

MARITIME TRANSPORTATION SECURITY ACT OF 2002
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Summary of Security Provisions

S. 1214, the Maritime Transportation Security Act of 2002 (“Act”), was signed into law by the President on November 25, 2002, as Public Law 107-295. The provisions of the new legislation are found in Title 46 of the United States Code.

The main areas that are covered by this new chapter of Title 46 are as follows:

- U.S. facility and vessel vulnerability assessments
- Maritime transportation security plans
- Transportation security incident response
- Transportation security cards for access to secure areas
- Maritime safety and security teams
- Grants for implementing security plans and for R&D on security technology
- Foreign ports – assessment of effectiveness of antiterrorism measures, notifying foreign authorities, and actions when foreign ports are not maintaining effective antiterrorism measures
- Enhanced crewmember identification
- Maritime security advisory committees
- Maritime intelligence
- Automatic identification systems
- Long-range vessel tracking system
- Secure systems of transportation

ANALYSIS OF KEY PROVISIONS

U.S. facility and vessel vulnerability assessments (new sec. 70102 of title 46)
– This section addresses an essential first step of port security, assessing the vulnerability of facilities and **vessels in U.S. waters**.

- Initial assessment. Section 70102 requires the Secretary to conduct initial assessments of vessel types and facilities located on or adjacent to waters under U.S. jurisdiction and, in so doing, to identify the vessel types and facilities that pose a high risk of being involved in a transportation security incident.
- Detailed assessment. Based on the information gathered in an initial assessment, the Secretary is required to conduct a detailed vulnerability assessment of the facilities and vessels that may be involved in a transportation security incident. Each detailed assessment must be

updated at least every five years. Note that the initial assessment evaluates “vessel types” while the detailed assessments focus on “vessels.” This appears to indicate that detailed assessments are required for individual vessels that fit within each vessel type determined to pose a high risk of being involved in such an incident.

- Alternative assessment. In lieu of conducting a detailed vulnerability assessment of a vessel or facility, the Secretary may accept an alternative assessment conducted by or on behalf of the owner or operator of the facility or vessel, as long as the alternative assessment addresses the same matters as must be covered by a detailed assessment.
- Matters to be covered. Detailed assessments must cover the following matters: (1) identification and evaluation of critical assets and infrastructures; (2) identification of the threats to those assets and infrastructures; and (3) 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 specified by the Secretary.

Maritime transportation security plans (new sec. 70103 of title 46) – This section requires a National Maritime Transportation Security Plan by the Secretary, Area Transportation Security Plans for each area designated by the National Plan, **and individual plans for each vessel** and facility that the Secretary believes may be involved in a transportation security incident.

- Vessel and facility security plans. As noted previously, vessel and facility security plans are required for vessels and facilities that the Secretary believes may be involved in a transportation security incident.
 - Deadline for plan submission. The owner or operator of each such vessel or facility must submit a security plan to the Secretary within six months after the Secretary prescribes interim final regulations (expected in late Spring 2003) for these kinds of plans.
 - Updating; approval of changes. Each plan must be updated at least every five years and must be resubmitted to the Secretary for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility.
 - Impact on right to continue operating. This provision prohibits a vessel or facility from operating after the 12-month period following the publication of the interim final regulations unless the Secretary has approved the applicable plan and the vessel or facility is operating in compliance with the approved plan. However, the Secretary may

authorize continued operation until one year after the date of submission of the applicable plan if the owner or operator certifies that the owner or operator has acquired by contract or other Secretary-approved means a capability to deter an incident or substantial threat of an incident, to the maximum extent practicable. The conferees' statement on the port security bill notes that vessel and facility owners "should not be required to cease their operations due to the failure of the Secretary to approve their vessel or facility transportation security plans in a reasonable time period."

- Interim measures. During the period prior to approval of a vessel or facility plan, the owner or operator must implement necessary interim security measures, in accordance with the Secretary's requirements, to deter a transportation security incident, to the maximum extent practicable.
- Required plan contents. Vessel and facility plans, which must be consistent with requirements of the National Plan and Area Plans, are required to include provisions on the following:
 - Identification of the qualified individual with full authority to implement security actions.
 - Establishment and maintenance of physical security, passenger and cargo security, and personnel security.
 - Establishment and control of access to secure areas of the vessel or facility.
 - Procedural security policies, communications systems, and other security systems.
 - Identification of the available security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such an incident. These measures are to be ensured through contractual or other means approved by the Secretary. The conferees' statement states that this requirement "is not intended to require vessel operators to contract in advance or otherwise arrange antiterrorism response resources." Rather, they make clear that the actual response to a terrorist attack is "the responsibility of local, state, and Federal law enforcement agencies." The conferees' statement would logically apply not only to vessel operators, but also to vessel owners and to facility owners and operators as well.
 - Description of the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility.

