

Calendar No. 530

108th Congress }
2d Session }

SENATE

{ REPORT
{ 108-274

**MARITIME TRANSPORTATION SECURITY
ACT OF 2004**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

on

S. 2279



MAY 20, 2004.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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MARITIME TRANSPORTATION SECURITY ACT OF 2004

MAY 20, 2004.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2279]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2279) to amend title 49, United States Code, with respect to maritime transportation security, and for other purposes, 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.

PURPOSE OF THE BILL

The purpose of the bill is to build upon and enhance implementation of the Maritime Transportation Security Act of 2002 (P.L. 107-295), and to improve maritime transportation security.

BACKGROUND AND NEEDS

The Maritime Transportation Security Act of 2002, which was signed into law November 25, 2002, established the first Federal requirements for maritime transportation security; however, many of these requirements have yet to be developed or implemented. Such delays threaten potential maritime security enhancements. In particular, the lack of coordination and absence of established standards and goals have lead to confusion for the maritime industry as to what must be done to improve security and to whom to go with security questions. Confusion of this sort could lead to less cooperation from industry and ultimately to lax security. S. 2279, the Maritime Transportation Security Act of 2004, would provide further direction and clarification in achieving maritime transportation security objectives.

SUMMARY OF PROVISIONS

S. 2279 would build on the Maritime Transportation Security Act of 2002, improving coordination among agencies with a maritime role, and requiring the establishment of standards and goals in an effort to provide those in the maritime industry a better understanding of their responsibilities pertaining to security. The measure includes a number of report and security plan refinement requirements that would further clarify maritime transportation security objectives.

Specifically, the bill would impose *in rem* liability to secure payment of penalties and fines under the Act. Additionally, a vessel would be liable *in rem* for certain unpaid reimbursable costs, defined as costs incurred by any service provider, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, or other person to whom the management of the vessel at the port of supply is entrusted. Reimbursable costs could be incurred by any valid claimant for expenses incurred related to actions required by law enforcement in the handling of cargo, or certain actions required to be taken with respect to the vessel's crew.

The bill includes provisions to increase the security in waterside cargo areas, and ensure that cargo contents of imported marine cargo containers would be required to be removed from the pier or wharf within five days of entering a United States port, or removed if after five days it has not been cleared, and sent to a Federally regulated warehouse where the marine container would be opened to verify its contents. The bill also would require a report on the current policies and practices to secure the shipment of empty containers, with recommendations included whether additional regulations or legislation is necessary regarding empty containers.

The Secretary would be required to produce a report on a preliminary plan for coordinating, collecting, analyzing, and disseminating maritime information collected by Federal agencies on ships, cargo, crew members, and passengers. In part this would help bolster the information available pertaining to the crew, passengers, and cargoes carried on vessels operating in waters under the jurisdiction of the United States, and help increase the awareness of Federal, State, and private sector security personnel. Recommendations would be included pertaining to various potential improvements, including: co-locating agency personnel with similar expertise; the utilization of private sector resources; and the expansion of maritime information through cooperation with the Department of the Navy.

The Secretary would be required, within 180 days after enactment, to submit a report on the Department of Homeland Security's (DHS) cargo security programs, and provide recommendations on cargo security enhancements, and cargo security plans. Specifically, DHS would report on the Secure Systems of Transportation (SST) plan; the installation of radiation detectors at United States ports; non-intrusive inspection of marine cargo at foreign ports; and compliance with security standards programs. Importantly, with respect to the provision of the report on SST, an analysis of the feasibility of establishing a user fee is to be included in order to evaluate, certify, and validate secure systems of transpor-

tation, as is an analysis of the need and feasibility of establishing a system to inspect, monitor, and track intermodal shipping containers within the United States. The report also would contain a determination whether an international approach to established standards for SST is justified.

The bill would require the DHS Inspector General (DHS IG) to report to the Senate Committee on Commerce, Science, and Transportation (Committee or Commerce Committee) and the House of Representatives Committee on Transportation and Infrastructure evaluating the progress made by DHS in implementing its SST plan.

The DHS IG also would be required to evaluate the Department's cargo inspection targeting system for international intermodal cargo containers. This evaluation would be completed six months after date of enactment, and annually thereafter, to determine the system's effectiveness, the sources and quality of information, the reporting and analysis of statistics including the testing of targeting analysis, and the competence and training of employees to determine whether they are sufficiently capable to detect potential terrorist threats. Should the IG find the system lacking in any of the evaluated areas, the Secretary would be required to double the number of containers subjected to intrusive or non-intrusive inspection at United States ports or to be shipped to the United States from foreign ports.

