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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Statement	STATEMENT BY THE PRESIDENT - From: The White House	2	N.D.	P5;
002	Statement	STATEMENT BY THE PRESIDENT	2	N.D.	P5;
003	Statement	STATEMENT BY THE PRESIDENT	1	N.D.	P5;
004	Letter	[responds to your request for the views and recommendation of the Department of Justice] - To: The Honorable Mitchell E. Daniels - From: Daniel J. Bryant	2	11/22/2002	P5;
005	Statement	STATEMENT BY THE PRESIDENT	1	N.D.	P5;
006	Statement	STATEMENT BY THE PRESIDENT	1	N.D.	P5;

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11/25/2002 [S. 1214] [771618]

FRC ID:
6363

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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007	Statement	STATEMENT BY THE PRESIDENT - From: White House	2	11/25/2002	P5; Transferred

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Barcode Scanning Sheet



Collection Code: **SECLOG**

Staff Name:

Document Date:

Correspondent: **TIM SAUNDERS**

Subject/Description: **OVERSIZE ATTACHMENT # 9470 NARA # 9361 BOX 6
FOLDER 3B BILL FILE RECEIVED FROM THE OFFICE OF
THE EXECUTIVE CLERK - NOV 25 02 ENROLLED BILL S.
1214 - MARITIME TRANSPORTATION SECURITY ACT OF
2002**



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE PRESIDENT HAS SEEN

11/25/02

November 22, 2002

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1214 - Maritime Transportation Security Act of 2002
Sponsors - Senator Hollings (D) South Carolina and 14 cosponsors

Last Day for Action

November 30, 2002 - Saturday

Purpose

(1) Establishes a program to improve security in U.S. ports and maritime operations;
(2) authorizes FY 2003 appropriations for the Coast Guard; and (3) amends law enforcement, marine safety, environmental, and other statutory provisions related to the Coast Guard and other maritime programs.

Agency Recommendations

Office of Management and Budget

Approval (Signing statement attached)

Department of Transportation

Approval

Department of Justice

Approval

National Transportation Safety Board

No objection

Department of Commerce

No objection (Informally)

Department of Labor

No objection (Informally)

Department of the Treasury

No objection (Informally)

General Services Administration

No objection (Informally)

Nuclear Regulatory Commission

No objection (Informally)

Department of Health and Human Services

Defers (Informally)

Department of the Interior

Defers (Informally)

Department of Energy

No comment (Informally)

Federal Communications Commission

No comment (Informally)

Federal Emergency Management Agency

No comment (Informally)

Office of National Drug Control Policy

No comment (Informally)

Discussion

S. 1214 reflects a House-Senate compromise on proposals to improve port and maritime security. The enrolled bill also authorizes appropriations for the Coast Guard and revises numerous Coast Guard-related statutory provisions. The enrolled bill's most significant provisions are described below. Other important provisions are summarized in the Attachment.

Maritime Security Program

Responsibilities of the Secretary of Homeland Security. Unless otherwise stated, references in S. 1214 (and this memo) to "the Secretary" refer to the Secretary of the Department in which the Coast Guard is located. The Coast Guard, which is currently located in the Department of Transportation, will be transferred to the Department of Homeland Security pursuant to the Homeland Security Act of 2002. (Under both current law and the Homeland Security Act, the Coast Guard would operate as a part of the Department of the Navy upon a declaration of war or the direction of the President.)

Vulnerability and Risk Assessments. S. 1214 would require the Secretary to make an initial assessment of the types of vessels and U.S. facilities that pose a high risk of involvement in transportation security incidents that could disrupt the economy or transportation system, or cause significant loss of life or environmental damage. Such facilities would include not only those directly involved in port operations, but other shoreside facilities vulnerable to terrorism such as nuclear power plants and chemical factories.

The Secretary would then be responsible for performing detailed vulnerability assessments of all vessels and maritime facilities in the identified categories. These assessments would address physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, and other areas identified by the Secretary. The Secretary could accept assessments conducted by or on behalf of vessel or facility owners that meet the Department's standards.

