219. Validations by other DHS components.
- "Sec. 220. Recertification and revalidation.
- "Sec. 221. Noncontainerized cargo.
- "Sec. 222. Program management.".
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