Section five would require the Commandant of the United States Coast Guard to report to Congress, within 180 days after enactment, on the potential benefits of establishing joint operational centers for port security at certain United States seaports, like, and including, those already established in Norfolk, VA; Charleston, S.C.; and San Diego, CA.

Section six of the bill would rewrite the port security grant program to be established by the Undersecretary of Homeland Security for Border and Transportation Security, and be coordinated with the Director of the Office of Domestic Preparedness. The grant awards would be reviewed by the Federal Maritime Security Coordinator and the Maritime Administrator.

Section seven would require the Maritime Administrator, in coordination with the Secretary of State, to identify foreign assistance programs that could facilitate implementation of port security anti-terrorism measures in foreign countries. The section also would require the Secretary of DHS to issue a report on Caribbean Basin port security effectiveness, readiness, and additional resources necessary. It is expected that utilizing the foreign assistance budget in this fashion will ensure that those nations that could be in jeopardy of losing trading privileges with the United States because of security deficiencies could, in fact, continue to receive foreign assistance from the United States, as well as continue United States trade.

The Secretary of Transportation would be required, under section eight, to establish a curriculum to educate and instruct Federal and State officials on commercial maritime and intermodal transportation in order to facilitate performance of their security responsibilities.

Section nine rewrites the MTSA 2002 requirements for research and development to improve port security—including explosives,

chemical or biological detection equipment; nuclear or radiological detection; improved tags and seals; and tools to improve maritime area awareness. This would be done by the Director of the Science and Technology Directorate at DHS. There would be authorized \$35,000,000 for each fiscal year 2005 through 2009 to carry out pilot projects and implement technology at United States seaports related to these research and development (R&D) efforts. The Director would prepare a report annually on these efforts and indicate the amount of port-security related research being conducted by the Directorate, the process of coordination amongst DHS organizations working in port security, and a description of plans for field implementation.

The Secretary also would be required to identify all nuclear facilities in maritime areas. He would work in coordination with the Secretary of Energy to evaluate the security plans of each identified facility. The Secretaries would be required to address any deficiencies in security identified in their evaluations, and report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure Committee, and the House of Representatives Select Committee on Homeland Security in both a classified and redacted manner. The bill also would require criminal background checks of United States and foreign seafarers engaged in the transportation of nuclear materials.

Section 11 would require a report to include recommendations for harmonizing, combining, or coordinating requirements, procedures, and programs for conducting background checks on individuals engaged in transportation or transportation-related activities. A detailed time line for implementation of background checks at seaports, and recommendations for a waiver and appeals process also would be required. A report on the cruise ship industry security measures also would be required no later than 120 days after enactment.

Section 13 would require a report on the design of maritime security grant programs. To be included in the report are recommendations on whether grant programs should be discretionary or formula based, and whether the grant program should include requirements for ensuring that Federal funds will not be substituted for grantee funds. Also included would be targeting requirements that ensure funding is directed in a manner that reflects a national, risk-based perspective on priority needs, the fiscal capacity of recipients, and explicit analysis of the impact of minimum funding to small ports.

LEGISLATIVE HISTORY

S. 2279 was introduced on April 1, 2004, by Senator Hollings and cosponsored by Senators McCain and Breaux. The bill would improve upon Public Law 107-295, the Maritime Transportation Security Act of 2002, which was introduced as S. 1214 on July 20, 2001, by Senator Hollings and cosponsored by Senator Graham. That bill was similar to legislation introduced in the 106th Congress.

During the 106th Congress, in response to the findings of the Interagency Commission on Crime and Security in United States Seaports, Senators Hollings introduced S. 2965 on July 27, 2000. The bill was cosponsored by Senators Graham, Breaux, and

Cleland. On October 4, 2000, the Committee on Commerce, Science, and Transportation held an oversight hearing on seaport security and the recommendations of the Interagency Commission on Crime and Security in United States seaports. The Committee heard testimony from Senator Bob Graham, the Coast Guard, Maritime Administration, the Department of Justice, as well as the American Association of Port Authorities, and a representative from the International Longshoremen's & Warehousemen's Union.

During the 107th Congress, Senator Hollings introduced S. 1214, the Port and Maritime Security Act of 2001, which included improvements in response to concerns previously raised about S. 2965.

On July 24, 2001, the Committee held a full Committee hearing on seaport security issues and S. 1214. The Committee heard from: Senator Bob Graham; the Maritime Administration; the Customs Service; Coast Guard; the Director of the Office of Intelligence and Security, Department of Transportation; a representative of the American Association of Port Authorities; President and CEO of Maher Terminals Inc.; the Vice President of International Transportation Services Inc.; a representative of the American Institute of Marine Underwriters; and the Executive Director of the Maritime Security Council.