The Secretary would also be responsible for assessing the effectiveness of the anti-terrorism measures maintained by foreign ports from which vessels servicing the United States depart, and to identify ports that pose high risks to international commerce. The Secretary would be required to notify foreign governments found not to maintain effective anti-terrorism measures, and to make port security training available to the officials of such ports in conjunction with the Department of State. The Secretary would also be authorized to bar vessels departing from such high risk ports or carrying cargo originating in or transshipped through such ports from entry into U.S. ports unless they met special conditions specified by the Secretary.

The Secretary would be required to develop a system to collect, integrate, and analyze information concerning vessels operating in or bound for U.S. waters, including information on the cargo, passengers, and crew of such vessels. The report of the conferees on the enrolled bill emphasized that it is anticipated that such intelligence will be used to develop risk assessments of vessels entering U.S. waters so that those which pose the greatest risk can be searched before they enter U.S. ports.

Maritime Transportation Security Plans. S. 1214 would require the development of national, area, and facility level plans to assure that problems identified in vulnerability assessments are addressed.

The Secretary would be required to prepare a National Maritime Transportation Security Plan to deter and minimize damage from transportation security incidents. The Plan would identify security vulnerabilities and resources, and assign Federal, state and local responsibilities for minimizing damage from transportation security incidents. In particular, the Plan would be required to prescribe a surveillance system to assure that security incidents and imminent threats are promptly noted and acted upon. It would also include plans for reestablishing the flow of cargo as soon as possible should a security incident occur. The Plan would designate areas for which Area Maritime Transportation Security Plans would be required, and designate Coast Guard officials to serve as Federal Maritime Security Coordinators for each of these areas. Actions by Federal agencies to deter and minimize damage from transportation security incidents would be required to conform to the Plan "to the greatest extent possible."

Area Maritime Security Coordinators would be required to develop Area Maritime Transportation Security Plans that would have to be approved by the Secretary. Owners of vessels and facilities previously identified as high-risk by the Secretary would be required to develop individual vessel and facility security plans and security incident response plans. (Facilities and vessels of the Department of Defense would not be subject to this requirement.) Security plans would have to be submitted to the Secretary within 6 months of the issuance of interim final regulations setting forth the requirements of such plans. Any plan which has not been approved by the Secretary within 12 months of the issuance of such regulations would not be permitted to remain in effect. Security incident response plans, which could be included in security plans, would be required to detail how a facility or vessel would respond to a security incident or other emergency, including procedures for notifying the Federal Emergency Management Agency and other relevant Federal agencies. Area, facility, and vessel plans would have to be updated every five years.

The enrolled bill specifies that information developed in connection with these plans is "not required to be disclosed to the public."

Maritime Transportation Security Grants. S. 1214 would establish a program of grants to be awarded to port authorities, state and local governments, and facility operators in an "equitable manner" to reimburse them for eligible costs connected with implementing area or facility Maritime Transportation Security Plans. Grants could be used to defray eligible expenditures previously made by recipients, but could not exceed 75 percent of the cost of projects costing \$25,000 or more unless the Secretary of Transportation determines the project has special merit and would not be completed without Federal assistance. The enrolled bill specifies that this grant program would be administered by the Secretary of Transportation through the Maritime Administration. It therefore would not be among the Coast Guard programs transferred to the Department of Homeland Security.

Personnel Security. The Secretary would be required to issue regulations restricting entrance to vessels, or to other maritime facilities designated by the Secretary as secure areas, to persons to whom biometric transportation security cards have been issued, or who are authorized to be in the area and are accompanied by a person to whom a card has been issued. Maritime Transportation Security Plans developed by vessels and facilities would be required to specify areas that would be limited to individuals possessing transportation security cards.

The Secretary would be required to issue cards to all persons whose positions require access to such facilities unless they are determined to be transportation security risks pursuant to regulations issued by the Secretary. Factors to be considered in determining whether individuals are transportation security risks would include whether they are in this country legally, and whether they have been convicted within the preceding 7 years or released from prison within the preceding 5 years for committing certain felonies. The Secretary would also be required to issue regulations detailing standards and procedures for considering waivers and appeals of determinations that individuals are transportation security risks.

