

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1814.)

REFERENCES IN TEXT

Act of March 26, 1934, referred to in subsec. (f), is act Mar. 26, 1934, ch. 90, 48 Stat. 500, as amended, known as the Reconstruction Finance Corporation Exports Resolution, which is classified to section 1241-1 of the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 53104, 53105, 53106 of this title.

§ 53108. Regulatory relief

(a) OPERATION IN FOREIGN COMMERCE.—A contractor for a vessel included in an operating agreement under this chapter may operate the vessel in the foreign commerce of the United States without restriction.

(b) OTHER RESTRICTIONS.—The restrictions of section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)) concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payments for operation of that vessel under an operating agreement under this chapter.

(c) TELECOMMUNICATIONS EQUIPMENT.—The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an operating agreement under this chapter shall be deemed to satisfy all Federal Communications Commission equipment certification requirements, if—

(1) such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) that country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) at the end of its useful life, such equipment will be replaced with equipment that meets Federal Communications Commission equipment certification standards.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1816.)

§ 53109. Special rule regarding age of participating fleet vessel

Any age restriction under section 53102(b)(3) or 53106(c)(3) shall not apply to a participating fleet vessel during the 30-month period beginning on the date the vessel begins operating under an operating agreement under this title, if the Secretary determines that the contractor for the vessel has entered into an arrangement to obtain and operate under the operating agreement for the participating fleet vessel a replacement vessel that, upon commencement of such operation, will be eligible to be included in the Fleet under section 53102(b).

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1817.)

§ 53110. Regulations

The Secretary and the Secretary of Defense may each prescribe rules as necessary to carry out their respective responsibilities under this chapter.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1817.)

INTERIM RULES

Pub. L. 108-136, div. C, title XXXV, §3533, Nov. 24, 2003, 117 Stat. 1818, provided that: “The Secretary of Transportation and the Secretary of Defense may each prescribe interim rules necessary to carry out their respective responsibilities under this subtitle [subtitle C (§§3531-3537) of title XXXV of div. C of Pub. L. 108-136, enacting this chapter, amending section 12102 of this title and sections 808 and 1162 of the Appendix to this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, enacting provisions set out as a note under section 53101 of this title, and amending provisions set out as a note under section 1187 of the Appendix to this title] and the amendments made by this subtitle. For this purpose, the Secretaries are excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this section that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subtitle [see Effective Date note set out under section 53101 of this title].”

§ 53111. Authorization of appropriations

There are authorized to be appropriated for payments under section 53106, to remain available until expended—

- (1) \$156,000,000 for each of fiscal years 2006, 2007, and 2008;
(2) \$174,000,000 for each of fiscal years 2009, 2010, and 2011; and
(3) \$186,000,000 for each fiscal year thereafter through fiscal year 2015.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1817.)

Subtitle VI—Miscellaneous

Chap. 701. Port Security Sec. 70101

CHAPTER 701—PORT SECURITY

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§ 70101. Definitions

For the purpose of this chapter:

1 So in original. Does not conform to section catchline.

(1) The term “Area Maritime Transportation Security Plan” means an Area Maritime Transportation Security Plan prepared under section 70103(b).

(2) The term “facility” means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.

(3) The term “National Maritime Transportation Security Plan” means the National Maritime Transportation Security Plan prepared and published under section 70103(a).

(4) The term “owner or operator” means—

(A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel; and

(B) in the case of a facility, any person owning, leasing, or operating such facility.

(5) The term “Secretary” means the Secretary of the department in which the Coast Guard is operating.

(6) The term “transportation security incident” means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2068.)

REGULATIONS

Pub. L. 107-295, title I, §102(d), Nov. 25, 2002, 116 Stat. 2084, provided that:

“(1) INTERIM FINAL RULE AUTHORITY.—The Secretary shall issue an interim final rule as a temporary regulation implementing this section [enacting this subtitle and provisions set out as notes under sections 70104 and 70114 of this title] (including the amendments made by this section) as soon as practicable after the date of enactment of this section [Nov. 25, 2002], without regard to the provisions of chapter 5 of title 5, United States Code. All regulations prescribed under the authority of this subsection that are not earlier superseded by final regulations shall expire not later than 1 year after the date of enactment of this Act [Nov. 25, 2002].

“(2) INITIATION OF RULEMAKING.—The Secretary may initiate a rulemaking to implement this section (including the amendments made by this section) as soon as practicable after the date of enactment of this section. The final rule issued pursuant to that rulemaking may supersede the interim final rule promulgated under this subsection.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FINDINGS

Pub. L. 107-295, title I, §101, Nov. 25, 2002, 116 Stat. 2066, provided that:

“The Congress makes the following findings:

“(1) There are 361 public ports in the United States that are an integral part of our Nation’s commerce.

“(2) United States ports handle over 95 percent of United States overseas trade. The total volume of goods imported and exported through ports is expected to more than double over the next 20 years.

“(3) The variety of trade and commerce carried out at ports includes bulk cargo, containerized cargo,

passenger transport and tourism, and intermodal transportation systems that are complex to secure.

