

SECURITY MATTERS

PASSENGER MANIFESTS

Section 402(a) of Public Law 107-173, approved May 14, 2002 (116 STAT. 543, 557), the Enhanced Border Security and Visa Entry Reform Act of 2002, amended 8 U.S.C. 1221 to read as follows:

8 U.S.C. 1221. (2002) Lists of alien and citizen passengers arriving and departing

(a) **Arrival manifests.** For each commercial vessel or aircraft transporting any person to any seaport or airport of the United States from any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) to provide to any United States border officer (as defined in subsection (i)) at that port manifest information about each passenger, crew member, and other occupant transported on such vessel or aircraft prior to arrival at that port.

(b) **Departure manifests.** For each commercial vessel or aircraft taking passengers on board at any seaport or airport of the United States, who are destined to any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) to provide any United States border officer (as defined in subsection (i)) before departure from such port manifest information about each passenger, crew member, and other occupant to be transported.

(c) **Contents of manifest.** The information to be provided with respect to each person listed on a manifest required to be provided under subsection (a) or (b) shall include_

- (1) complete name;
- (2) date of birth;
- (3) citizenship;
- (4) sex;
- (5) passport number and country of issuance;
- (6) country of residence;
- (7) United States visa number, date, and place of issuance, where applicable;
- (8) alien registration number, where applicable;
- (9) United States address while in the United States; and
- (10) such other information the Attorney General, in consultation with the Secretary of State, and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

(d) **Appropriate officials specified.** An appropriate official specified in this subsection is the master or commanding officer, or authorized agent, owner, or consignee, of the commercial

(1) STUDY. _The President shall conduct a study regarding the feasibility of extending the requirements of subsections (a) and (b) of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), as amended by subsection (a), to any commercial carrier transporting persons by land to or from the United States. The study shall focus on the manner in which such requirement would be implemented to enhance the national security of the United States and the efficient cross-border flow of commerce and persons.

(2) REPORT. _Not later than two years after the date of enactment of this Act, the President shall submit to Congress a report setting forth the findings of the study conducted under paragraph (1).

(c) EFFECTIVE DATE. _The amendments made by subsection (a) shall apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of this Act.

TRANSPORTATION SECURITY ADMINISTRATION

Public Law 107-206, approved August 2, 2002 (116 STAT. 820, 879), the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, provides additional funds for the Transportation Security Administration: _for emergency expenses to ensure transportation security, \$3,850,200,000, to remain available until expended: .

. . . Provided further, That of the total amount provided herein, the following amounts are available for obligation only for the specific purposes below: . . . (2) Port security activities, \$125,000,000, of which \$105,000,000 shall be distributed under the same terms and conditions as provided for under Public Law 107-117 and of which \$20,000,000 shall be used for developing and conducting port incident training and exercises._

PORT SECURITY

Section 102 of Public Law 107-295 (116 STAT. 2068), added to Title 46, a new Subtitle VI _Miscellaneous, to establish a comprehensive national system of transportation security enhancements. Section 102. Port Security, consists of 46 U.S.C. 70101 to 70117, as follows:

46 U.S.C. 70101. (2002) Definitions

For the purpose of this chapter:

(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.

46 U.S.C. 70102. (2002) United States facility and vessel vulnerability assessments

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

(b) **Facility and vessel assessments.**

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

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

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

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

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

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

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

46 U.S.C. 70103. (2002) Maritime transportation security plans

(a) **National Maritime Transportation Security Plan.**

(1) The Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

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

shall include the following:

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

(B) Identification of security resources.

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

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

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

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

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

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

(G) Designation of_

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

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

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

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

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

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

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

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

(b) Area Maritime Transportation Security Plans.

(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall_

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

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

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

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

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

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

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

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

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

(3) The Secretary shall_

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

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

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

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

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

(c) Vessel and facility security plans.