The enrolled bill would require the Department of Justice to perform background records checks upon the request of the Secretary of persons whose eligibility to work in secure areas is being evaluated. Information gathered in the process of determining eligibility could be shared with other Federal agencies, but employers could only be informed of whether an employee had been issued a biometric transportation security card.

The Secretary would also be authorized to prescribe identification requirements for crew members of foreign vessels calling on U.S. ports. The enrolled bill would "encourage" the Secretary to negotiate an international agreement that will enable the U.S. to establish the identities of all seafarers on vessels within its jurisdiction. Should the Secretary fail to negotiate an agreement within 24 months of enactment, the Secretary would be required to transmit to the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee a draft of legislation that would establish a uniform comprehensive identification system for seafarers.

Cargo Security. The Secretary would be required to implement a system for identifying, tracking, and screening containerized cargo shipped through U.S. ports. S. 1214 would also require the development of performance standards to improve the security of containerized cargo such as standards for locks and seals and mechanisms for indicating whether tampering has occurred.

The enrolled bill would require carriers to provide the Customs Service with electronically filed cargo manifest information in advance of entering a U.S. port. The Customs Service would be required to share this information with other Federal Departments.

Sea Marshals and Maritime Safety-Security Teams. The enrolled bill would authorize armed Coast Guard personnel to act as "sea marshals" to protect vessels and facilities. It would also require the Secretary to establish maritime safety and security teams that may be rapidly deployed to respond to terrorist threats or other emergencies. Team members would have to be qualified to perform a broad range of safety, police, and anti-terrorism functions specified in the enrolled bill. The number and location of such teams would be determined by the Secretary.

Vessel Identification and Tracking Systems. S. 1214 would require that specified categories of vessels operating in U.S. waters be equipped with automatic identification systems to be specified under regulations issued by the Secretary. Such systems include position indicating transponders and electronic charting or position displays. The Secretary would also be authorized to implement a long-range automated vessel tracking system for all vessels in U.S. waters that are equipped with the necessary satellite technology.

Authorizations of Appropriations

Coast Guard. S. 1214 would authorize total FY 2003 appropriations of \$5.9 billion for the Coast Guard, consistent with your request. The enrolled bill would also authorize an end-of-year active duty personnel level of 45,500, and specify that if a war or national emergency is in effect at the end of any fiscal year, the President may defer the effectiveness of any end-of-year limitation until six months after the war or national emergency has ended.

Department of Transportation. The enrolled bill would authorize appropriations of "such sums as may be necessary" for FYs 2003-2008 to the Department of Transportation for the maritime transportation security grants described above. It would also authorize appropriations to the Department of Transportation of \$15 million for port security research and development grants and \$5.5 million for the training of maritime security professionals for each of FYs 2003-2008. Unlike programs administered by the Coast Guard, these programs would not be transferred to the Department of Homeland Security. Finally, S. 1214 would authorize FY 2003 appropriations of \$500,000 for grants to the American Merchant Marine Veterans Memorial Committee to construct an addition to the American Merchant Marine Memorial Wall of Honor at the Los Angeles Maritime Museum in San Pedro, California.

Under Secretary of Transportation for Policy

S. 1214 would create a Presidentially-appointed, Senate-confirmed position of Under Secretary of Transportation for Policy within the Department of Transportation. The Administration proposed that this position be created.

Agency Views

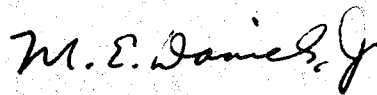
The Department of Transportation recommends approval of S. 1214, and advises that the enrolled bill is "[s]tructured on a template developed by the Department [and] achieves the Department's goals for maritime security."

The Department of Justice recommends approval of S. 1214, but has provided a proposed signing statement that addresses constitutional concerns.

Conclusion and Recommendations

We join Transportation and Justice in recommending approval of S. 1214, which passed the Senate by unanimous consent and the House by voice vote.

Attached for your consideration is a signing statement that is based on the language submitted by Justice. It has been reviewed and approved by the Departments of Transportation and Justice and by the White House Counsel's Office.