On August 2, 2001, S. 1214 was ordered to be reported favorably. The legislation was modified to incorporate additional security provisions and comments suggested by the Department of Transportation after the attacks of September 11, 2001, and was taken up and passed by the Senate by voice vote on December 20, 2001. On June 4, 2002, the House of Representatives passed a substitute then appointed Conferees. The Senate appointed its Conferees on June 18, 2002, and took up and passed by voice vote the Conference Report on November 14, 2002. The House of Representatives passed the measure by voice vote the same day and the bill was signed into law November 25, 2002.

Prior to introduction of S. 2279, the Maritime Transportation Security Act of 2004, the Senate Committee on Commerce, Science, and Transportation held a hearing March 24, 2004, on the state of maritime security. The Committee heard testimony from the Commandant of the Coast Guard; the Commissioner of Customs and Border Protection; the Acting Administrator of the Transportation Security Administration; the President of the World Shipping Council; the Executive Director and CEO of the Port of New Orleans; a Senior Research Fellow from the Heritage Foundation; and the Director of Coast Port Security, Longshore Division of the International Longshore and Warehouse Union.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 19, 2004.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2279, the Maritime Transportation Security Act of 2004.

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

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2279—Maritime Transportation Security Act of 2004

Summary: S. 2279 would require the Departments of Transportation (DOT) and Homeland Security (DHS) to report on their progress in implementing the Maritime Transportation Security Act of 2002 (MTSA). The bill would amend the MTSA to clarify existing planning and reporting requirements. In addition, federal agencies would be required to complete new or more detailed studies of maritime security, issues, review certain security plans, and correct deficiencies where identified.

Section 9 of the bill would authorize the appropriation of \$3.5 million for each of fiscal years 2005 through 2009 for pilot programs that test newly developed security technologies. This section also would eliminate existing authorizations of \$15 million annually for fiscal years 2003 through 2008 for research and development grants under the MTSA, resulting in a net increase in authorized funding of \$20 million a year through 2008 and \$35 million for 2009.

Assuming appropriation of the authorized amounts, CBO estimates that the federal government would spend about \$5 million in fiscal year 2005 and \$80 million over the 2005–2009 period to implement S. 2279. (About \$35 million of the authorized amounts would be spent after 2009.) The costs of complying with other bill provisions would depend on the findings of future security evaluations. Any security enhancements that may be found to be necessary by such evaluations also occur under current law.

The bill would authorize DHS to impose a new civil penalty for leaving merchandise unattended on loading piers that could increase federal revenues, but CBO estimates that any revenue from new penalty collections would be less than \$500,000 annually. Enacting this legislation would not affect direct spending.

S. 2279 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The bill would benefit publicly owned ports and vessels, and any costs they incur would result from conditions of aid.

S. 2279 would impose a private-sector mandate as defined by UMRA on owners of vessels and U.S. and foreign seamen that are employed on vessels transporting nuclear materials in the navi-

gable waters of the United States. CBO estimates that the cost of that private-sector mandate would not exceed the annual threshold established in UMRA (\$120 million in 2004, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2279 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year in millions of dollars—					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION ¹						
Spending under the MTSA for R&D grants:						
Authorization level ²	0	15	15	15	15	0
Estimated outlays	0	4	10	14	15	15
Proposed changes:						
Authorization level	0	20	20	20	20	35
Estimated outlays	0	5	11	18	20	26
Spending under S. 2279 for R&D pilot projects:						
Authorization level ²	0	35	35	35	35	35
Estimated outlays	0	9	21	32	35	35

¹No amounts are included in this estimate for a possible increase in the number of cargo inspections performed by DHS or for correcting other security deficiencies in existing federal maritime security operations. If such additional inspections or other security enhancements are found to be necessary, existing law would require that this same improvement be made.

²The MTSA authorizes \$15 million a year through 2008 for port security research and development grants. (S. 2279 would eliminate these authorizations.) No amounts were appropriated for MTSA research grants for 2004.

Basis of estimate: For this estimate, CBO assumes that S. 2799 will be enacted by the end of fiscal year 2004 and that the amounts authorized for grants for pilot projects will be appropriated for each year beginning in 2005. The proposed changes in authorization levels shown in the above table include \$35 million authorized for the pilot projects, less \$15 million for each of years 2005 through 2008 (which the legislation would eliminate). Outlays are estimated on the basis of spending for similar grant programs. CBO estimates that carrying out the various studies, progress reports, and assessments required by the bill would cost the DHS and other federal agencies less than \$500,000 a year.

Section 4 would require the Inspector General (IG) of the DHS to evaluate the department's cargo inspection targeting system. The targeting system involves reviewing shipping documents and other information to identify high-risk cargoes, which are then inspected. This provision would give the department one year in which to double the number of physical inspections of containers of imported cargo at U.S. or foreign ports if the IG determines that the existing system is not sufficient for security purposes.