“(4) The United States is increasingly dependent on imported energy for a substantial share of its energy supply, and a disruption of that share of supply would seriously harm consumers and our economy.

“(5) The top 50 ports in the United States account for about 90 percent of all the cargo tonnage. Twenty-five United States ports account for 98 percent of all container shipments. Cruise ships visiting foreign destinations embark from at least 16 ports. Ferries in the United States transport 113,000,000 passengers and 32,000,000 vehicles per year.

“(6) Ports often are a major locus of Federal crime, including drug trafficking, cargo theft, and smuggling of contraband and aliens.

“(7) Ports are often very open and exposed and are susceptible to large scale acts of terrorism that could cause a large loss of life or economic disruption.

“(8) Current inspection levels of containerized cargo are insufficient to counter potential security risks. Technology is currently not adequately deployed to allow for the nonintrusive inspection of containerized cargo.

“(9) The cruise ship industry poses a special risk from a security perspective.

“(10) Securing entry points and other areas of port facilities and examining or inspecting containers would increase security at United States ports.

“(11) Biometric identification procedures for individuals having access to secure areas in port facilities are important tools to deter and prevent port cargo crimes, smuggling, and terrorist actions.

“(12) United States ports are international boundaries that—

“(A) are particularly vulnerable to breaches in security;

“(B) may present weaknesses in the ability of the United States to realize its national security objectives; and

“(C) may serve as a vector or target for terrorist attacks aimed at the United States.

“(13) It is in the best interests of the United States—

“(A) to have a free flow of interstate and foreign commerce and to ensure the efficient movement of cargo;

“(B) to increase United States port security by establishing improving communication among law enforcement officials responsible for port security;

“(C) to formulate requirements for physical port security, recognizing the different character and nature of United States port facilities, and to require the establishment of security programs at port facilities;

“(D) to provide financial assistance to help the States and the private sector to increase physical security of United States ports;

“(E) to invest in long-term technology to facilitate the private sector development of technology that will assist in the nonintrusive timely detection of crime or potential crime at United States ports;

“(F) to increase intelligence collection on cargo and intermodal movements to address areas of potential threat to safety and security; and

“(G) to promote private sector procedures that provide for in-transit visibility and support law enforcement efforts directed at managing the security risks of cargo shipments.

“(14) On April 27, 1999, the President established the Interagency Commission on Crime and Security in United States Ports to undertake a comprehensive study of the nature and extent of the problem of crime in our ports, as well as the ways in which governments at all levels are responding. The Commission concluded that frequent crimes in ports include drug smuggling, illegal car exports, fraud, and cargo theft. Internal conspiracies are an issue at many ports and contribute to Federal crime. Criminal orga-

nizations are exploiting weak security at ports to commit a wide range of cargo crimes. Intelligence and information sharing among law enforcement agencies needs to be improved and coordinated at many ports. A lack of minimum physical and personnel security standards at ports and related facilities leaves many ports and port users very vulnerable. Access to ports and operations within ports is often uncontrolled. Security-related and detection-related equipment, such as small boats, cameras, large-scale x-ray machines, and vessel tracking devices, are lacking at many ports.

“(15) The International Maritime Organization and other similar international organizations are currently developing a new maritime security system that contains the essential elements for enhancing global maritime security. Therefore, it is in the best interests of the United States to implement new international instruments that establish such a system.”

MARITIME SECURITY PROFESSIONAL TRAINING

Pub. L. 107-295, title I, §109, Nov. 25, 2002, 116 Stat. 2090, provided that:

“(a) IN GENERAL.—

“(1) DEVELOPMENT OF STANDARDS.—Not later than 6 months after the date of enactment of this Act [Nov. 25, 2002], the Secretary of Transportation shall develop standards and curriculum to allow for the training and certification of maritime security professionals. In developing these standards and curriculum, the Secretary shall consult with the National Maritime Security Advisory Committee established under section 70112 of title 46, United States Code, as amended by this Act.

“(2) SECRETARY TO CONSULT ON STANDARDS.—In developing standards under this section, the Secretary may, without regard to the Federal Advisory Committee Act (5 U.S.C. App.), consult with the Federal Law Enforcement Training Center, the United States Merchant Marine Academy’s Global Maritime and Transportation School, the Maritime Security Council, the International Association of Airport and Port Police, the National Cargo Security Council, and any other Federal, State, or local government or law enforcement agency or private organization or individual determined by the Secretary to have pertinent expertise.

“(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include the following elements:

“(1) The training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures, including, as appropriate, recommendations for incorporating a background check process for personnel trained and certified in foreign ports.

“(2) The training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment.

“(3) The provision of off-site training and certification courses and certified personnel at United States and foreign ports used by United States-flagged vessels, or by foreign-flagged vessels with United States citizens as passengers or crewmembers, to develop and enhance security awareness and practices.

“(c) TRAINING PROVIDED TO LAW ENFORCEMENT AND SECURITY PERSONNEL.—

“(1) IN GENERAL.—The Secretary is authorized to make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by vessels with United States citizens as passengers or crewmembers.

