

Calendar No. 350

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-99 }

CTPAT PILOT PROGRAM ACT OF 2021

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2322

TO REQUIRE A PILOT PROGRAM ON THE PARTICIPATION
OF NON-ASSET-BASED THIRD-PARTY LOGISTICS PROVIDERS
IN THE CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM



APRIL 27, 2022.—Ordered to be printed

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Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2322]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2322), to require a pilot program on the participation of non-asset-based third-party logistics providers in the Customs-Trade Partnership Against Terrorism, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2322, the Customs Trade Partnership Against Terrorism (CTPAT) Pilot Program Act of 2021, expands the U.S. Customs and Border Protection’s (CBP) existing CTPAT program to pilot the participation of asset-based and non-asset based third-party logistics providers (3PLs). The bill requires the Department of Homeland Security (DHS) to create the pilot program within 180 days of enactment. The bill also requires the DHS Secretary to submit a report to Congress that outlines recommendations stemming from the pilot program. Finally, the bill requires the Government Account-

ability Office (GAO) to submit a report to appropriate congressional committees that assesses the effectiveness of the CTPAT program.

II. BACKGROUND AND NEED FOR THE LEGISLATION

In response to the attacks on September 11, 2001, the federal government engaged with the trade community to enhance supply chain security to protect the U.S. from acts of terrorism.¹ One such enhancement was the Customs Trade Partnership Against Terrorism (CTPAT), which began in November 2001. CTPAT is a partnership between the federal government and the private sector that seeks to improve security throughout the supply chain, from the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination.² The program created a customs clearance process for trusted merchants that want to voluntarily submit themselves to enhanced security screening measures.³

On October 13, 2006, President George W. Bush signed the Security and Accountability For Every (SAFE) Port Act of 2006, which legislatively authorized CBP's CTPAT program.⁴ The SAFE Port Act of 2006 required CBP to expand the eligible enrollment entities to include other organizations that strengthen security along critical points in the international supply chain.⁵ Having established they meet CBP's minimum security criteria, members are eligible for benefits including: reduced examination rates, access to Free and Secure Trade (FAST) lanes, and front of the line processing.⁶ By ensuring that participants meet minimum security standards, CTPAT helps CBP improve trade facilitation by enhancing the security of incoming cargo and processing of cargo through ports of entry, which also benefits CTPAT members. According to a 2017 GAO review, there were more than 11,000 members of CTPAT as of September 2016, whose shipments made up more than half of the cargo entering the country.⁷

In 2008, the Federal government issued CTPAT guidance that included eligibility requirements for 3PLs to participate in the program.⁸ The guidance defined 3PLs as "a firm that provides outsourced or 'third party' logistics services to companies for part, or sometimes all of their supply chain management function."⁹ There are two types of 3PLs: asset-based and non asset-based. Asset based 3PLs own warehousing facilities, vehicles, aircraft, or any other transportation assets. Non asset-based 3PLs perform services such as quoting, booking, routing, and auditing.¹⁰ In its guidance, CBP excluded non-asset based 3PLs, noting that non-asset based 3PLs do not physically take possession of freight or add

¹ U.S. Customs and Border Protection, *CTPAT: Customs Trade Partnership Against Terrorism* (<https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat>) (accessed Dec. 9, 2021).

² *Id.*

³ *Id.*

⁴ Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, Sec. 211 (2006).

⁵ *Id.*

⁶ Government Accountability Office, *Supply Chain Security: Providing Guidance and Resolving Data Problems Could Improve Management of the Customs-Trade Partnership Against Terrorism Program* at 11 (GAO-17-84) (Feb. 8, 2017) (<https://www.gao.gov/assets/gao-17-84.pdf>).

⁷ *Id.* at 2.

⁸ U.S. Customs and Border Protection, *Customs-Trade Partnership Against Terrorism (CTPAT) Minimum Security Criteria: Third Party Logistics Providers (3PL)* (Jan. 2009) (https://www.cbp.gov/sites/default/files/documents/3pl_security_criteria_3.pdf).

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

a significant national security value to the program.¹¹ Despite this guidance, CBP has, in fact, allowed some non-asset based 3PLs eligibility into the CTPAT program, including indirect air carriers, non-vessel operating common carriers)¹² and customs brokers.¹³ Additionally, non-asset based 3PLs do have a role in safety and national security by selecting those logistics carriers entering the country and assuring that those carriers are legitimate and understand the cargo they are transporting.¹⁴

S. 2322 addresses the current exclusion of certain 3PLs by creating a CBP pilot program that allows non-asset based 3PLs and additional asset-based 3PLs to participate in CTPAT. Within 180 days of the enactment of this legislation, DHS must establish a pilot program that includes up to 20 trusted vendors—10 asset-based 3PLs and 10 non asset-based 3PLs. The pilot shall take place for at least one year, and the DHS Secretary will submit a report to Congress that outlines recommendations that stem from the pilot.

Because the nature of the 3PLs eligible for the pilot program differs from those currently participating, under the pilot CBP will determine the entities to participate as well as eligibility and minimum-security criteria (MSC) for the participants.¹⁵ After identifying eligibility and MSC, CBP will evaluate applications of potential participants.¹⁶ For those applicants who are accepted for participation, CBP will work with the selected participants to identify a location to complete the validation visit, where CBP reviews the participant's supply chain security procedures.¹⁷ After concluding the validations of all pilot participants, CBP will evaluate the process under the pilot to see what worked, what did not, and where they can improve.¹⁸

III. LEGISLATIVE HISTORY

Senator John Cornyn (R–TX) introduced S. 2322, the CTPAT Pilot Program Act of 2021, on July 13, 2021, along with Senators Robert Menendez (D–NJ), Tom Carper (D–DE), and Tim Scott (R–SC). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senators Margaret Hassan (D–NH) and James Lankford (R–OK) joined as cosponsors on November 1, 2021 and November 16, 2021, respectively. The Committee considered S. 2322 at a business meeting on November 3, 2021.