(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall

prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

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

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

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

(3) A security plan required under this subsection shall_

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

(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant

to subparagraph (C);

(C) include provisions for_

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

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

(iii) procedural security policies;

(iv) communications systems; and

(v) other security systems;

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

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

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

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

(4) The Secretary shall_

(A) promptly review each such plan;

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

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

(D) review each plan periodically thereafter.

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

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

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

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

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

(d) **Nondisclosure of information.** Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including_

(1) facility security plans, vessel security plans, and port vulnerability assessments; and

(2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

46 U.S.C. 70104. (2002) Transportation security incident response

(a) Facility and vessel response plans.

The Secretary shall_

(1) establish security incident response plans for vessels and facilities that may be involved in a transportation security incident; and

(2) make those plans available to the Director of the Federal Emergency Management Agency for inclusion in the Director_s response plan for United States ports and waterways.

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

(c) **Inclusion in security plan.** A response plan required under this subsection for a vessel or

facility may be included in the security plan prepared under section 70103(c).

46 U.S.C. 70105. (2002) Transportation security cards

(a) Prohibition.

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

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

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

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

(b) Issuance of cards.

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

(2) This subsection applies to_

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

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

(C) a vessel pilot;

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

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

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

(c) Determination of terrorism security risk.

(1) An individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual_

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

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

United States; or

(ii) for causing a severe transportation security incident;

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

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

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

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

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

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

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

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

(d) Background records check.

(1) On request of the Secretary, the Attorney General shall _

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

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

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

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

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

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

(D) Review of any other national security-related information or database identified by the

Attorney General for purposes of such a background records check.

(e) Restrictions on use and maintenance of information.

(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

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

46 U.S.C. 70106. (2002) Maritime safety and security teams

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

(b) **Mission.** Each maritime safety and security team shall be trained, equipped, and capable of being employed to_

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

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

(3) conduct high speed intercepts;

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

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

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

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

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

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

46 U.S.C 70107. (2002) 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.

(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 [enacted Nov. 25, 2002], 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.

46 U.S.C. 70108. (2002) Foreign port assessment

(a) **In general.** The Secretary shall assess the effectiveness of the antiterrorism measures maintained at _

(1) a foreign port _

(A) served by vessels documented under chapter 121 of this title; or

(B) from which foreign vessels depart on a voyage to the United States; and

(2) any other foreign port the Secretary believes poses a security risk to international maritime commerce.

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

(1) screening of containerized and other cargo and baggage;

(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

(3) additional security on board vessels;

(4) licensing or certification of compliance with appropriate security standards;

(5) the security management program of the foreign port; and

(6) other appropriate measures to deter terrorism against the United States.

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

(1) the Secretary of Defense and the Secretary of State _

(A) on the terrorist threat that exists in each country involved; and

(B) to identify foreign ports that pose a high risk of introducing terrorism to international maritime commerce;

(2) the Secretary of the Treasury;

(3) appropriate authorities of foreign governments; and

(4) operators of vessels.

46 U.S.C. 70109. (2002) Notifying foreign authorities

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

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

46 U.S.C. 70110. (2002) Actions when foreign ports not maintaining effective antiterrorism measures

(a) **In general.** If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, the Secretary_

(1) may prescribe conditions of entry into the United States for any vessel arriving from that port, or any vessel carrying cargo or passengers originating from or transshipped through that port;

(2) may deny entry into the United States to any vessel that does not meet such conditions; and

(3) shall provide public notice for passengers of the ineffective antiterrorism measures.

(b) **Effective date for sanctions.** Any action taken by the Secretary under subsection (a) for a particular port shall take effect_

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

(2) immediately upon the finding of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port.

(c) **State Department to be notified.** The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain effective antiterrorism measures.

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

46 U.S.C. 70111. (2002) Enhanced crewmember identification

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

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

46 U.S.C. 70112. (2002) Maritime Security Advisory Committees

(a) Establishment of Committees.

(1) The Secretary shall establish a National Maritime Security Advisory Committee. The Committee_

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

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

(C) shall meet at the call of_

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

(ii) a majority of the Committee.