“(2) ACADEMIES AND SCHOOLS.—The Secretary may provide training under this section at—

“(A) each of the 6 State maritime academies;

“(B) the United States Merchant Marine Academy;

“(C) the Appalachian Transportation Institute; and

“(D) other security training schools in the United States.

“(d) USE OF CONTRACT RESOURCES.—The Secretary may employ Federal and contract resources to train and certify maritime security professionals in accordance with the standards and curriculum developed under this Act [see Tables for classification].

“(e) ANNUAL REPORT.—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$5,500,000 for each of fiscal years 2003 through 2008.”

[For transfer of functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center of the Department of the Treasury to the Secretary of Homeland Security, and for treatment of related references, see sections 203(4), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

REPORT ON TRAINING CENTER

Pub. L. 107-295, title I, §110(b), Nov. 25, 2002, 116 Stat. 2091, provided that: “The Commandant of the United States Coast Guard, in conjunction with the Secretary of the Navy, shall submit to Congress a report, at the time they submit their fiscal year 2005 budget, on the life cycle costs and benefits of creating a Center for Coastal and Maritime Security. The purpose of the Center would be to provide an integrated training complex to prevent and mitigate terrorist threats against coastal and maritime assets of the United States, including ports, harbors, ships, dams, reservoirs, and transport nodes.”

REPORT ON FOREIGN-FLAG VESSELS

Pub. L. 107-295, title I, §112, Nov. 25, 2002, 116 Stat. 2092, provided that: “Within 6 months after the date of enactment of this Act [Nov. 25, 2002] and every year thereafter, the Secretary of the department in which the Coast Guard is operating, in consultation with the Secretary of State, shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives that lists the following information:

“(1) A list of all nations whose flag vessels have entered United States ports in the previous year.

“(2) Of the nations on that list, a separate list of those nations—

“(A) whose registered flag vessels appear as Priority III or higher on the Boarding Priority Matrix maintained by the Coast Guard;

“(B) that have presented, or whose flag vessels have presented, false, intentionally incomplete, or fraudulent information to the United States concerning passenger or cargo manifests, crew identity or qualifications, or registration or classification of their flag vessels;

“(C) whose vessel registration or classification procedures have been found by the Secretary to be noncompliant with international classifications or do not exercise adequate control over safety and security concerns; or

“(D) whose laws or regulations are not sufficient to allow tracking of ownership and registration histories of registered flag vessels.

“(3) Actions taken by the United States, whether through domestic action or international negotia-

tion, including agreements at the International Maritime Organization under section 902 of the International Maritime and Port Security Act (46 U.S.C. App. 1801), to improve transparency and security of vessel registration procedures in nations on the list under paragraph (2).

“(4) Recommendations for legislative or other actions needed to improve security of United States ports against potential threats posed by flag vessels of nations named in paragraph (2).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 1226.

§ 70102. United States facility and vessel vulnerability assessments

(a) INITIAL ASSESSMENTS.—The Secretary shall conduct an assessment of vessel types and United States facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that pose a high risk of being involved in a transportation security incident.

(b) FACILITY AND VESSEL ASSESSMENTS.—(1) Based on the information gathered under subsection (a) of this section, the Secretary shall conduct a detailed vulnerability assessment of the facilities and vessels that may be involved in a transportation security incident. The vulnerability assessment shall include the following:

(A) Identification and evaluation of critical assets and infrastructures.

(B) Identification of the threats to those assets and infrastructures.

(C) Identification of weaknesses in physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, contingency response, and other areas as determined by the Secretary.

(2) Upon completion of an assessment under this subsection for a facility or vessel, the Secretary shall provide the owner or operator with a copy of the vulnerability assessment for that facility or vessel.

(3) The Secretary shall update each vulnerability assessment conducted under this section at least every 5 years.

(4) In lieu of conducting a facility or vessel vulnerability assessment under paragraph (1), the Secretary may accept an alternative assessment conducted by or on behalf of the owner or operator of the facility or vessel if the Secretary determines that the alternative assessment includes the matters required under paragraph (1).

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2068.)

§ 70103. Maritime transportation security plans

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—(1) The Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

(B) Identification of security resources.

(C) Procedures and techniques to be employed in deterring a national transportation security incident.

(D) Establishment of procedures for the coordination of activities of—

(i) Coast Guard maritime security teams established under this chapter; and

(ii) Federal Maritime Security Coordinators required under this chapter.

(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

(G) Designation of—

(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

(I) A recognition of certified systems of intermodal transportation.

(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.

(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

(4) Actions by Federal agencies to deter and minimize damage from a transportation security incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

(b) AREA MARITIME TRANSPORTATION SECURITY PLANS.—(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

(2) The Area Maritime Transportation Security Plan for an area shall—

(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

(E) include any other information the Secretary requires; and

(F) be updated at least every 5 years by the Federal Maritime Security Coordinator.

(3) The Secretary shall—

(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

(B) periodically review previously approved Area Maritime Transportation Security Plans.