The CBO cost estimates for S. 2279 does not includes any costs associated with increasing the number of container inspections under section 4 because it is uncertain how (or if) this provision would change the department's future plans and operations. CBO estimates that the costs of doubling the inspection program would be significant—about \$50 million for training, acquisition of detection equipment, and other one-time activities and about \$25 million a year for salaries and other operating expenses. We cannot predict, however, whether the IG will determine that the current program is inadequate or how many inspections the department will choose to perform in the future in the absence of this requirement. The number of container inspections has increased from about 170,000 containers in 2002 to nearly 490,000 in 2003 and an estimated 520,000 this year. Assuming appropriation of the necessary

amounts in future years, CBO expects that this number would continue to grow, but possibly more slowly than may be required under the bill.

Section 10 would require DHS to evaluate security plans for nuclear facilities located near navigable waterways and to ensure that any identified deficiencies are corrected. The CBO cost estimate does not include any costs for carrying out this provision because the periodic review and updating of security programs for these facilities are already required under current law. Owners and operators of nuclear facilities (including those owned by the Tennessee Valley Authority) currently must maintain security plans as a condition of federal licensing. Other laws, including the MTSA, require the periodic review and (if necessary) revision of plans and programs for nuclear facility security.

This estimate is based on information provided by DHS and other federal agencies.

Estimated impact on state, local, and tribal governments: S. 2279 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would require DHS to report on the status of implementing the requirements for port and vessel security that are in current law.

Specifically, the bill would require DHS to update the Congress on its efforts to gather information on vessels operating on, or bound for, the waters of the United States. The original mandate for both public and private entities to submit vessel information to the federal government was created in the MTSA. The bill also would require DHS to report on and analyze its efforts to secure and screen imported cargo. The reporting requirements would impose no new mandates on ports, terminals, and vessels, some of which are owned by local, state, and regional authorities.

S. 2279 would amend current law to expand the scope and funding of the research and development program for port security. State and local governments, among other entities, would benefit from the additional \$20 million authorized for each fiscal year to conduct pilot projects, to purchase and test technology, and to improve shipping containers, and tracking. Other sections of the bill also would benefit publicly owned ports and vessels. Any costs they incur would result from conditions of aid.

Estimated impact on the private sector: S. 2279 would impose a private-sector mandate as defined by UMRA on certain owners of vessels and U.S. and foreign seamen. The bill would mandate that vessel owners require seamen transporting nuclear materials in the navigable waters of the United States to undergo criminal background checks. According to information from government representatives, most U.S. seamen undergo those background checks under current law, and the cost to the private sector for the additional checks would not be large. CBO estimates that the cost to comply with the mandate would not exceed the annual threshold established in UMRA (\$120 million in 2004, adjusted annually for inflation).

Estimated prepared by: Federal Costs: Deborah Reis. Impact on State, Local, and Tribal Governments: Gregory Waring. Impact on the Private Sector: Jean Talarico.

Estimated approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

The bill would require containers be cleared from a pier or wharf within five days of entering a United States port. If such action is not taken, the container would be removed at the expense of the person in custody of the cargo.

NUMBER OF PERSONS COVERED

This legislation updates and clarifies the port security requirements found in the Maritime Transportation and Security Act of 2002. It is expected there will be no greater number of persons covered by this legislation.

ECONOMIC IMPACT

S. 2279 would authorize \$35,000,000 for each fiscal year 2005 through 2009. These funding levels are not expected to have an inflationary impact on the nation's economy. A fine of up to \$5,000 could be imposed by the Secretary of DHS for each bill of lading for general order merchandise remaining after those five days.

PRIVACY

This legislation updates and clarifies the port security requirements found in the Maritime Transportation and Security Act of 2002. It is expected there will be no greater impact on the individuals covered by this legislation.

PAPERWORK

Section 6 of the legislation creates a grant program which may create additional paperwork for applicants and for DHS in administering the program.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of Contents

Section 1 contains the title and table of contents for the bill.

Sec. 2. In Rem Liability; Enforcement; Pier and Wharf Security Costs

Section 2 of the bill would amend title 46, United States Code, to require vessels subject to and in violation of the regulations in chapter 701 be liable *in rem* for any civil penalty assessed pursuant to section 70120 of title 46, United States Code. Proceedings against the vessel may be brought in the United States district court for any district in which such vessel may be found. The vessel also would be held liable *in rem* for the reimbursable costs incurred by any valid claimant related to implementation and enforcement of chapter 701 with respect to the vessel and cargo. Reimbursable costs by valid claimants for which *in rem* jurisdiction is conferred are limited to those actions taken with respect to the care and custody of the crew or cargo under lawful order.