Mitchell E. Daniels, Jr.
Director

Enclosures

One Hundred Seventh Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,
the twenty-third day of January, two thousand and two*

An Act

To amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Maritime Transportation Security Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MARITIME TRANSPORTATION SECURITY

- Sec. 101. Findings.
- Sec. 102. Port security.
- Sec. 103. International seafarer identification.
- Sec. 104. Extension of seaward jurisdiction.
- Sec. 105. Suspension of limitation on strength of Coast Guard.
- Sec. 106. Extension of Deepwater Port Act to natural gas.
- Sec. 107. Assignment of Coast Guard personnel as sea marshals and enhanced use of other security personnel.
- Sec. 108. Technical amendments concerning the transmittal of certain information to the Customs Service.
- Sec. 109. Maritime security professional training.
- Sec. 110. Additional reports.
- Sec. 111. Performance standards.
- Sec. 112. Report on foreign-flag vessels.
- Sec. 113. Revision of Port Security Planning Guide.

TITLE II—MARITIME POLICY IMPROVEMENT

- Sec. 201. Short title.
- Sec. 202. Vessel COASTAL VENTURE.
- Sec. 203. Expansion of American Merchant Marine Memorial Wall of Honor.
- Sec. 204. Discharge of agricultural cargo residue.
- Sec. 205. Recording and discharging notices of claim of maritime lien.
- Sec. 206. Tonnage of R/V DAVIDSON.
- Sec. 207. Miscellaneous certificates of documentation.
- Sec. 208. Exemption for Victory Ships.
- Sec. 209. Certificate of documentation for 3 barges.
- Sec. 210. Certificate of documentation for the EAGLE.
- Sec. 211. Waiver for vessels in New World Challenge Race.
- Sec. 212. Vessel ASPHALT COMMANDER.
- Sec. 213. Coastwise trade authorization.
- Sec. 214. Jones Act waiver for delayed vessel delivery.
- Sec. 215. Realignment of policy responsibility in the Department of Transportation.

TITLE III—COAST GUARD PERSONNEL AND MARITIME SAFETY

Sec. 301. Short title.

Subtitle A—Personnel Management

Sec. 311. Coast Guard band director rank.

\$3,500,000 is authorized to be derived each fiscal year from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$889,000,000.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, \$18,000,000, to remain available until expended.

(6) For environmental compliance and restoration at Coast Guard facilities (other than parts and equipment associated with operations and maintenance), \$17,000,000, to remain available until expended.

SEC. 503. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) **ACTIVE DUTY STRENGTH.**—The Coast Guard is authorized an end-of-year strength for active duty personnel of 45,500 as of September 30, 2003.

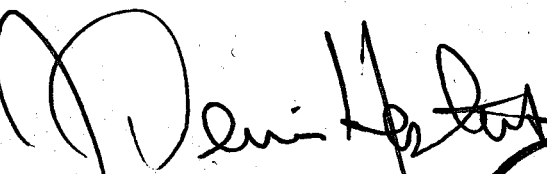
(b) **MILITARY TRAINING STUDENT LOADS.**—The Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training for fiscal year 2003, 2,250 student years.

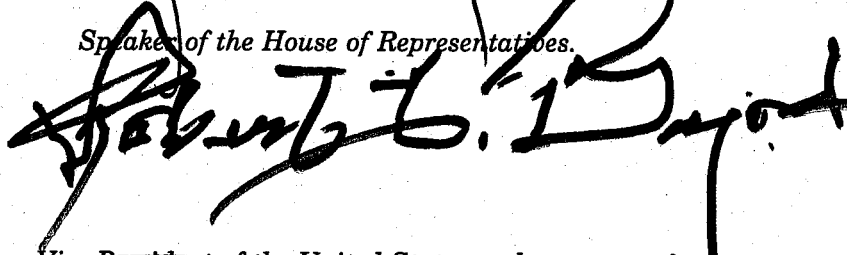
(2) For flight training for fiscal year 2003, 125 student years.

(3) For professional training in military and civilian institutions for fiscal year 2003, 300 student years.

(4) For officer acquisition for fiscal year 2003, 1,150 student years.



Speaker of the House of Representatives.