(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

(c) VESSEL AND FACILITY SECURITY PLANS.—(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

(2) The vessels and facilities referred to in paragraph (1)—

(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

(B) do not include any vessel or facility owned or operated by the Department of Defense.

(3) A security plan required under this subsection shall—

(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate

Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);

(C) include provisions for—

(i) establishing and maintaining physical security, passenger and cargo security, and personnel security;

(ii) establishing and controlling access to secure areas of the vessel or facility;

(iii) procedural security policies;

(iv) communications systems; and

(v) other security systems;

(D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;

(E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;

(F) be updated at least every 5 years; and

(G) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility.

(4) The Secretary shall—

(A) promptly review each such plan;

(B) require amendments to any plan that does not meet the requirements of this subsection;

(C) approve any plan that meets the requirements of this subsection; and

(D) review each plan periodically thereafter.

(5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—

(A) the plan has been approved by the Secretary; and

(B) the vessel or facility is operating in compliance with the plan.

(6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.

(7) The Secretary shall require each owner or operator of a vessel or facility located within or adjacent to waters subject to the jurisdiction of the United States to implement any necessary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

(d) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

- (1) facility security plans, vessel security plans, and port vulnerability assessments; and
- (2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2069.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REVISION OF PORT SECURITY PLANNING GUIDE

Pub. L. 107-295, title I, §113, Nov. 25, 2002, 116 Stat. 2093, provided that: “The Secretary of Transportation, acting through the Maritime Administration and after consultation with the National Maritime Security Advisory Committee and the Coast Guard, shall publish a revised version of the document entitled ‘Port Security: A National Planning Guide’, incorporating the requirements prescribed under chapter 701 of title 46, United States Code, as amended by this Act, within 3 years after the date of enactment of this Act [Nov. 25, 2002], and make that revised document available on the Internet.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70101, 70104, 70105, 70106, 70112 of this title.

§ 70104. Transportation security incident response

(a) FACILITY AND VESSEL RESPONSE PLANS.—The Secretary shall—

- (1) establish security incident response plans for vessels and facilities that may be involved in a transportation security incident; and
- (2) make those plans available to the Director of the Federal Emergency Management Agency for inclusion in the Director’s response plan for United States ports and waterways.

(b) CONTENTS.—Response plans developed under subsection (a) shall provide a comprehensive response to an emergency, including notifying and coordinating with local, State, and Federal authorities, including the Director of the Federal Emergency Management Agency, securing the facility or vessel, and evacuating facility and vessel personnel.

(c) INCLUSION IN SECURITY PLAN.—A response plan required under this subsection for a vessel or facility may be included in the security plan prepared under section 70103(c).

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2072.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Fed-

eral Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEADLINE

Pub. L. 107-295, title I, §102(c), Nov. 25, 2002, 116 Stat. 2084, provided that: “The Secretary shall establish the plans required under section 70104(a)(1) of title 46, United States Code, as enacted by this Act, before April 1, 2003.”

§ 70105. Transportation security cards

(a) PROHIBITION.—(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the vessel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

(b) ISSUANCE OF CARDS.—(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary decides that the individual poses a security risk under subsection (c) warranting denial of the card.

(2) This subsection applies to—

(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title;

(C) a vessel pilot;

(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel;

(E) an individual with access to security sensitive information as determined by the Secretary; and

(F) other individuals engaged in port security activities as determined by the Secretary.

(c) DETERMINATION OF TERRORISM SECURITY RISK.—(1) An individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

(A) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) otherwise poses a terrorism security risk to the United States.

(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—

(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and

(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

(3) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card that includes notice and an opportunity for a hearing.

(4) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

(d) BACKGROUND RECORDS CHECK.—(1) On request of the Secretary, the Attorney General shall—

(A) conduct a background records check regarding the individual; and

(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

(2) A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases or other appropriate means.

(D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.

(e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with

other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

(f) DEFINITION.—In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2073.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (c)(1)(C), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70107 of this title.

§ 70106. Maritime safety and security teams

(a) IN GENERAL.—To enhance the domestic maritime security capability of the United States, the Secretary shall establish such maritime safety and security teams as are needed to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with the transportation security plans developed under section 70103.

(b) MISSION.—Each maritime safety and security team shall be trained, equipped, and capable of being employed to—

(1) deter, protect against, and rapidly respond to threats of maritime terrorism;

(2) enforce moving or fixed safety or security zones established pursuant to law;

(3) conduct high speed intercepts;

(4) board, search, and seize any article or thing on or at, respectively, a vessel or facility found to present a risk to the vessel or facility, or to a port;

(5) rapidly deploy to supplement United States armed forces domestically or overseas;

(6) respond to criminal or terrorist acts within a port so as to minimize, insofar as possible, the disruption caused by such acts;

(7) assist with facility vulnerability assessments required under this chapter; and

(8) carry out other security missions as are assigned to it by the Secretary.

(c) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, each maritime safety and security team shall coordinate its activities with other Federal, State, and local law enforcement and emergency response agencies.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2074.)