(2) (A) The Secretary may_

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

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

(B) A committee established under this paragraph for an area_

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

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

(iii) shall meet at the call of_

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

(II) a majority of the committee.

(b) Membership.

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

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

(3) Before appointing an individual to a position on such a committee, the Secretary shall publish

a notice in the Federal Register soliciting nominations for membership on the committee.

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

(c) Chairperson and Vice Chairperson.

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

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

(d) Observers.

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

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

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

(f) Compensation and expenses.

(1) A member of a committee established under this section, when attending meetings of the committee or when otherwise engaged in the business of the committee, is entitled to receive_

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

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

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

(g) FACA; termination.

(1) The Federal Advisory Committee Act (5 U.S.C. App.)_

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

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

(2) Not later than September 30, 2006, each committee established under this section shall

submit to the Congress its recommendation regarding whether the committee should be renewed and continued beyond the termination date.

46 U.S.C. 70113. (2002) Maritime intelligence

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

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

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

46 U.S.C. 70114. (2002) Automatic identification systems

(a) System requirements.

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

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

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

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

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

(2) The Secretary may_

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

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

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

46 U.S.C. 70115. (2002) Long-range vessel tracking system.

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

46 U.S.C. 70116. (2002) Secure systems of transportation

(a) **In general.** The Secretary, in consultation with the Transportation Security Oversight Board, shall establish a program to evaluate and certify secure systems of international intermodal transportation.

(b) **Elements of program.** The program shall include_

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

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

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

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

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

46 U.S.C. 70117. (2002) 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.

EXTENSION OF TERRITORIAL JURISDICTION.

Section 104 of Public Law 107-295 (116 STAT. 2085), amended 50 U.S.C. 195, to extend the territorial jurisdiction of the United States from 3 miles to 12 miles offshore, and provided a civil penalty of \$25,000 for each violation. The Conference Report (H. Rpt. 107-777). provides at page 85:

To better protect our ports and waterways and effectively counter the threat posed by maritime terrorism, the United States must be able to exercise broad powers in the maritime environment. International law, both conventional and customary, provides coastal States with broad security powers in the maritime environment. Both the Convention on the Territorial Sea and Contiguous Zone, 1958 (TSC), to which the United States is a party, and the 1982 United Nations Convention on the Law of the Sea (LOS), clearly recognize coastal States sovereignty in their territorial sea. Article 14(4) of the TSC states that innocent passage _shall take place in conformity with these articles and with other rules of international law._ The _other rules of

international law_ include customary international law. The United States, although not a party to the 1982 United Nations Convention on the Law of the Sea (LOS), has consistently maintained that specific provisions, including Article 21, represent customary

international law. Therefore, the Conferees note that Section 33 U.S.C. 1223(d) of the Ports and Waterways Safety Act (33 U.S.C. 1221, et seq.) (PWSA), which limits application of the PWSA with respect to foreign vessels in innocent passage to actions

authorized by _international treaty, convention or agreement, to which the United States is a party_, also allows for such actions to be taken under PWSA which are consistent with customary international law._

MARAD REVISION OF PORT SECURITY PLANNING GUIDE.

Section 113 of Public Law 107-295 (116 STAT. 2093), requires that the Secretary of Transportation, within three years of enactment, acting through the Maritime Administration and after consultation with the National Maritime Security Advisory Committee and the Coast Guard, to publish a revised version of the document entitled _Port Security: A National Planning guide_, incorporating the requirements prescribed under Chapter 701 of Title 46, United States Code, as amended by this Act, and make the revised document available on the Internet.

PORTS AND WATERWAYS SAFETY ACT.