Section 2 also would give the United States the power to restrain violators of regulations of chapter 701 and if an owner, agent, mas-

ter, officer, or person in charge of a vessel is liable (or there is reasonable cause) for a penalty or fine under section 70120, and authorize the Secretary to refuse or revoke any clearance the vessel or cargo may require. The clearance refused in this subsection may be granted by filing a bond of other surety satisfactory to the Secretary.

The section would further amend title 46 to require uncleared merchandise remaining on a wharf or pier to be removed within 5 calendar days to public stores or a general order warehouse where its contents will be inspected to determine the cargo contents. This provision is intended to determine the security risk posed by certain cargo as early as practicable. Further, the section would allow the Secretary of Homeland Security to impose an administrative penalty of \$5,000 for each bill of lading for general order cargo that remains on the wharf or pier.

Sec. 3. Maritime Information

Section 3 would require the Secretary of Homeland Security to provide a plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure for the implementation of section 70113 of title 46, United States Code. Section 70113 requires the Secretary of Homeland Security to establish a coordinated system of collecting information on vessels, crew, passengers, and cargo aimed at improving maritime domain awareness. The plan, required to be submitted within 3 months of enactment, must identify agencies that can provide maritime information relating to vessels, crew, passengers and cargo and shall provide a time line for the agencies to coordinate their efforts. The section would further require the plan to establish when automatic and long-range vessel tracking will be integrated into the maritime intelligence system. The section also would require the plan to contain recommendations on co-locating agency personnel to reduce costs and increase efficiency, as well as evaluating how naval intelligence could be incorporated into the effort of collecting and analyzing commercial maritime information. Additionally, the section would require the Secretary to evaluate, as part of the plan, the use of private sector resources to collect and analyze information, and identify potential sources of private sector information sources, and make recommendations on educating Federal officials on commercial maritime operations in order to facilitate security. The report would include recommendations on how to disseminate security information to State, local, and private security personnel in order to prevent transportation security incidents, and the need to establish of a public-private information sharing analysis center.

Sec. 4. Intermodal Cargo Security Plan

Section 4 would require the Secretary of Homeland Security to submit an intermodal cargo security plan to Congress within 180 days after enactment. Under the section, the plan would be required to include recommendations on how to integrate various cargo security programs into the certification process of SST found in section 70116 of title 46, United States Code. Further, the plan would provide evaluation of the necessary resources to certify and validate SST and also would include a feasibility analysis on estab-

lishing a user fee in order to investigate and certify SST. The section also would require the DHS IG to review progress on the implementation of the SST program. This section also would require DHS to report to Congress on the progress of installing radiation detectors at all major United States seaports and include an anticipated completion date and cost estimate. Additionally, a report would be required detailing to what extent foreign seaports have been willing to use screening equipment at their ports and indicate which specific foreign ports would be willing to use their own screening equipment for cargo exported to the United States. The report would describe to what extent additional resources may be necessary to maximize scrutiny of cargo in foreign seaports, in the event that an insufficient amount of screening is being done.

The section would further require the DHS IG to, within six months after enactment and annually thereafter, analyze and report to Congress on the system of targeting international intermodal containers for inspection. The DHS IG would be directed to include an assessment on the effectiveness of the system, including the sources of information used to target containers to determine the effectiveness of the system and its potential gaps and weaknesses to determine if it is adequate to prevent international intermodal containers from being used for purposes of terrorism. The assessment also would evaluate the targeting system for reporting and analyzing inspection statistics and testing the system, as well as the competence and training of the employees operating the system, to determine whether it is sufficiently effective to detect potential acts of terrorism and if more steps need to be taken to remedy deficiencies in targeting.

If the DHS IG's office determines that the targeting system is insufficient to detect potential acts of terrorism, the Secretary of Homeland Security would be required to double the amount of inspections of international intermodal containers (including either intrusive and non-intrusive inspections) at United States ports or to be shipped to the United States from foreign seaports in the fiscal year following the report. The requirement to inspect double the amount of containers would ensue after each report of insufficiency.

Sec. 5. Joint Operations Center for Port Security

Section 5 would require the Commandant of the United States Coast Guard to report to Congress, within 180 days of enactment, on the potential benefits of establishing joint operational centers for port security at certain United States seaports; to evaluate the three existing joint operational centers; and to consider to what extent these centers could be beneficial in the implementation and operation of maritime area security plans. It also would require the USCG to consider how specific security functions could be folded into their operations and to consider where else these Centers should be established.

Sec. 6. Maritime Transportation Security Plan Grants

Section 6 would rewrite portions (Section 70101(a) of title 46) of the port security grant program designed to help implement the Area Maritime Transportation Security plans and to help fund compliance with the Federal security plans. The rewrite would align the program with the process developed for awarding grants.