§ 70107. Grants

(a) IN GENERAL.—The Secretary of Transportation, acting through the Maritime Administrator, shall establish a grant program for mak-

ing a fair and equitable allocation among port authorities, facility operators, and State and local agencies required to provide security services of funds to implement Area Maritime Transportation Security Plans and facility security plans. The program shall take into account national economic and strategic defense considerations.

(b) **ELIGIBLE COSTS.**—The following costs of funding the correction of Coast Guard identified vulnerabilities in port security and ensuring compliance with Area Maritime Transportation Security Plans and facility security plans are eligible to be funded:

(1) Salary, benefits, overtime compensation, retirement contributions, and other costs of additional Coast Guard mandated security personnel.

(2) The cost of acquisition, operation, and maintenance of security equipment or facilities to be used for security monitoring and recording, security gates and fencing, marine barriers for designated security zones, security-related lighting systems, remote surveillance, concealed video systems, security vessels, and other security-related infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.

(3) The cost of screening equipment, including equipment that detects weapons of mass destruction and conventional explosives, and of testing and evaluating such equipment, to certify secure systems of transportation.

(4) The cost of conducting vulnerability assessments to evaluate and make recommendations with respect to security.

(c) **MATCHING REQUIREMENTS.**—

(1) **75-PERCENT FEDERAL FUNDING.**—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) **EXCEPTIONS.**—

(A) **SMALL PROJECTS.**—There are no matching requirements for grants under subsection (a) for projects costing not more than \$25,000.

(B) **HIGHER LEVEL OF SUPPORT REQUIRED.**—If the Secretary of Transportation determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

(d) **COORDINATION AND COOPERATION AGREEMENTS.**—The Secretary of Transportation shall ensure that projects paid for, or the costs of which are reimbursed, under this section within any area or port are coordinated with other projects, and may require cooperative agreements among users of the port and port facilities with respect to projects funded under this section.

(e) **ADMINISTRATION.**—

(1) **IN GENERAL.**—The program shall require eligible port authorities, facility operators, and State and local agencies required to provide security services, to submit an applica-

tion, at such time, in such form, and containing such information and assurances as the Secretary of Transportation may require, and shall include appropriate application, review, and delivery mechanisms.

(2) **MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.**—Each application for payment or reimbursement of eligible costs shall include, at a minimum, the following:

(A) A copy of the applicable Area Maritime Transportation Security Plan or facility security plan.

(B) A comprehensive description of the need for the project, and a statement of the project's relationship to the applicable Area Maritime Transportation Security Plan or facility security plan.

(C) A determination by the Captain of the Port that the security project addresses or corrects Coast Guard identified vulnerabilities in security and ensures compliance with Area Maritime Transportation Security Plans and facility security plans.

(3) **PROCEDURAL SAFEGUARDS.**—The Secretary of Transportation shall by regulation establish appropriate accounting, reporting, and review procedures to ensure that amounts paid or reimbursed under this section are used for the purposes for which they were made available, all expenditures are properly accounted for, and amounts not used for such purposes and amounts not obligated or expended are recovered.

(4) **PROJECT APPROVAL REQUIRED.**—The Secretary of Transportation may approve an application for the payment or reimbursement of costs under this section only if the Secretary of Transportation is satisfied that—

(A) the project is consistent with Coast Guard vulnerability assessments and ensures compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) enough money is available to pay the project costs that will not be reimbursed by the United States Government under this section;

(C) the project will be completed without unreasonable delay; and

(D) the recipient has authority to carry out the project as proposed.

(f) **AUDITS AND EXAMINATIONS.**—A recipient of amounts made available under this section shall keep such records as the Secretary of Transportation may require, and make them available for review and audit by the Secretary of Transportation, the Comptroller General of the United States, or the Inspector General of the Department of Transportation.

(g) **REPORTS ON SECURITY FUNDING AND COMPLIANCE.**—

(1) **INITIAL REPORT.**—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit an unclassified report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, that—

(A) includes a funding proposal and rationale to fund the correction of Coast Guard

identified vulnerabilities in port security and to help ensure compliance with Area Maritime Transportation Security Plans and facility security plans for fiscal years 2003 through 2008; and

(B) includes projected funding proposals for fiscal years 2003 through 2008 for the following security programs:

- (i) The Sea Marshall program.
- (ii) The Automated Identification System and a system of polling vessels on entry into United States waters.
- (iii) The maritime intelligence requirements in this Act.
- (iv) The issuance of transportation security cards required by section 70105.
- (v) The program of certifying secure systems of transportation.

(2) OTHER EXPENDITURES.—The Secretary of Transportation shall, as part of the report required by paragraph (1) report, in coordination with the Commissioner of Customs, on projected expenditures of screening and detection equipment and on cargo security programs over fiscal years 2003 through 2008.