¹¹*Id.* at 2.

¹²U.S. Customs and Border Protection, *Air Freight Consolidators, Ocean Transport Intermediaries, and Non-Vessel Operating Common Carriers (NVOCC) Security Criteria* (<https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat/security-guidelines/air-freight-ocean-transport-nvoce>) (accessed Dec. 9, 2021).

¹³U.S. Customs and Border Protection, *U.S. Customs Broker Eligibility Requirements* (<https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat/security-guidelines/customs-brokers>) (accessed Dec. 9, 2021).

¹⁴U.S. Customs and Border Protection, *Minimum Security Criteria—Third Party Logistics Providers (3PLs)* (Mar. 2020) (<https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr-CTPAT%203PLs%20MSC%20March%202020.pdf>).

¹⁵Email from Office of Congressional Affairs, U.S. Customs and Border Protection, to Senate Committee on Homeland Security and Governmental Affairs Majority Staff (Feb. 11, 2022).

¹⁶*Id.*

¹⁷U.S. Customs and Border Protection, *CTPAT Validation Process* (<https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/validation>) (accessed Dec. 9, 2021).

¹⁸Email from Office of Congressional Affairs, U.S. Customs and Border Protection, to Senate Committee on Homeland Security and Governmental Affairs Majority Staff (Feb. 11, 2022).

During the business meeting, a substitute amendment was offered by Senator Carper that added asset-based 3PLs in the pilot program, as well as a requirement for GAO to assess the effectiveness of the CTPAT program. The Carper Substitute Amendment was adopted by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present. The Committee ordered the bill, as amended, reported favorably by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the name of the bill as the “Customs Trade Partnership Against Terrorism Pilot Program Act of 2021” or the “CTPAT Pilot Program Act of 2021.”

Section 2. Definitions

This section defines the terms “appropriate congressional committees” and “CTPAT.”

Section 3. Pilot program on participation of third-party logistics providers in CTPAT

Subsection (a) requires the DHS Secretary to carry out a pilot program to assess whether allowing entities described in subsection (b) to participate in CTPAT would enhance port security, combat terrorism, prevent supply chain security breaches, or otherwise meet the goals of CTPAT. This subsection also requires the DHS Secretary to publish a Federal Register notice within a year of this legislation’s enactment specifying the requirements of the pilot program.

Subsection (b) provides descriptions of non-asset-based and asset-based third-party logistics providers that are entities eligible to participate in the pilot program described in subsection (a).

Subsection (c) requires the DHS Secretary to ensure that no more than 10 non-asset-based third-party logistics providers and no more than 10 asset-based third-party logistics providers may participate in the pilot program. The subsection also requires that participation in the program to be voluntary, and that the program shall continue for at least one year after the Secretary publishes the required Federal Register notice, and shall not continue five years after that date.

Subsection (d) requires the DHS Secretary to submit a report to appropriate congressional committees on the findings and recommendations from the pilot program concerning the participation in CTPAT of entities described in subsection (b), including an assessment of participation by those entities.

Section 4. Report on effectiveness of CTPAT

Subsection (a) requires the Comptroller General to submit a report assessing the effectiveness of CTPAT to appropriate congressional committees one year after the date of enactment of this bill.

Subsection (b) requires the report to include: (1) an analysis of CBP cargo supply chain security incidents relating to criminal ac-

tivity involving CTPAT participants versus non-participants over the past five years; (2) an analysis of causes for suspension and removal actions of CTPAT participants as a result of security incidents over the past five years; (3) an analysis of the number of active CTPAT participants with one or multiple security incidents while maintaining membership in the program; and (4) recommendations to the CBP Commissioner for improvements to the CTPAT program to increase prevention of cargo supply chain security incidents of participants.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 22, 2021.

Hon. GARY PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2322, the CTPAT Pilot Program Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lindsay Wylie.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2322, CTPAT Pilot Program Act of 2021			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 3, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2322 would require the Department of Homeland Security (DHS) to carry out a five-year pilot program to include certain third-party logistics providers in the customs trade partnership against terrorism (CTPAT) program. CTPAT is a voluntary program that encourages entities involved in international trade to cooperate with Customs and Border Protection (CBP) to strengthen international supply chains, improve border security, and facilitate the movement of secure cargo through the supply chain.

The bill would require CBP to publish participation requirements for the pilot program in the Federal Register within one year of the bill's enactment and submit a report to the Congress on its findings about the pilot program six months after it ends. S. 2322 also would require the Government Accountability Office (GAO) to report to the Congress on the effectiveness of the CTPAT program within one year.

Using information from the agency, CBO estimates that any new activities required under S. 2322 would not require substantial action by DHS and would cost less than \$500,000 over the 2022–2026 period. Furthermore, based on the cost of similar activities, CBO estimates the cost to GAO of producing the report would be less than \$500,000 over the 2022–2026 period. Taken together, CBO estimates implementing the bill would cost \$1 million over the 2022–2026 period. All spending under the bill would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI

of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