Transportation security incident response (new sec. 70104 of title 46) – This provision calls for the Secretary to establish security incident response plans for vessels and facilities that may be involved in a transportation security incident. These are different from security plans in that they are designed to provide a

comprehensive response to an actual emergency, including notifying and coordinating with local, State, and Federal authorities (including the Federal Emergency Management Agency), securing the facility or vessel after the incident, and evacuating personnel from the facility or vessel. The focus of these plans will be the coordination of facility and vessel responses to an incident (e.g., an explosion in a port) with the responses of governmental agencies. Individual vessel or facility security plans may incorporate the incident response plans applicable to the vessel or facility involved. Section 102(c) of the Act requires that the Secretary establish these incident response plans by April 1, 2003.

Transportation security cards (new sec. 70105 of title 46) – This section requires the Secretary to prescribe regulations prohibiting an individual from entering an area of a vessel or facility that is designated by the Secretary as a secure area, unless the individual has a transportation security card issued under this section and is authorized under the vessel or facility’s security plan to be in the secure area, or is accompanied by an individual who holds such a card and has authorization to be in the secure area.

- Issuance of security cards. The Secretary is required to issue a biometric transportation security card to any of the following categories of individuals, unless the individual poses a security risk warranting denial of the card:
 - An individual allowed unescorted access to a secure area of a vessel or facility.
 - A licensed or unlicensed member of a vessel crew.
 - A vessel pilot.
 - An individual engaged on a towing vessel that assists a tank vessel.
 - An individual with access to information that is determined by the Secretary to be security sensitive.
 - Other individuals that the Secretary determines are engaged in port security activities.

Automatic identification systems (new sec. 70114 of title 46) – This section directs the Secretary to issue regulations for requiring certain vessels to be equipped with an automatic identification system (“AIS”) while operating on U.S. navigable waters. The AIS includes a position-indicating transponder on the vessel and an electronic charting or situation display to enable the vessel operator and shore-based Coast Guard facilities to access the information made available by the transponder.

- Covered vessels; waivers. Section 70114 specifies that the AIS requirement will apply to all self-propelled commercial vessels of at least 65 feet in length overall, vessels carrying more than a certain number of passengers for hire specified by the Secretary, towing vessels of more than 26 feet in length overall and 600 horsepower, and all other vessels specified by the Secretary. However, the Secretary is authorized to waive

the AIS requirement for vessels and waters that the Secretary considers do not require the AIS for safe navigation.

- AIS Phase-in schedule. Section 102(e) of the Act provides the following schedule for phasing in the AIS requirements: (1) on and after January 1, 2003, for vessels built after that date; (2) on and after July 1, 2003, for vessels built before January 1, 2003, that are passengers vessels required to carry a certificate under the International Convention for the Safety of Life at Sea, 1974 (SOLAS), tankers, or towing vessels engaged in moving a tank vessel; and (3) on and after December 31, 2004, for all other vessels built before January 1, 2003.

Long-range vessel tracking system (new sec. 70115 of title 46) – This section authorizes the Secretary to develop and implement a long-range automated vessel tracking system for all vessels in U.S. waters that are equipped with the Global Marine Distress and Safety System or equivalent satellite technology. The system is to be designed to provide information on vessel positions that is useful to deter transportation security incidents.

Secure systems of transportation (new sec. 70116 of title 46) -- This section requires the Secretary to establish a program to evaluate and certify secure systems of international intermodal transportation. The elements of the program must include standards and procedures for screening and evaluating cargo prior to loading in a foreign port for direct or indirect shipment to the United States; for securing cargo and monitoring that security in transit; for enhancing the physical security of shipping containers, including seals and locks; and for allowing the U.S. Government to ensure and validate compliance with the program.

Other Key Sections of the Act

International Seafarer Identification (sec. 103 of the Act) – This section encourages the Secretary to negotiate an international agreement that provides for a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction of the United States or the other country.

Transmittal of information to the Customs Service (sec. 108 of the Act) – This section makes technical amendments to provisions enacted in section 343 of the Trade Act of 2002 (Public Law 107-210) relating to the reporting of undocumented cargo to the Customs Service and to the mandatory advanced transmission of electronic cargo information to the Customs Service.