(3) ANNUAL REPORTS.—Annually, beginning 1 year after transmittal of the report required by paragraph (1) until October 1, 2009, the Secretary of Transportation shall transmit an unclassified annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, on progress in achieving compliance with the correction of Coast Guard identified vulnerabilities in port security and compliance with Area Maritime Transportation Security Plans and facility security plans that—

(A) identifies any modifications necessary in funding to ensure the correction of Coast Guard identified vulnerabilities and ensure compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) includes an assessment of progress in implementing the grant program established by subsection (a);

(C) includes any recommendations the Secretary may make to improve these programs; and

(D) with respect to a port selected by the Secretary of Transportation, describes progress and enhancements of applicable Area Maritime Transportation Security Plans and facility security plans and how the Maritime Transportation Security Act of 2002 has improved security at that port.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for each of fiscal years 2003 through 2008 such sums as are necessary to carry out subsections (a) through (g).

(i) RESEARCH AND DEVELOPMENT GRANTS FOR PORT SECURITY.—

(1) AUTHORITY.—The Secretary of Transportation is authorized to establish and administer a grant program for the support of research and development of technologies that can be used to secure the ports of the United States. The Secretary may award grants under

the program to national laboratories, private nonprofit organizations, institutions of higher education, and other entities. The Secretary shall establish competitive procedures for awarding grants under the program and criteria for grant applications and eligibility.

(2) USE OF FUNDS.—Grants awarded pursuant to paragraph (1) shall be used to develop—

(A) methods to increase the ability of the Customs Service to inspect, or target for inspection, merchandise carried on any vessel that will arrive or has arrived at any port or place in the United States;

(B) equipment to accurately detect explosives, or chemical and biological agents, that could be used to commit terrorist acts against the United States;

(C) equipment to accurately detect nuclear materials, including scintillation-based detection equipment capable of attachment to spreaders to signal the presence of nuclear materials during the unloading of containers;

(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including “smart sensors” that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit such information to the appropriate authorities at a remote location;

(E) tools to mitigate the consequences of a terrorist act at a port of the United States, including a network of sensors to predict the dispersion of radiological, chemical, or biological agents that might be intentionally or accidentally released; or

(F) applications to apply existing technologies from other industries to increase overall port security.

(3) ADMINISTRATIVE PROVISIONS.—

(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary of Transportation shall coordinate with other Federal agencies to ensure the grant will not be used for research and development that is already being conducted with Federal funding.

(B) ACCOUNTING.—The Secretary of Transportation shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

(C) RECORDKEEPING.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the Department of Transportation and the Secretary of Transportation for audit and examination.

(D) ANNUAL REVIEW AND REPORT.—The Inspector General of the Department of Transportation shall annually review the program established under paragraph (1) to ensure that the expenditures and obligations of funds are consistent with the purposes for

which they are provided and report the findings to Congress.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$15,000,000 for each of the fiscal years 2003 through 2008 to carry out the provisions of this subsection.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2075.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (g)(1), probably means the date of enactment of Pub. L. 107–295, which enacted this section and was approved Nov. 25, 2002.

This Act, referred to in subsec. (g)(1)(B)(iii), probably means the Maritime Transportation Security Act of 2002, Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064, which enacted this subtitle. For complete classification of this Act to the Code, see Tables.

The Maritime Transportation Security Act of 2002, referred to in subsec. (g)(3)(D), is Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 70108. Foreign port assessment

(a) **IN GENERAL.**—The Secretary shall assess the effectiveness of the antiterrorism measures maintained at—

- (1) a foreign port—
 - (A) served by vessels documented under chapter 121 of this title; or
 - (B) from which foreign vessels depart on a voyage to the United States; and
- (2) any other foreign port the Secretary believes poses a security risk to international maritime commerce.

(b) **PROCEDURES.**—In conducting an assessment under subsection (a), the Secretary shall assess the effectiveness of—

- (1) screening of containerized and other cargo and baggage;
- (2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;
- (3) additional security on board vessels;
- (4) licensing or certification of compliance with appropriate security standards;
- (5) the security management program of the foreign port; and
- (6) other appropriate measures to deter terrorism against the United States.

(c) **CONSULTATION.**—In carrying out this section, the Secretary shall consult with—

- (1) the Secretary of Defense and the Secretary of State—
 - (A) on the terrorist threat that exists in each country involved; and
 - (B) to identify foreign ports that pose a high risk of introducing terrorism to international maritime commerce;
- (2) the Secretary of the Treasury;
- (3) appropriate authorities of foreign governments; and
- (4) operators of vessels.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2079.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70109, 70110 of this title.

§ 70109. Notifying foreign authorities

(a) **IN GENERAL.**—If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to improve the antiterrorism measures in use at the port.

(b) **TRAINING PROGRAM.**—The Secretary, in cooperation with the Secretary of State, shall operate a port security training program for ports in foreign countries that are found under section 70108 to lack effective antiterrorism measures.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2080.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70110 of this title.

§ 70110. Actions when foreign ports not maintaining effective antiterrorism measures

(a) **IN GENERAL.**—If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, the Secretary—

- (1) may prescribe conditions of entry into the United States for any vessel arriving from that port, or any vessel carrying cargo or passengers originating from or transshipped through that port;
- (2) may deny entry into the United States to any vessel that does not meet such conditions; and
- (3) shall provide public notice for passengers of the ineffective antiterrorism measures.

