

otherwise would be imposed is a lien enforceable against the vessel when found in the waters of the United States.

(Pub. L. 109-304, §9(b), Oct. 6, 2006, 120 Stat. 1682.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows include 60507(a) through (d) with corresponding source citations.

In this section, the word "cargo" is substituted for "cargo", "cargoes", "portions or cargoes", "freight", and "freight of whatever kind or description" for consistency and to eliminate unnecessary words.

Subsection (a) is substituted for "With a view of securing reciprocal advantages for the citizens, ports, and vessels of the United States" to improve the organization of the section.

In subsection (b), the words "and so often as" are omitted as unnecessary. The word "burdened" is substituted for "made difficult or burdensome", the word "unreasonable" is substituted for "reciprocally unjust and unreasonable", the words "the President by proclamation may suspend" are substituted for "he shall have the power, and it shall be his duty, to suspend by proclamation to that effect", the words "even when carried in vessels of the United States" are substituted for "whether carried in vessels of the United States or of other nations", and the words "The suspension shall apply to the extent and for the time the President considers appropriate" are substituted for "for such time and to such extent (including absolute prohibition) as he shall deem just", to eliminate unnecessary words.

In subsection (c)(1), the words "the President shall impose a toll of" are substituted for "tolls shall be levied, collected, and paid as follows, to wit: . . . as shall be from time to time determined by the President" for clarity and to eliminate unnecessary words.

In subsection (c)(2), the word "landed" is substituted for "carried to and landed" to eliminate unnecessary words.

In subsection (d), the Secretary of Homeland Security is substituted for the Commissioner of Customs because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2178). The functions of the Commissioner of Customs previously were vested in the Secretary of the Treasury under section 321(c) of title 31. For prior related transfers of functions, see the transfer of functions note under 46 App. U.S.C. 145.

In subsection (d)(2), the words "a port described in subsection (c)(2) of this section" are substituted for "some port or place within the limits above named" for clarity.

Subtitle VII—Security and Drug Enforcement

Chapter 701. Port Security 70101
703. Maritime Security 70301
705. Maritime Drug Law Enforcement ... 70501

AMENDMENTS

2008—Pub. L. 110-181, div. C, title XXXV, §3529(c)(1), Jan. 28, 2008, 122 Stat. 603, repealed Pub. L. 109-304, §9(a). See 2006 Amendment note below.

2006—Pub. L. 109-304, §10(1), Oct. 6, 2006, 120 Stat. 1683, amended analysis generally, substituting "Security

and Drug Enforcement" for "Miscellaneous" in subtitle heading and adding items 703 and 705.

Pub. L. 109-304, §9(a), Oct. 6, 2006, 120 Stat. 1674, which directed amendment identical to that made by Pub. L. 109-241, was repealed by Pub. L. 110-181, §3529(c)(1), with Pub. L. 109-304, §9(a), to be treated as if never enacted. See note below.

Pub. L. 109-241, title IX, §901(k)(1), July 11, 2006, 120 Stat. 564, redesignated subtitle VI of this title as subtitle VII.

CHAPTER 701—PORT SECURITY

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70102. United States facility and vessel vulnerability assessments.
70103. Maritime transportation security plans.
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70116. Secure systems of transportation.
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70118. Enforcement by State and local officers.
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70120. In rem liability for civil penalties and certain costs.
70121. Withholding of clearance.

AMENDMENTS

2006—Pub. L. 109-347, title I, §108(d), title II, §233(d), Oct. 13, 2006, 120 Stat. 1893, 1918, added item 70107A and substituted "Actions and assistance for foreign ports and United States territories" for "Actions when foreign ports not maintaining effective antiterrorism measures" in item 70110.

Pub. L. 109-304, §15(33)(E), Oct. 6, 2006, 120 Stat. 1705, which directed the substitution of items 70117 to 70121 for items 70117 to 70119, was executed by making the substitution for items 70117 "Civil penalty", 70118 "Enforcement", 70117 "In rem liability for civil penalties and certain costs", 70118 "Enforcement by injunction or withholding of clearance", and 70119 "Civil penalty" to reflect the probable intent of Congress.

Pub. L. 109-241, §901(l)(5), July 11, 2006, 120 Stat. 565, which directed amendment of analysis by striking items 70117 through the second 70119 and inserting items 70117 "Firearms, arrests, and seizure of property", 70118 "Enforcement by State and local officers", 70119 "Civil penalty", 70120 "In rem liability for civil penalties and certain costs", and 70121 "Withholding of clearance", could not be executed because only one item 70119 appeared.

2004—Pub. L. 108-293, title VIII, §802(c), Aug. 9, 2004, 118 Stat. 1080, added items 70117 "In rem liability for civil penalties and certain costs", 70118 "Enforcement by injunction or withholding of clearance", and 70119 "Civil penalty", and struck out former item 70119 "Enforcement by State and local officers".

Pub. L. 108-293, title VIII, §801(b), Aug. 9, 2004, 118 Stat. 1078, added items 70118 "Enforcement" and 70119 "Enforcement by State and local officers".