The section does not change the criteria for awarding grants which are to be used to address the vulnerabilities in security and will take into account national economic and strategic defense concerns. The grants would be administered by Undersecretary of Border and Transportation Security, and awarded after review and comment of the United States Coast Guard Captain of the Port and the regional Maritime Administrator. Grants would be required to be coordinated with other Office of Domestic Preparedness grants.

Sec. 7. Assistance for Foreign Ports

Section 7 would amend MTSA (70109 of title 46, United States Code) to require the Maritime Administration to work with the State Department to identify foreign assistance programs available domestically that could help implement port security anti-terrorism measures in foreign countries including countries that lack effective antiterrorism measures, to help these countries achieve compliance with the internationally set standards for port security.

Sec. 8. Federal and State Commercial Maritime Transportation Training

Section 8 would supplement the existing MTSA security training requirements and would require the Maritime Administration (MARAD) in coordination with Federal Law Enforcement Training Center (FLETC) to establish a curriculum to educate Federal and State officials on commercial maritime and intermodal transportation in order to assist them in the performance of their security responsibilities. In developing the training and standards, MARAD would be required to consult with each agency within the Department of Homeland Security which has jurisdiction over maritime security as well as the FLETC and work with the Center to educate DHS officials on transportation elements that could impact and improve maritime security.

Sec. 9. Research and Development

Section 9 would replace the MTSA research and development (R&D) grants section with one that transfers control from the Department of Transportation to the Science and Technology Directorate within the Department of Homeland Security. It will conduct investigations, fund pilot programs, award grants, and conduct research and development. The section would expand the research conducted from only merchandise, to include target inspection of vessels, cargo, crewmembers, or passengers arriving in any port or place in the United States. It would maintain the detection of explosives, chemical, or biological agents in current law and add radiological materials to the existing research requirement. The section also would allow R&D funding to be used to look at the ability to increase awareness, including satellite tracking systems, of potential terrorist threats that would have an impact on facilities, vessels, and infrastructure on or near navigable waterways, including underwater. The section also would fund R&D for tools which would mitigate the consequences of a terrorist act on, near, or under navigable waterways.

The section would further require the Under Secretary of the Science and Technology Directorate to conduct pilot projects at United States ports to test the effectiveness and applicability of

new port security technology. Testing could include new detection and screening technologies, projects to protect United States ports and infrastructure on, near or next to the navigable waters of the United States, and tools for responding to a terrorist threat or incident at United States ports. The section would authorize \$35 million for each fiscal year 2005 through 2009 to carry out research and development.

The section also would require, for each fiscal year 2005 through 2009, a report to be submitted that will describe any port security-related research in the preceding fiscal year; describe the amount of DHS resources dedicated to research that can be applied to port security; the steps taken to coordinate with other DHS agencies to ensure that research efforts are coordinated with port security efforts; describe how the results will be implemented in the field; lay out the plans for research in the current fiscal year; and include a description of the funding levels for the research in the preceding, current, and next fiscal years.

Sec. 10. Nuclear Facilities in Maritime Areas

Section 10 would amend section 70103(b) of title 46, United States Code, (the Area Maritime Transportation Security Plans) to include the identification of all nuclear facilities on, near or in close proximity to navigable waterways that may be damaged by a transportation security incident and also to evaluate each nuclear facility's security plan for that facility's ability to protect itself from damage or disruption in a transportation security incident originating in or on the navigable waterway. The Secretary of Homeland Security would have the ability to correct any deficiencies in security identified during the evaluation process. After the evaluations, the Secretary would be required to transmit a report to Congress describing the results of the identification and evaluation, describing the subsequent corrective actions taken, and evaluating the technology used to protect nuclear facilities. The report would be delivered to Congress in both a classified and redacted form. The section also would establish a requirement for criminal background checks for all United States and foreign seamen employed on vessels transporting nuclear materials in the United States's navigable waters.

Sec. 11. Transportation Worker Background Investigation Programs

Section 11 would require the Secretary of Homeland Security to report to Congress within 120 days after enactment with recommendations for harmonizing, combining, or coordinating requirements, procedures, and programs for conducting background checks for individuals engaged in transportation or transportation-related activities. The section would require the report contain a detailed time line for implementation of such harmonization, combination, or coordination, and a review of the requirements of the appeals and waiver process.