(b) **EFFECTIVE DATE FOR SANCTIONS.**—Any action taken by the Secretary under subsection (a) for a particular port shall take effect—

- (1) 90 days after the government of the foreign country with jurisdiction over or control of that port is notified under section 70109 unless the Secretary finds that the government has brought the antiterrorism measures at the port up to the security level the Secretary used in making an assessment under section 70108 before the end of that 90-day period; or
- (2) immediately upon the finding of the Secretary under subsection (a) if the Secretary

finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port.

(c) STATE DEPARTMENT TO BE NOTIFIED.—The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain effective antiterrorism measures.

(d) ACTION CANCELED.—An action required under this section is no longer required if the Secretary decides that effective antiterrorism measures are maintained at the port.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2080.)

§ 70111. Enhanced crewmember identification

(a) REQUIREMENT.—The Secretary, in consultation with the Attorney General and the Secretary of State, shall require crewmembers on vessels calling at United States ports to carry and present on demand any identification that the Secretary decides is necessary.

(b) FORMS AND PROCESS.—The Secretary, in consultation with the Attorney General and the Secretary of State, shall establish the proper forms and process that shall be used for identification and verification of crewmembers.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2080.)

INTERNATIONAL SEAFARER IDENTIFICATION

Pub. L. 107–295, title I, §103, Nov. 25, 2002, 116 Stat. 2084, provided that:

“(a) TREATY INITIATIVE.—The Secretary of the department in which the Coast Guard is operating is encouraged to negotiate an international agreement, or an amendment to an international agreement, that provides for a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial waters, of the United States or such other country.

“(b) LEGISLATIVE ALTERNATIVE.—If the Secretary fails to complete a negotiation process undertaken under subsection (a) within 24 months after the date of enactment of this Act [Nov. 25, 2002], the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a draft of legislation that, if enacted, would establish a uniform, comprehensive system of identification for seafarers.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 70112. Maritime Security Advisory Committees

(a) ESTABLISHMENT OF COMMITTEES.—(1) The Secretary shall establish a National Maritime Security Advisory Committee. The Committee—

(A) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to national maritime security matters;

(B) may make available to the Congress recommendations that the Committee makes to the Secretary; and

(C) shall meet at the call of—

(i) the Secretary, who shall call such a meeting at least once during each calendar year; or

(ii) a majority of the Committee.

(2)(A) The Secretary may—

(i) establish an Area Maritime Security Advisory Committee for any port area of the United States; and

(ii) request such a committee to review the proposed Area Maritime Transportation Security Plan developed under section 70103(b) and make recommendations to the Secretary that the Committee considers appropriate.

(B) A committee established under this paragraph for an area—

(i) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to maritime security in that area;

(ii) may make available to the Congress recommendations that the committee makes to the Secretary; and

(iii) shall meet at the call of—

(I) the Secretary, who shall call such a meeting at least once during each calendar year; or

(II) a majority of the committee.

(b) MEMBERSHIP.—(1) Each of the committees established under subsection (a) shall consist of not less than 7 members appointed by the Secretary, each of whom has at least 5 years practical experience in maritime security operations.

(2) The term of each member shall be for a period of not more than 5 years, specified by the Secretary.

(3) Before appointing an individual to a position on such a committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the committee.

(4) The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—(1) Each committee established under subsection (a) shall elect 1 of its members as the Chairman and 1 of its members as the Vice Chairperson.

(2) The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman.

(d) OBSERVERS.—(1) The Secretary shall, and the head of any other interested Federal agency may, designate a representative to participate as an observer with the Committee.

(2) The Secretary's designated representative shall act as the executive secretary of the Committee and shall perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) CONSIDERATION OF VIEWS.—The Secretary shall consider the information, advice, and recommendations of the Committee in formulating policy regarding matters affecting maritime security.

(f) COMPENSATION AND EXPENSES.—(1) A member of a committee established under this sec-

tion, when attending meetings of the committee or when otherwise engaged in the business of the committee, is entitled to receive—

(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS-15 of the General Schedule under section 5332 of title 5 including travel time; and

(B) travel or transportation expenses under section 5703 of title 5.

(2) A member of such a committee shall not be considered to be an officer or employee of the United States for any purpose based on their receipt of any payment under this subsection.

(g) FACA; TERMINATION.—(1) The Federal Advisory Committee Act (5 U.S.C. App.)—

(A) applies to the National Maritime Security Advisory Committee established under this section, except that such committee terminates on September 30, 2008; and

(B) does not apply to Area Maritime Security Advisory Committees established under this section.

(2) Not later than September 30, 2006, each committee established under this section shall submit to the Congress its recommendation regarding whether the committee should be renewed and continued beyond the termination date.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2081.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsecs. (d)(2) and (g)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 70113. Maritime intelligence

(a) IN GENERAL.—The Secretary shall implement a system to collect, integrate, and analyze information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States, including information related to crew, passengers, cargo, and intermodal shipments.

(b) CONSULTATION.—In developing the information system under subsection (a), the Secretary shall consult with the Transportation Security Oversight Board and other departments and agencies, as appropriate.