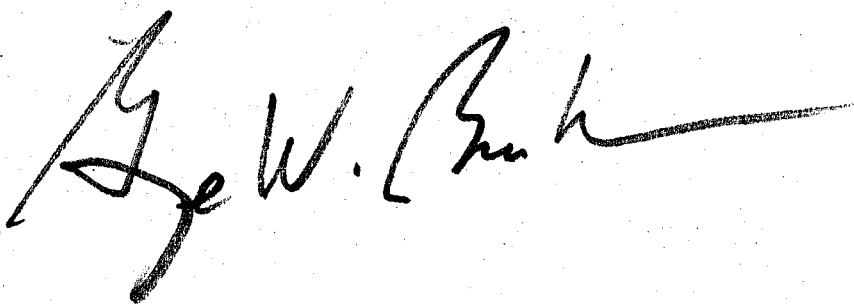


~~Vice President of the United States and~~

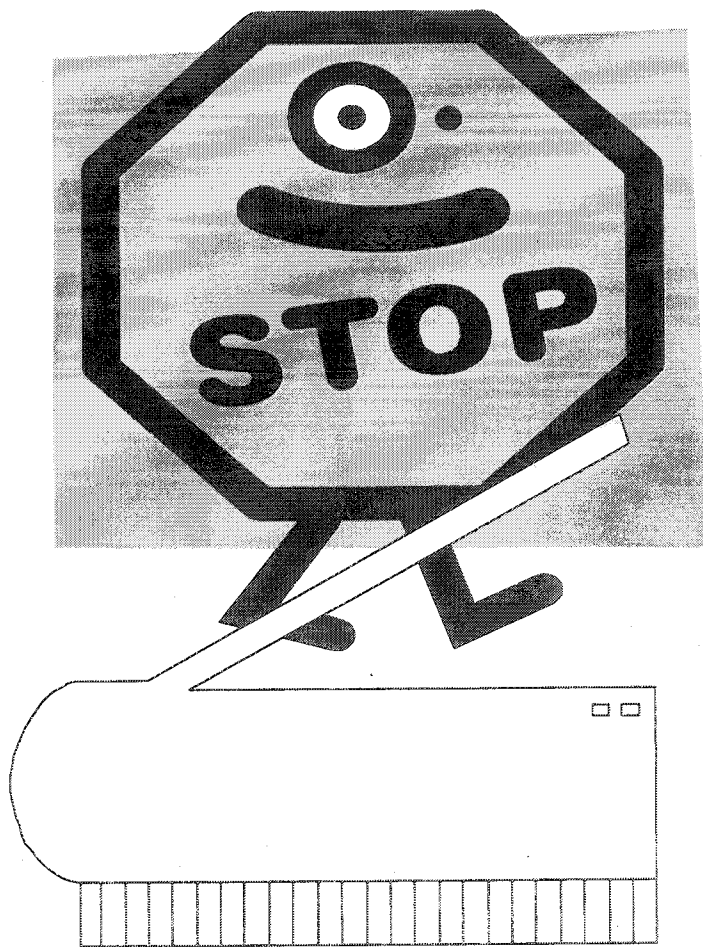
President of the Senate, *pro tempore*.

APPROVED

NOV 25 2002



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Other Provisions of S. 1214

Prohibition of New Maritime User Fees

The enrolled bill would reinstate a statutory provision that expired on September 30, 2001, prohibiting the Secretary of Transportation from planning or implementing any maritime user fee that was not in effect before January 1, 1998. The restored prohibition would expire on September 30, 2006.

Law Enforcement Provisions

The enrolled bill would:

- Extend the Coast Guard's law enforcement jurisdiction to 24 nautical miles from U.S. shores for enforcement of drug laws (the outer limit of the U.S. contiguous zone) and 12 nautical miles (the outer limit of the U.S. territorial waters) for all other laws.
- Clarify the circumstances under which the Government can seize a vessel that participates in illicit drug smuggling.
- Authorize the Coast Guard to accept the transfer of seven patrol craft from the Department of Defense for use in drug interdiction and other law enforcement operations.
- Authorize the Coast Guard to operate a Caribbean Support Tender to provide training and technical assistance for foreign coast guards, navies, and other maritime services; and to provide medical and dental care to participating foreign military personnel and their dependents during their service on the tender.
- Increase penalties for the negligent operation or interfering with the safe operation of vessels from \$1,000 to \$5,000 in the case of recreational vessels and \$25,000 in the case of other vessels.
- Prohibit vessels forfeited to the U.S. Government for breaches of U.S. laws from obtaining certificates of documentation with fisheries endorsements.