Sec. 12. Report on Cruise Ship Security

Section 12 would require the Secretary of Homeland Security to report to Congress within 120 days on the security of ships and facilities used in the cruise line industry. The report would contain, among other things, an assessment of security of cruise ships that

originate at foreign ports; the security of ports utilized for cruise ship docking; the costs incurred by the cruise line industry to carry out MTSA 2002; and the costs of canine units and hand-held explosive detection wands. In addition, the report would be required to contain a description of the need and feasibility of deploying explosive detection systems and canine units; an assessment of security measures taken by the Secretary of Homeland Security to increase the security of the cruise line industry; a summary of passenger fees paid to be used for inspections and the feasibility of creating a dedicated passenger vessel security fund from such fees; and the Secretary's recommendations if any to improve cruise ship security.

Sec. 13. Report on Design of Maritime Security Grant Programs

Section 13 would require the Secretary of Homeland Security to report to Congress within 90 days on the design of maritime security grant programs and include recommendations on whether it should be discretionary or formula based; requirements for ensuring that Federal funds will not be substituted for grantee funds; targeting the funds to the highest priority needs; and matching requirements that provide incentive to grantees to invest their own funds.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

MARITIME TRANSPORTATION SECURITY ACT OF 2002

TITLE I—MARITIME TRANSPORTATION SAFETY

* * * * *

SEC. 109. MARITIME SECURITY PROFESSIONAL TRAINING.

[46 U.S.C. 70101 note]

(a) IN GENERAL.—

(1) DEVELOPMENT OF STANDARDS.—Not later than 6 months after the date of enactment of this Act, 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) **FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.**—*The Secretary of Transportation shall establish a curriculum, to be incorporated into the curriculum developed under subsection (a)(1), to educate and instruct Federal and State officials on commercial maritime and intermodal transportation. The curriculum shall be designed to familiarize those officials with commercial maritime transportation in order to facilitate performance of their commercial maritime and intermodal transportation security responsibilities. In developing the standards for the curriculum, the Secretary shall consult with each agency in the Department of Homeland Security with maritime security responsibilities to determine areas of educational need. The Secretary shall also coordinate with the Federal Law Enforcement Training Center in the development of the curriculum and the provision of training opportunities for Federal and State law enforcement officials at appropriate law enforcement training facilities.*

[(c)] (d) **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)] (e) **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.

[(e)] (f) **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)] (g) 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.

UNITED STATES CODE

TITLE 46. SHIPPING

SUBTITLE VI. MISCELLANEOUS

CHAPTER 701. PORT SECURITY

§ 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.

(5) *WATERWAYS LOCATED NEAR NUCLEAR FACILITIES.*—

(A) *IDENTIFICATION AND SECURITY EVALUATION.*—*The Secretary shall—*

(i) *identify all nuclear facilities on, adjacent to, or in close proximity to navigable waterways that might be damaged by a transportation security incident; and*

(ii) *in coordination with the Secretary of Energy, evaluate the security plans of each such nuclear facility for its adequacy to protect the facility from damage or disruption from a transportation security incident originating in the navigable waterway, including threats posed by navigation, underwater access, and the introduction of harmful substances into water coolant systems.*

(B) *RECTIFICATION OF DEFICIENCIES.*—*The Secretary, in coordination with the Secretary of Energy, shall take such steps as may be necessary or appropriate to correct any deficiencies in security identified in the evaluations conducted under subparagraph (A).*

(C) *REPORT.*—*As soon as practicable after completion of the evaluation under subparagraph (A), the Secretary shall transmit a report, in both classified and redacted format, to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Select Committee on Homeland Security—*

(i) *describing the results of the identification and evaluation required by subparagraph (A);*

(ii) *describing the actions taken under subparagraph (B); and*

(iii) *evaluating the technology utilized in the protection of nuclear facilities (including any such technology under development).*

(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.] facility; and**

(H) establish a requirement, coordinated with the Department of Energy, for criminal background checks of all United States and foreign seamen employed on vessels transporting nuclear materials in the navigable waters of the United States.

(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.

§ 70107. Grants

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

(a) IN GENERAL.—The Under Secretary of Homeland Security for Border and Transportation Security shall establish a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and to help fund compliance with Federal security plans among port authorities, facility operators, and State and local agencies required to provide security services. Grants shall be made on the basis of the need to address vulnerabilities in security subject to review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administration. The grant program shall take into account national economic and strategic defense concerns and shall be coordinated with the Director of the Office of Domestic Preparedness to ensure that the grant process is consistent with other Department of Homeland Security grant programs.

(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 application, 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.]

(i) RESEARCH AND DEVELOPMENT.—

(1) *IN GENERAL.—As part of the research and development program within the Science and Technology directorate, the Secretary of Homeland Security shall conduct investigations, fund pilot programs, award grants, and otherwise conduct research and development across the various portfolios focused on making United States ports safer and more secure. Research conducted under this subsection may include—*

(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

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

(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

(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 that information to the appropriate law enforcement authorities;

(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential terrorist threats that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

(F) tools to mitigate the consequences of a terrorist act on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a terrorist action;

(G) applications to apply existing technologies from other areas or industries to increase overall port security; and

(H) improved container design, including blast-resistant containers.

