



Summary Maritime and Transportation Security Act of 2002 November 25, 2002

The Maritime and Transportation Security Act has been passed in the House and the Senate and will soon be signed into law by the President of the United States. Following is an outline of the major provisions of the bill. In order to eliminate contentious proposals in the bill, the international maritime security user fee proposal, which would have levied a security fee on cargo interests to pay for a portion of the bill, was dropped.

1. Section 70102: U.S. Facility and Vessel Vulnerability Assessments

This provision will require the Secretary¹ of the department in which the Coast Guard is operating to conduct an assessment of vessel types and facilities on or adjacent to the waters of the US to identify vessels and facilities that pose a “high risk of being involved in a transportation security incident”. To that end, the Coast Guard will continue to conduct detailed vulnerability assessments of high-risk vessels and facilities, specifically to identify and evaluate critical assets and infrastructures, and threats and weaknesses in physical, passenger and cargo security systems.

Upon completion, the Coast Guard will provide the vessel or facility owner a copy of the assessment results, which will be updated every 5 years. The Secretary may also accept alternative assessments conducted on behalf of an owner or operator. The Council supported inclusion of this provision to ensure the Government takes responsibility for completing these counter terror assessments and providing the results to the industry.

2. Section 70103: Vessel and Facility Security Plans

This provision requires owners and operators of vessels operating in US waters to prepare and submit to the Secretary a security plan for a vessel or facility for deterring a transportation security incident to the maximum extent practicable. The Council expressed opposition to the language “deter to the maximum extent practicable”, because the standard is vague and imprecise; nevertheless, this language remains in the final bill. However, because the US government is required to approve the vessel plans as meeting this standard, the provision should not create liability concerns that do not otherwise exist.

¹ The term “Secretary”, unless otherwise indicated, will refer to the Secretary of the department the Coast Guard is operating under.

Vessel and facility security plans must be submitted to the Secretary not more than six months after the promulgation of an interim final regulation on the subject. (Such an interim final regulation is likely to be promulgated by the Coast Guard in Spring 2003). The security plans must also include provisions for establishing and maintaining physical, passenger and cargo security, controlling access, and outlining training programs to protect a vessel or facility. The Secretary will then be required to approve the plans and provide appropriate feedback. It is our belief that the Coast Guard's review of the plans, as well as the interim final rule, will be based on the IMO rules to be approved in December 2002 and the recent Coast Guard Navigation and Vessel Inspection Circular (NVIC) 10-02 that we forwarded to Members on October 25th.

3. Section 70105: Transportation Security Cards

This provision will require the Secretary to promulgate regulations to prevent specified individuals from entering a vessel or port facility area unless the individual holds a "transportation security card" or is accompanied by someone who has one. The Secretary will also be responsible for issuing these cards. This requirement is targeted at US domestic vessel and port facility workers, and will only apply to foreign individuals who arrive at US ports by sea and seek "unescorted access" to designated areas within a port facility. National background checks--which will be performed by the US government--will be a part of the card issuance process, and biometrics will be included in the card.

4. Section 70107: Port Security Research and Development Grants

This recently added provision will set aside \$15 million per year through 2008, for the development of new technologies to secure US ports. Examples for possible grant fund uses include: increasing Customs' ability to inspect or target merchandise, enhancing accurate detection of explosives and chemical, biological, and radiological materials and agents, improving tags and seals for use on containers, and including smart sensors to detect hazardous or radioactive materials within a container.

5. Section 70108: Foreign Port Assessments

This provision requires the Secretary to assess the effectiveness of antiterrorism measures at major overseas ports from which vessels are bound to the US. Elements to be assessed include: screening of cargo and containers, access to the facilities, vessels and cargo, vessel security and compliance with "security standards". These standards are not defined in the bill, but the Council has consistently argued that they should be similar to or consistent with the standards developed by the IMO. If the Secretary finds that a specific port does not maintain adequate antiterrorism measures, he is obliged to notify appropriate foreign officials in the host country. He may also prescribe conditions of entry into the US for any vessel arriving from that port.

6. Section 70111: Enhanced Crewmember Identification

This short provision will require the Secretary, in consultation with the US Attorney General and the Secretary of State, to require crewmembers of vessels calling at US ports to carry and present a form of identification that the Secretary decides is necessary. This provision is consistent with regulations already promulgated by the Coast Guard under existing statutory authority.

7. Section 70113: Automated Identification Systems (AIS)

The bill will require AIS systems to be installed on all vessels while operating in US waters in accordance with the following implementation timeline:

- ♦ Any new vessel built after January 1, 2003, must have AIS systems installed
- ♦ Passenger vessels, tankers and tow vessels must have AIS systems installed by July 1, 2003.
- ♦ All other vessels (including liner vessels) must have AIS systems installed on or after December 31, 2004

8. Section 103: International Seafarer Identification

This provision will require 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 other countries to positively establish the identity of any seafarer aboard a vessel in the waters of the US or another country. This requirement also stipulates that if the Secretary fails to complete an international agreement within 2 years of the enactment of the bill, the Secretary must draft and submit to Congress legislation that will create a uniform, comprehensive system of identification for seafarers.

The Council, in addition to commenting on the transportation security card provision in the bill, argued strongly in support of a provision that would oblige the United States to participate in the development of and conform to the uniform international seafarer credentialing standards being developed by the International Labour Organization (ILO). The Council has recently filed comments to the Maritime Administration regarding the US government's position on this topic at the ILO.

9. Section 108: Technical Amendments Concerning Transmission of Certain Information To Customs

The bill includes a number of technical amendments to the Trade Act of 2002 regarding the manifesting of cargo exports. Regulations under this law regarding the documentation of export cargo will not be proposed by Customs until next year. The Council worked with the congressional staff to ensure that these amendments were in fact "technical" and would not confuse the export cargo manifesting process. Problematic elements from the various proposed technical elements were removed from the final bill.

The bill now includes technical amendments relating to the following issues: notification to Customs of improperly documented cargos; changing reporting requirements for vessel sharing agreements to allow for the reporting of undocumented cargo by the vessel accepting the booking--without regard to whether it operates the vessel; the exchange of information with Customs when containers are reassigned to another vessel; and, the handling of multiple container shipments.

This section of the bill also includes amendments to the Trade Act to require Customs to promulgate regulations, by October 31, 2003, to provide for the filing of electronic import and export cargo information for vessels bound to or departing from the US. This provision essentially extends Customs' deadline for complying with the Trade Act on the electronic filing of export manifest information by two months.

10. Section 111: Performance Standards

This short provision will require the Secretary, by January 1, 2004, to develop and maintain an anti-terrorism cargo identification, tracking and screening system for containers shipped to and from the US directly or via a foreign port. We believe that the existing AMS system for inbound cargo and the AES system for outbound cargo should serve this function.

This provision also requires the Secretary to develop performance standards to enhance the physical security of shipping containers, seals and locks. Efforts are underway to establish standards for container seals. We will be sending Members a separate memo on that topic in the near future.