

## **Customs-Trade Partnership Against Terrorism (C-TPAT) Third Party Validator Voluntary Pilot Program Proposal**

*January 8, 2007*

**Issue:** The “Security and Accountability For Every Port Act of 2006” or the “SAFE Port Act”, as signed by the President on October 13, 2006 calls for CBP to develop a third party validator voluntary pilot program within 120 days of the enactment of this Act, after consulting private sector stakeholders, including the Commercial Operations Advisory Committee (COAC). A one-year voluntary pilot program will be initiated, with a final report to Congress 30 days after completion of the pilot. As outlined in section 218 of the Act, CBP will develop the requirements and standard operating procedures which a third party validator must meet in order to be eligible for this pilot program. CBP will publish an announcement on the Federal Business Opportunities (fedbizopps.gov) website to identify those firms interested in conducting third party C-TPAT validations.

**Background:** At present, C-TPAT validations are only conducted by CBP employees (Supply Chain Security Specialists, SCSSs). Minor trade facilitation benefits are afforded to certified members (Tier 1), while validated members benefit from more significant reduced cargo examinations (Tier 2 and 3). CBP has increased its level of permanent SCSSs to 160 and has employed more efficient and effective validation processes, specifically blitz operations, which have increased the number of validations completed. In January 2005, 8% (403) validations were performed compared to 64.5% (3,731) today. The level of validations completed will reach 65% by December 31, 2006 and 100% in 2007. Re-validations of high-risk supply chains will commence in 2007.

CBP has maintained that the responsibility of assessing the security and integrity of an international supply chain is of paramount importance and should remain the responsibility of CBP. CBP believes that highly trained CBP employees are best suited to perform this assessment, and that extended use of private companies to perform validations would likely diminish the ability of CBP to foster long-term positive relationships with C-TPAT trade partners.

CBP has assured C-TPAT members that all business and security practice information provided would remain confidential and within CBP. This steadfast assurance has granted C-TPAT personnel extensive access into company policies and procedures during the validation process. C-TPAT personnel are also privy to the security relationships between the C-TPAT member and their foreign suppliers, logistics providers, and export terminals.

**Proposal:** *To implement the Third Party Validator Voluntary Pilot Program on a limited and controlled basis to allow CBP to meet the goal of 100% validations completed by 2007. CBP will employ a third party firm(s) with established access into a specific trade lane outside the reach of CBP – China.*

At this time, CBP has not been granted access to perform validations in China. All attempts to enter the country to conduct C-TPAT validations have been denied. Collectively, China is the number one trading partner to C-TPAT importer partners, yet China can be viewed as a low risk supply chain for acts of terrorism against the United States. Data from January 2006 through November 2006 indicates that 55 C-TPAT importer partners currently have sole supply chains (100% of imports) in China. These importers will remain in a Tier 1 status since a validation cannot be performed. An additional 245 C-TPAT importer partners have sourced over 75% of their imports from China.

**Justification:** The current situation in China presents CBP with an opportunity to conduct a pilot of third party validators in the area to help gain some knowledge into supply chains currently outside CBP's reach. This is also an opportunity for C-TPAT importer partners, who have supply chains solely in China, to participate in the validation process with the potential to be granted Tier 2 or Tier 3 status upon validation completion. If this endeavor proves successful, it can later be employed across other low risk supply chains to conduct validations and re-validations, thus freeing CBP personnel and resources to focus on higher risk supply chains. As stated in the SAFE Port Act, the decision to validate a C-TPAT partner is solely within the discretion of CBP. CBP would determine the facilities to be visited, both domestic and abroad, to include the point of stuffing, drayage of the container to the port of export, and the port of export. Upon completion of the validation, CBP will retain all decisions over the status of the C-TPAT partner, not the third party validator. Additionally, the C-TPAT participant is responsible for all costs associated with the validation.

**Third Party Requirements:** CBP shall certify a third party firm(s) to conduct C-TPAT validations if the firm(s):

- can provide CBP with documentation attesting to its established "footprint" in the area of consideration.
- demonstrates that it has the ability to perform validations in accordance with standard operating procedures and requirements designated by CBP.
- agrees to perform validations in accordance with such standard operating procedures and requirements (and updates to such procedures and requirements).
- can employ a comparable data collection methodology to what is currently utilized by CBP, thus capable of transmitting findings to CBP in an electronic forum.
- can provide CBP with the documented training procedures for their validators.

- agrees to maintain liability insurance coverage at policy limits and in accordance with conditions established by the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 or the “SAFETY Act”, as outlined in Section 864 of the Homeland Security Act of 2002.
- Agrees to a CBP-ICE background check to be performed on the validator and the local validator’s principle management,
- Provide their fee schedules to be posted on the CBP website and have the fees openly available on their own websites.
- signs an agreement to protect all proprietary information of C-TPAT participants with respect to which the entity will conduct validations.

**Additional Requirements:** CBP shall ensure that any third party entity certified does not have any beneficial interest in or any direct or indirect control over the C-TPAT participant for which the validation services are performed; or any other conflict of interest with respect to the C-TPAT participant. CBP shall ensure that 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. CBP shall only grant a C-TPAT validation by a third party entity if the C-TPAT participant voluntarily submits to validation by such third party entity.

CBP may allow the 3<sup>rd</sup> party entity to also attend the validation meetings with the importer “in country” and/or in the USA, so that the recommendations that come from the meetings can be implemented “in-country”.

**Monitoring:** CBP shall regularly monitor and review the operations of a third party entity conducting validations to ensure that the entity is meeting the standard operating procedures and requirements for the validation of C-TPAT participants and all other applicable requirements for validation services. If CBP determines that a third party entity is not meeting the minimum standard operating procedures and requirements, CBP shall:

- revoke the entity’s certificate of conformance.
- review any validations conducted by the entity.

**Report:** CBP shall submit a report to the appropriate congressional and advisory committees no later than 30 days after the completion of the pilot program 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;
- (5) any recommendations by CBP based upon the results of the pilot program.

**Performance measurements and evaluations:** The third party firm(s) chosen will be subject to periodic performance measurements and evaluations as follows:

- (1) The timeliness and accuracy of the third party validation and subsequent findings will be evaluated and reviewed against the standard operating procedures and requirements designated by CBP.
- (2) The findings and assessment of the third party entity will be reviewed to determine whether all C-TPAT minimum security criteria have been addressed.
- (3) The third party entity will be subject to random “spot checks” of the C-TPAT participant’s security profile to ensure proper documentation of implemented security policies and procedures. Additionally, the domestic corporate headquarters site of the C-TPAT participant may be visited to verify security policies and procedures documented by the third party entity.

The proposed timeline for the implementation of the Third Party Validator Voluntary Pilot Program is as follows:

01/08/07	Proposal submitted to COAC for review
01/15/07	Proposal returned to CBP
01/16/07	Proposal submitted to OPP
01/22/07	Proposal submitted to DHS
02/15/07	Announcement posted on CBP website
02/15/07-03/01/07	Open bids for interested third party entities
03/10/07	Third party entity(s) selected and notified
03/12/07	Pilot Program commences

**Next Steps:**

- CBP has compiled a list of 300 importers who source 75% or more of their imports from China who are eligible to volunteer for the pilot program. CBP will notify these importers of their eligibility to participate in the pilot program via the C-TPAT Security Link Web Portal and solicit any volunteers.

- CBP will publish an announcement in the Federal Business Opportunities ([fedbizopps.gov](http://fedbizopps.gov)) to identify those firms interested in conducting C-TPAT validations in China. The proposal will clearly define the requirements of the validating firm.