Environmental Provisions

The enrolled bill would authorize the Coast Guard to borrow up to \$100 million from the Oil Spill Liability Trust Fund when the existing limit of \$50 million in unappropriated funds is inadequate to deal with a discharge or threatened discharge. The Coast Guard would be required to notify Congress of the circumstances of such borrowings, and to repay the Fund as removal costs are recovered from responsible parties.

The bill also would extend the Deepwater Port Act to permit the construction of "deepwater ports" (facilities for loading and offloading ships located on platforms several miles offshore) that handle liquefied natural gas. Currently, deepwater ports may load or offload liquefied natural gas only if they are primarily licensed to load and unload oil.

Finally, the enrolled bill would specify that discharges of agricultural residue from vessels shall be governed exclusively by the terms of an international agreement known as Marpol Annex V, as implemented by the Act to Prevent Pollution from Ships. The Coast Guard had previously announced its intent to regulate these discharges under other statutes.

Maritime Safety

The enrolled bill would:

- Require foreign flag vessels to monitor inter-ship radio-telephone safety and distress frequencies when operating in U.S. waters.
- Extend requirements of the Vessel Bridge-to-Bridge Radiotelephone Act to require vessels, dredges, and floating plants to carry radiotelephones throughout the U.S. Territorial Sea.
- Require the Commandant of the Coast Guard to ensure that all Coast Guard personnel are equipped with adequate safety equipment, including hypothermia protective clothing where appropriate, while performing search and rescue missions.
- Authorize the Coast Guard to conduct marine casualty investigations involving foreign vessels in areas outside U.S. territorial waters consistent with the practices and procedures of international law.

Coast Guard Personnel

The enrolled bill's provisions regarding Coast Guard personnel would:

- Conform statutory provisions regarding Coast Guard severance pay to those which apply to the Department of Defense.
- Authorize compensatory absence from duty for Coast Guard military personnel serving at isolated duty stations under certain circumstances.
- Prescribe procedures under which promotion selection boards may accelerate the promotion of certain outstanding officers by placing them at the top of selection lists.
- Revise promotion procedures for Coast Guard Reserve Officers.
- Authorize the Coast Guard to continue certain captains, commanders, and lieutenant commanders on active service who would otherwise be scheduled to retire because they had not been selected for promotion.
- Authorize the Coast Guard to provide financial assistance to eligible enlisted Coast Guard Reservists, not on active duty, for expenses incurred while pursuing baccalaureate or post-baccalaureate degrees on a full time basis.
- Permit the Coast Guard to pay death gratuities to personal representatives of Coast Guard Auxiliarists who die in the line of duty, to the same extent that death gratuities are paid on behalf of Federal employees.
- Increase the maximum rank of the director of the Coast Guard band from commander to captain.

Coast Guard Management

The enrolled bill's provisions regarding management of the Coast Guard would:

- Establish safety standards for land-based Coast Guard facilities involved in search and rescue activities.
- Authorize the Coast Guard to use certain vessels of the U.S. Navy for training.

- Authorize the Coast Guard to lease lighthouse property to non-Federal entities for periods not to exceed 30 years.

Coast Guard Housing Authorities

The Coast Guard's authority to enter into contracts and investments with private parties to acquire or construct military family housing and military unaccompanied housing expired on October 1, 2001. The enrolled bill would extend this authority until October 1, 2006, and double the total budget authority the Coast Guard may devote to annually to such contracts and investments from \$20 million to \$40 million. The enrolled bill would also authorize the Coast Guard to implement a demonstration project for the acquisition or construction of military family housing and military unaccompanied housing at the Coast Guard installation in Kodiak, Alaska.