(c) INFORMATION INTEGRATION.—To deter a transportation security incident, the Secretary may collect information from public and private entities to the extent that the information is not provided by other Federal departments and agencies.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2082.)

§ 70114. Automatic identification systems

(a) SYSTEM REQUIREMENTS.—(1) Subject to paragraph (2), the following vessels, while operating on the navigable waters of the United States, shall be equipped with and operate an automatic identification system under regulations prescribed by the Secretary:

(A) A self-propelled commercial vessel of at least 65 feet overall in length.

(B) A vessel carrying more than a number of passengers for hire determined by the Secretary.

(C) A towing vessel of more than 26 feet overall in length and 600 horsepower.

(D) Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.

(2) The Secretary may—

(A) exempt a vessel from paragraph (1) if the Secretary finds that an automatic identification system is not necessary for the safe navigation of the vessel on the waters on which the vessel operates; and

(B) waive the application of paragraph (1) with respect to operation of vessels on navigable waters of the United States specified by the Secretary if the Secretary finds that automatic identification systems are not needed for safe navigation on those waters.

(b) REGULATIONS.—The Secretary shall prescribe regulations implementing subsection (a), including requirements for the operation and maintenance of the automatic identification systems required under subsection (a).

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2082.)

EFFECTIVE DATE

Pub. L. 107-295, title I, §102(e), Nov. 25, 2002, 116 Stat. 2084, provided that:

“(1) SCHEDULE.—Section 70114 of title 46, United States Code, as enacted by this Act, shall apply as follows:

“(A) On and after January 1, 2003, to any vessel built after that date.

“(B) On and after July 1, 2003, to any vessel built before the date referred to in subparagraph (A) that is—

“(i) a passenger vessel required to carry a certificate under the International Convention for the Safety of Life at Sea, 1974 (SOLAS) [see 33 U.S.C. 1602 and notes thereunder];

“(ii) a tanker; or

“(iii) a towing vessel engaged in moving a tank vessel.

“(C) On and after December 31, 2004, to all other vessels built before the date referred to in subparagraph (A).

“(2) DEFINITION.—The terms in this subsection have the same meaning as those terms have under section 2101 of title 46, United States Code.”

§ 70115. Long-range vessel tracking system

The Secretary may develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology. The system shall be designed to provide the Secretary the capability of receiving information on vessel positions at interval positions appropriate to deter transportation security incidents. The Secretary may use existing maritime organizations to collect and monitor tracking information under the system.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2083.)

§ 70116. Secure systems of transportation

(a) IN GENERAL.—The Secretary, in consultation with the Transportation Security Oversight

Board, shall establish a program to evaluate and certify secure systems of international intermodal transportation.

(b) ELEMENTS OF PROGRAM.—The program shall include—

(1) establishing standards and procedures for screening and evaluating cargo prior to loading in a foreign port for shipment to the United States either directly or via a foreign port;

(2) establishing standards and procedures for securing cargo and monitoring that security while in transit;

(3) developing performance standards to enhance the physical security of shipping containers, including standards for seals and locks;

(4) establishing standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

(5) any other measures the Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2083.)

REPORT ON SECURE SYSTEM OF TRANSPORTATION PROGRAM

Pub. L. 107–295, title I, §110(c), Nov. 25, 2002, 116 Stat. 2092, provided that:

“Within 1 year after the secure system of transportation program is implemented under section 70116 of title 46, United States Code, as amended by this Act, the Secretary of the department in which the Coast Guard is operating shall transmit a report to the Senate Committees on Commerce, Science, and Transportation and Finance and the House of Representatives Committees on Transportation and Infrastructure and Ways and Means that—

“(1) evaluates the secure system of transportation program and its components;

“(2) states the Secretary’s view as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than requiring imported goods to clear customs under existing procedures and for the requirements of the National Maritime Security Plan for reopening of United States ports to commerce;

“(3) states the Secretary’s view as to the integrity of the procedures, technology, or systems evaluated as part of the program;

“(4) makes a recommendation with respect to whether the program, or any procedure, system, or technology should be incorporated in a nationwide system for preclearance of imports of waterborne goods and for the requirements of the National Maritime Security Plan for the reopening of United States ports to Commerce;

“(5) describes the impact of the program on staffing levels at the department in which the Coast Guard is operating, and the Customs Service; and

“(6) states the Secretary’s views as to whether there is a method by which the United States could validate foreign ports so that cargo from those ports is preapproved for entry into the United States and for the purpose of the requirements of the National Maritime Security Plan for the reopening of United States ports to commerce.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

PERFORMANCE STANDARDS

Pub. L. 107–295, title I, §111, Nov. 25, 2002, 116 Stat. 2092, provided that: “Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, in consultation with the Transportation Security Oversight Board, shall—

“(1) develop and maintain an antiterrorism cargo identification, tracking, and screening system for containerized cargo shipped to and from the United States either directly or via a foreign port; and

“(2) develop performance standards to enhance the physical security of shipping containers, including standards for seals and locks.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 70117. Civil penalty

Any person that violates this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2084.)