§ 70101. Definitions

For the purpose of this chapter:

¹ So in original. Probably should be followed by a period.
² 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. In this paragraph, the term “economic disruption” does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2068; amended Pub. L. 109-347, title I, §124, Oct. 13, 2006, 120 Stat. 1900.)

AMENDMENTS

2006—Par. (6). Pub. L. 109-347 inserted at end “In this paragraph, the term ‘economic disruption’ does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute.”

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.

WATCH LISTS FOR PASSENGERS ABOARD VESSELS

Pub. L. 108-458, title IV, §4071, Dec. 17, 2004, 118 Stat. 3729, provided that:

“(a) WATCH LISTS.—

“(1) IN GENERAL.—As soon as practicable but not later than 180 days after the date of the enactment of this Act [Dec. 17, 2004], the Secretary of Homeland Security shall—

“(A) implement a procedure under which the Department of Homeland Security compares information about passengers and crew who are to be carried aboard a cruise ship with a comprehensive, consolidated database containing information about known or suspected terrorists and their associates;

“(B) use the information obtained by comparing the passenger and crew information with the information in the database to prevent known or suspected terrorists and their associates from boarding such ships or to subject them to specific additional security scrutiny, through the use of ‘no transport’ and ‘automatic selectee’ lists or other means.

“(2) WAIVER.—The Secretary may waive the requirement in paragraph (1)(B) with respect to cruise ships embarking at foreign ports if the Secretary determines that the application of such requirement to such cruise ships is impracticable.

“(b) COOPERATION FROM OPERATORS OF CRUISE SHIPS.—The Secretary of Homeland Security shall by rulemaking require operators of cruise ships to provide the passenger and crew information necessary to implement the procedure required by subsection (a).

“(c) MAINTENANCE OF ACCURACY AND INTEGRITY OF ‘NO TRANSPORT’ AND ‘AUTOMATIC SELECTEE’ LISTS.—

“(1) WATCH LIST DATABASE.—The Secretary of Homeland Security, in consultation with the Terrorist Screening Center, shall develop guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the ‘no transport’ and ‘automatic selectee’ lists described in subsection (a)(1) that are designed to ensure the accuracy and integrity of the lists.

“(2) ACCURACY OF ENTRIES.—In developing the ‘no transport’ and ‘automatic selectee’ lists under subsection (a)(1)(B), the Secretary shall establish a simple and timely method for correcting erroneous entries, for clarifying information known to cause false hits or misidentification errors, and for updating relevant information that is dispositive in the passenger and crew screening process. The Secretary shall also establish a process to provide an individual whose name is confused with, or similar to, a name in the watch list database with a means of demonstrating that such individual is not the person named in the database.

“(d) CRUISE SHIP DEFINED.—In this section, the term ‘cruise ship’ means a vessel on an international voyage that embarks or disembarks passengers at a port of United States jurisdiction to which subpart C of part 160 of title 33, Code of Federal Regulations, applies and that provides overnight accommodations.”

VESSEL AND INTERMODAL SECURITY REPORTS

Pub. L. 108-293, title VIII, §809(g)-(i), (k), Aug. 9, 2004, 118 Stat. 1087, 1088, provided that:

“(g) EVALUATION OF CARGO INSPECTION TARGETING SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CONTAINERS.—Within 180 days after the date of the enactment of this Act [Aug. 9, 2004] and annually thereafter, the Inspector General of the department in which the Coast Guard is operating shall prepare a report that includes an assessment of—

“(1) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

“(2) the sources of information, and the quality of the information at the time of reporting, used by the

system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

“(3) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

“(4) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

“(5) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

“(h) ACTION REPORT.—If the Inspector General of the department in which the Coast Guard is operating determines in any of the reports prepared under subsection (g) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then the Secretary of the department in which the Coast Guard is operating shall, within 90 days, submit 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 on what actions will be taken to correct deficiencies identified in the Inspector General Report.

“(i) COMPLIANCE WITH SECURITY STANDARDS ESTABLISHED PURSUANT TO MARITIME TRANSPORTATION SECURITY PLANS.—Within 180 days after the date of the enactment of this Act [Aug. 9, 2004] and annually thereafter, the Secretary of the department in which the Coast Guard is operating shall prepare a report on compliance and steps taken to ensure compliance by ports, terminals, vessel operators, and shippers with security standards established pursuant to section 70103 of title 46, United States Code. The reports shall also include a summary of security standards established pursuant to such section during the previous year. The Secretary shall submit the reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(k) REPORT AND PLAN FORMATS.—The Secretary and the Inspector General of the department in which the Coast Guard is operating may submit any plan or report required by this section in both classified and redacted formats, if the Secretary determines that it is appropriate or necessary.”

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 organizations 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 negotiation, including agreements at the International Maritime Organization under section 902 of the International Maritime and Port Security Act (46 U.S.C. App. 1801) [now 46 U.S.C. 70302], 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).”

§ 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