Section 443 of Public Law 107-295 (116 STAT. 2132), the Maritime Transportation Security Act of 2002, amended Section 2(a) and 5(a) of the Ports and Waterways Safety Act (33 U.S.C. 1221(a) & 1224(a)) to add the safety and security of United States ports and waterways to that Acts traditional focus on marine safety and environmental protection. These provisions follow:

33 U.S.C. 1221. (2002). Statement of policy.

The Congress finds and declares_

(a) that navigation and vessel safety, protection of the marine environment, and safety and security of United States ports and waterways are matters of major national importance;

(b) that increased vessel traffic in the Nation_s ports and waterways creates substantial hazard to life, property, and the marine environment;

(c) that increased supervision of vessel and port operations is necessary in order to_

(1) reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment;

(2) prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States or the resources within such waters;

(3) insure that vessels operating in the navigable waters of the United States shall comply with all applicable standards and requirements for vessel construction, equipment, manning, and operational procedures; and

(4) insure that the handling of dangerous articles and substances on the structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements; and

(d) that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other Federal agencies, State representatives, affected users, and the general public, in the development and implementation of such measures.

33 U.S.C. 1224. (2002). Considerations by Secretary

In carrying out his duties and responsibilities under section 4, the Secretary shall_

(a) take into account all relevant factors concerning navigation and vessel safety, protection of the marine environment, and the safety and security of United States ports and waterways, including but not limited to_

(1) the scope and degree of the risk or hazard involved;

(2) vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;

(3) port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;

(4) the need for granting exemptions for the installation and use of equipment or devices for use with vessel traffic services for certain classes of small vessels, such as self-propelled fishing vessels and recreational vessels;

(5) the proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;

(6) environmental factors;

(7) economic impact and effects;

(8) existing vessel traffic services; and

(9) local practices and customs, including voluntary arrangements and agreements within the maritime community; and

(b) at the earliest possible time, consult with and receive and consider the views of representatives of the maritime community, ports and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed actions.

ASSIGNMENT OF COAST GUARD AND MERCHANT MARINE PERSONNEL AS SEA MARSHALLS

Section 107(a) of Public Law 107-295 (116 STAT. 2088) amended Section 7(b) of the Ports and

Waterways Safety Act (33 U.S.C. 1226(b)), to allow for the dispatch of properly trained and qualified armed Coast Guard personnel on facilities and vessels to deter or respond to acts of terrorism or transportation security incidents. Section 107(b) requires the Secretary of the department in which the Coast Guard is operating to report to Congress on the use of non-Coast Guard personnel as sea marshals. This could include _documented United States Merchant Marine personnel, _ and _the possibility of utilizing the United States Merchant Marine Academy, State maritime academies, or Coast Guard approved maritime industry schools in the United States, to provide training._

33 U.S.C. 1226. Port, harbor, and coastal facility security

(a) **General authority.** The Secretary may take actions described in subsection (b) to prevent or respond to an act of terrorism against_

(1) an individual, vessel, or public or commercial structure, that is_

(A) subject to the jurisdiction of the United States; and

(B) located within or adjacent to the marine environment; or

(2) a vessel of the United States or an individual on board that vessel.

(b) **Specific authority.** Under subsection (a), the Secretary may_

(1) carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism;

(2) recruit members of the Regular Coast Guard and the Coast Guard Reserve and train members of the Regular Coast Guard and the Coast Guard Reserve in the techniques of preventing and responding to acts of terrorism; and

(3) dispatch properly trained and qualified armed Coast Guard personnel on vessels and public or commercial structures on or adjacent to waters subject to United States jurisdiction to deter or respond to acts of terrorism or transportation security incidents, as defined in section 70101 of title 46, United States Code.

(c) **Nondisclosure of port security plans.** Notwithstanding any other provision of law, information related to security plans, procedures, or programs for passenger vessels or passenger terminals authorized under this Act is not required to be disclosed to the public.