(2) IMPLEMENTATION OF TECHNOLOGY.—

(A) IN GENERAL.—In conjunction with ongoing efforts to improve security at United States ports, the Director of the Science and Technology Directorate, in consultation with other Department of Homeland Security agencies with responsibility for port security, may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

(i) testing of new detection and screening technologies;

(ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and

(iii) tools for responding to a terrorist threat or incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security \$35,000,000 for each of fiscal years 2005 through 2009 to carry out pilot projects under subparagraph (A).

(3) ADMINISTRATIVE PROVISIONS.—

(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary of Homeland Security 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 Homeland Security 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 Homeland Security and the Secretary of Homeland Security for audit and examination.

§ 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,】~~ *The Administrator of the Maritime Administration*, 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.

(c) *FOREIGN ASSISTANCE PROGRAMS.*—*The Administrator of the Maritime Administration, in coordination with the Secretary of State, shall identify foreign assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries. The Administrator and the Secretary shall establish a program to utilize those programs that are capable of implementing port security antiterrorism measures at ports in foreign countries that the Secretary finds, under section 70108, to lack effective antiterrorism measures.*

* * * * *

§ 70117. *In rem* liability for civil penalties and certain costs

(a) *IN GENERAL.*—Any vessel subject to the provisions of this chapter, which is used in violation of this chapter or any regulations issued hereunder shall be liable *in rem* for any civil penalty assessed pursuant to section 70120 and may be proceeded against in the United States district court for any district in which such vessel may be found.

(b) *REIMBURSABLE COSTS.*—

(1) *IN GENERAL.*—Any vessel subject to the provisions of this chapter shall be liable *in rem* for the reimbursable costs incurred by any valid claimant related to implementation and enforcement of this chapter with respect to the vessel, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, and other persons to whom the management of the vessel at the port of supply is entrusted, and any fine or penalty relating to reporting requirements of the vessel or its cargo, crew, or passengers, and may be proceeded against in the United States district court for any district in which such vessel may be found.

(2) *REIMBURSABLE COSTS DEFINED.*—In this subsection the term “reimbursable costs” means costs incurred by any service provider, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, or other person to whom the management of the vessel at the port of supply is entrusted, for—

(A) vessel crew on board, or in transit to or from, the vessel under lawful order, including accommodation, detention, transportation, and medical expenses; and

(B) required handling under lawful order of cargo or other items on board the vessel.

§ 70118. Enforcement by injunction or withholding of clearance

(a) *INJUNCTION.*—The United States district courts shall have jurisdiction to restrain violations of this chapter or of regulations issued hereunder, for cause shown.

(b) *WITHHOLDING OF CLEARANCE.*—

(1) If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under section 70120, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty under section 70120, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary.

§ 70119. Security of piers and wharfs

(a) *IN GENERAL.*—Notwithstanding any other provision of law, the Secretary shall require any uncleared, imported merchandise remaining on the wharf or pier onto which it was unladen for more than 5 calendar days to be removed from the wharf or pier and deposited in the public stores or a general order warehouse, where it shall be inspected for determination of contents, and thereafter a permit for its delivery may be granted.

(b) *PENALTY.*—The Secretary may impose an administrative penalty of \$5,000 for each bill of lading for general order merchandise remaining on a wharf or pier in violation of subsection (a).

[§ 70117. Civil penalty]

§ 70120. 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.

UNITED STATES CODE

TITLE 50. WAR AND NATIONAL DEFENSE

CHAPTER 12. VESSELS IN TERRITORIAL WATERS OF UNITED STATES

§ 192. Seizure and forfeiture of vessel; fine and imprisonment

(a) *IN GENERAL.*—If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be punished by imprisonment for not more than ten years and may in the discretion of the court, be fined not more than \$10,000.

(b) APPLICATION TO OTHERS.—If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than \$10,000.

(c) CIVIL PENALTY.—A person violating this [Act,] *title*, or a regulation prescribed under this [Act,] *title*, shall be liable to the United States Government for a civil penalty of not more than \$25,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

(d) IN REM LIABILITY.—*Any vessel subject to the provisions of this title that is used in violation of this title, or any regulations issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) and may be proceeded against in the United States district court for any district in which such vessel may be found.*

(e) INJUNCTION.—*The United States district courts shall have jurisdiction to restrain violations of this title or of regulations issued hereunder, for cause shown.*

(f) WITHHOLDING OF CLEARANCE.—

(1) *If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c), or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under subsection (c), the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).*

(2) *Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary of the Department in which the Coast Guard is operating.*