Section 107(b) of Public Law 107-295 (2088) provides:

* * * * *

Sec. 107(b). REPORT ON USE OF NON-COAST GUARD PERSONNEL._The Secretary of the department in which the Coast Guard is operating shall evaluate and report to the Congress on_

(1) the potential use of Federal, State, or local government personnel, and documented United States Merchant Marine personnel, to supplement Coast Guard personnel under section 7(b)(3)

of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)(3));

(2) the possibility of using personnel other than Coast Guard personnel to carry out Coast Guard personnel functions under that section and whether additional legal authority would be necessary to use such personnel for such functions; and

(3) the possibility of utilizing the United States Merchant Marine Academy, State maritime academies, or Coast Guard approved maritime industry schools in the United States, to provide training under that section.

MARITIME SECURITY PROFESSIONAL TRAINING AT MARITIME SCHOOLS

Section 109 of Public Law 107-295 (116 STAT. 2090), provides that in developing maritime security professional standards, the Secretary is authorized to consult with various organizations, including the U.S. Merchant Marine Academy's Global Maritime and Transportation School. Section 109(c)(2) authorizes the Secretary to provide such training at certain institutions, including the 6 State Maritime Academies and the U.S. Merchant Marine Academy.

SEC. 109. MARITIME SECURITY PROFESSIONAL TRAINING.

(a) In General.

(1) *Development of Standard.* 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) 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.

(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.

TERRORISM RISK INSURANCE ACT OF 2002

Title I of Public Law 107-297, approved November 26, 2002, (116 STAT. 2322), the Terrorism Risk Insurance Act of 2002 provides:

TITLE I_ TERRORISM INSURANCE PROGRAM

Sec. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) **Findings.** The Congress finds that

(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade

in an increasingly interconnected world;

(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) **Purpose.** The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

Sec. 102. DEFINITIONS.

In this title, the following definitions shall apply:

(1) Act of terrorism. __

(A) Certification. The term act of terrorism means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to_

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of_

(I) an air carrier or vessel described in paragraph (5)(B); or

(II) the premises of a United States mission; and

(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) *Limitation.*_ No act shall be certified by the Secretary as an act of terrorism if_

(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers_ compensation; or

(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

(C) *Determinations final.*_ Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(D) *Nondelegation.*_ The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

(2) *Affiliate.*_ The term _affiliate_ means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

(3) *Control.*_ An entity has _control_ over another entity, if_

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(4) *Direct earned premium.*_ The term _direct earned premium_ means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring

at the locations described in subparagraphs (A) and (B) of paragraph (5).

(5) *Insured loss.* The term *insured loss* means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss

(A) occurs within the United States; or

(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

(6) *Insurer.* The term *insurer* means any entity, including any affiliate thereof

(A) that is

(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

(iv) a State residual market insurance entity or State workers compensation fund; or

(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(7) *Insurer deductible.* The term *insurer deductible* means

(A) for the Transition Period, the value of an insurer's direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

(B) for Program Year 1, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

(C) for Program Year 2, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

(D) for Program Year 3, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent; and

(E) notwithstanding subparagraphs (A) through (D), for the Transition Period, Program Year 1, Program Year 2, or Program Year 3, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

(8) *NAIC.* _ The term _NAIC_ means the National Association of Insurance Commissioners.

(9) *Person.* _ The term _person_ means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(10) *Program.* _ The term _Program_ means the Terrorism Insurance Program established by this title.

(11) *Program years.* _

(A) Transition period. _The term _Transition Period_ means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

(B) Program year 1. _The term _Program Year 1_ means the period beginning on January 1, 2003 and ending on December 31, 2003.

(C) Program year 2. _The term _Program Year 2_ means the period beginning on January 1, 2004 and ending on December 31, 2004.

(D) Program year 3. _The term _Program Year 3_ means the period beginning on January 1, 2005 and ending on December 31, 2005.

(12) *Property and casualty insurance.* _ The term _property and casualty insurance_

(A) means commercial lines of property and casualty insurance, including excess insurance, workers_ compensation insurance, and surety insurance; and

(B) does not include_

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) insurance for medical malpractice;

(v) health or life insurance, including group life insurance;

(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et

seq.); or

(vii) reinsurance or retrocessional reinsurance.

(13) *Secretary.* The term *Secretary* means the Secretary of the Treasury.

(14) *State.* The term *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(15) *United States.* The term *United States* means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

(16) *Rule of construction for dates.* With respect to any reference to a date in this title, such day shall be construed

(A) to begin at 12:01 a.m. on that date; and

(B) to end at midnight on that date.

Sec. 103. TERRORISM INSURANCE PROGRAM

(a) Establishment of Program.

(1) *In general.* There is established in the Department of the Treasury the Terrorism Insurance Program.

(2) *Authority of the secretary.* Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(3) *Mandatory participation.* Each entity that meets the definition of an insurer under this title shall participate in the Program.

(b) Conditions for Federal Payments. No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless

(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program

(A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish_

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written certification_

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) **Mandatory Availability.**_

(1) *Initial program periods.*_ During the period beginning on the first day of the Transition Period and ending on the last day of Program Year 2, each entity that meets the definition of an insurer under section 102_

(A) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(B) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(2) *Program year 3.*_ Not later than September 1, 2004, the Secretary shall, based on the factors referred to in section 108(d)(1), determine whether the provisions of subparagraphs (A) and (B) of paragraph (1) should be extended through Program Year 3.

(d) **State Residual Market Insurance Entities.**_

(1) *In general.*_ The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities and State workers_ compensation funds.

(2) *Treatment of certain entities.*_ For purposes of the regulations issued pursuant to paragraph (1)_

(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

(3) *Treatment of participation in certain entities.* Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

(e) Insured Loss Shared Compensation.

(1) *Federal share.*

(A) In general. The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year shall be equal to 90 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

(B) Prohibition on duplicative compensation. The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

(2) *Cap on annual liability.*

(A) In general. Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed \$ 100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3 (until such time as the Congress may act otherwise with respect to such losses)

(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds \$100,000,000,000; and

(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds \$100,000,000,000.

(B) Insurer share. For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

(3) *Notice to congress.* The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3, and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

(4) Final netting. The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) Determinations final. Any determination of the Secretary under this subsection shall be

final, unless expressly provided, and shall not be subject to judicial review.

(6) Insurance marketplace aggregate retention amount. For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be

(A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of

(i) \$10,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such period;

(B) for Program Year 2, the lesser of

(i) \$12,500,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

(C) for Program Year 3, the lesser of

(i) \$15,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

(7) *Recoupment of federal share.*

(A) Mandatory recoupment amount. For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A), (B), and (C) of paragraph (6) shall be the difference between

(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses

(I) are within the insurer deductible for the insurer subject to the losses; or

(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

(B) No mandatory recoupment if uncompensated losses exceed insurance marketplace retention. Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in subparagraph (A), (B), or (C) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be \$0.

(C) Mandatory establishment of surcharges to recoup mandatory recoupment amount. The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in subparagraph (A), (B), or (C) of paragraph (6), terrorism loss

risk-spreading premiums in an amount equal to any mandatory recoupment amount for such period.

(D) Discretionary recoupment of remainder of financial assistance. To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on

(i) the ultimate costs to taxpayers of no additional recoupment;

(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

(iv) such other factors as the Secretary considers appropriate.

(8) Policy surcharge for terrorism loss risk-spreading premiums.

(A) Policyholder premium. Any amount established by the Secretary as a terrorism loss risk-spreading premium shall

(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

(B) Collection. The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

(C) Percentage limitation. A terrorism loss risk-spreading premium (including any additional amount included in such premium on a discretionary basis pursuant to paragraph (7)(D)) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

(D) Adjustment for urban and smaller commercial and rural areas and different lines of insurance.

(i) Adjustments. In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration

(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

(III) the various exposures to terrorism risk for different lines of insurance.

(ii) Recoupment of adjustments. Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.

(E) Timing of premiums. The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

(f) Captive Insurers and Other Self-Insurance Arrangements. The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers compensation self-insurance programs and State workers compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

(g) Reinsurance to Cover Exposure.

(1) *Obtaining coverage.* This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

(2) *Limitation on financial assistance.* The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

(h) Group Life Insurance Study.

(1) *Study.* The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

(2) *Conditional Coverage.* To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC

- (A) apply the provisions of this title, as appropriate, to providers of group life insurance; and
- (B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

(i) Study and Report._

(1) *Study.*_ The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

(2) *Report.*_ Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

Sec. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) General Authority._ The Secretary shall have the powers and authorities necessary to carry out the Program, including authority_

- (1) to investigate and audit all claims under the Program; and
- (2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

(b) Interim Rules and Procedures._ The Secretary may issue interim final rules or procedures specifying the manner in which_

- (1) insurers may file and certify claims under the Program;
- (2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;
- (3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and
- (4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

(c) Consultation._ The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

(d) Contracts for Services._ The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) Civil Penalties._

(1) *In general.* _ The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing_

(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

(C) submits to the Secretary fraudulent claims under the Program for insured losses;

(D) has failed to provide the disclosures required under subsection (f); or

(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

(2) *Amount.* _ The amount under this paragraph is the greater of \$1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

(3) *Recovery of amount in dispute.* _ A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

(f) Submission of Premium Information._

(1) *In general.* _ The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

(2) *Access to information.* _ To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

(3) *Availability to congress.* _ The Secretary shall make information compiled under this subsection available to the Congress, upon request.

(g) Funding._

(1) *Federal payments.* _ There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

(2) *Administrative expenses.* _ There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

Sec. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

(a) **General Nullification.** Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act shall be void to the extent that it excludes losses that would otherwise be insured losses.

(b) **General Preemption.** Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

(c) **Reinstatement of Terrorism Exclusions.** Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only_

(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) if_

(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

(B) the insurer provided notice, at least 30 days before any such reinstatement, of_

(i) the increased premium for such terrorism coverage; and

(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

Sec. 106. PRESERVATION PROVISIONS.

(a) **State Law.** Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person_

(1) except as specifically provided in this title; and

(2) except that_

(A) the definition of the term act of terrorism in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

(B) during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

(b) **Existing Reinsurance Agreements.** Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.

Sec. 107. LITIGATION MANAGEMENT.

(a) Procedures and Damages.

(1) *In general.* If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

(2) *Preemption of state actions.* All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

(3) *Substantive law.* The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

(4) *Jurisdiction.* For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(5) *Punitive damages.* Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

(b) **Exclusion.** Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

(c) **Right of Subrogation.** The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

(d) **Relationship to Other Law.** Nothing in this section shall be construed to affect

(1) any party's contractual right to arbitrate a dispute; or

(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107-42; 49 U.S.C. 40101 note.).

(e) **Effective Period.** This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

Sec. 108. TERMINATION OF PROGRAM.

(a) **Termination of Program.** The Program shall terminate on December 31, 2005.

(b) **Continuing Authority to Pay or Adjust Compensation.** Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

(c) **Repeal; Savings Clause.** This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

(d) **Study and Report on the Program.**

(1) *Study.* The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

(2) *Report.* The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

HOMELAND SECURITY ACT

Public Law 107-296, approved November 25, 2002 (116 STAT. 2135), the Homeland Security Act of 2002, transferred the U.S. Customs Service and the U.S. Coast Guard to the Department of Homeland Security.

1. **U. S. CUSTOMS SERVICE.** Section 403 of Public Law 107-296 (116 STAT. 2178) transferred the U.S. Customs Service from the Treasury Department of the Department to Homeland Security.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of_

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

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2. **U. S. COAST GUARD.** Section 888 of Public Law 107-296 (116 STAT. 2249) transferred the U.S. Coast Guard to the Department of Homeland Security.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

* * * * *

(b) **Transfer.** There are transferred to the Department the authorities, functions personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

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