Finally, the enrolled bill would specifically include small businesses participating in the Small Business Administration's 8(a) program among parties with whom the Coast Guard may contract, and require that such firms be utilized "to the maximum amount possible" in implementing the demonstration project in Kodiak, Alaska.

Regulatory Exceptions and Exemptions

Several provisions of S. 1214 would provide relief from normally applicable regulatory requirements for several named vessels. These provisions would require the Department of Transportation to:

- Issue vessel documentation to 27 named vessels qualifying them to participate in the United States coastwise trade. These vessels would otherwise be ineligible for documentation under the Jones Act because they were constructed and/or repaired outside of the United States.
- Prescribe a tonnage measurement to a named vessel that would qualify it to provide service as small passenger vessel.
- Exempt two named vessels that served as World War II Victory Ships from certain passenger vessel inspection requirements so long as they continue to be owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners.

The enrolled bill would also, with no further action required by the Department of Transportation, grant statutory waivers authorizing the transfer of a named vessel to foreign ownership or control.

Advisory Committees

The enrolled bill would:

- Require the establishment of a National Maritime Security Advisory Committee and of Area Maritime Security Advisory Committees for each U.S. port.
- Require the Coast Guard to evaluate the effectiveness of existing local harbor safety coordinating committees in the United States and to test the feasibility of extending such committees in small and medium-sized ports. The enrolled bill would also make the Federal Advisory Committee Act inapplicable to harbor safety committees.
- Extend the termination dates of six named Federal advisory committees related to maritime safety.

Reports

Preservation of Reporting Requirements. The enrolled bill would prohibit application of the Federal Reports Elimination and Sunset Act of 1995 to terminate reports required by several statutory provisions. These provisions require reports regarding Coast Guard operations and expenditures, marine casualties, user fees, public port conditions, the Federal Maritime Commission's activities, and interagency coordination of oil pollution research.

Termination of Reporting Requirements. The enrolled bill would eliminate a statutory requirement that the Department of Transportation submit an annual report on the Oil Spill Liability Trust Fund to Congress.

New Reporting Requirements. The enrolled bill would require the Department in which the Coast Guard is located to submit reports to the Senate Commerce, Science, and Transportation and the House Transportation and Infrastructure Committees:

- Within 60 days of enactment, on the status of efforts to modernize the National Distress and Response System.
- Within 90 days of enactment, comparing the amounts the Coast Guard spent on its various missions before and after the terrorist attacks of September 11, 2001, and providing estimates of the amounts necessary to restore Coast Guard's activity levels for all missions to those that existed before that date.
- Within 180 days of enactment, on the Coast Guard's performance objectives regarding each of its missions.

- Within six months, providing a proposal and rationale for funding Maritime Transportation Security Grants to eliminate identified security deficiencies for FYs 2003-2008. Thereafter, annual reports on progress in eliminating identified security deficiencies would be required.
- Annually, on the Coast Guard's readiness to perform defense-related responsibilities.
- Prior to making the results public, on the results of a required study on the impact on Coast Guard officer retention of designating outstanding officers on promotion lists.

Other Provisions

Other provisions of S. 1214 would:

- Permit only specified vessels, except in the case of a vessel in distress, to perform certain vessel escort towing assistance operations within the navigable waters of the United States.
- Revise procedures for recording and discharging certain maritime liens.
- Authorize the Department of Transportation to issue temporary merchant mariner documents for periods not to exceed 120 days to certain personnel.
- Exempt entertainment and service personnel who have no navigation duties and are employed on vessels engaged solely in domestic service from the requirement to obtain merchant mariner's documents.
- Authorize the transfer of specified Federal real property under specified conditions in Portland, Maine; Clallam County, Washington; Monterey County, California; and Hampton Township and Traverse City, Michigan.
- Amend the statutory definition of "small passenger vessel."
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Statement	STATEMENT BY THE PRESIDENT - From: The White House	2	N.D.	P5;

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COLLECTION:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

11/25/2002 [S. 1214] [771618]

FRC ID:

6363

FOIA IDs and Segments:

OA Num.:

9470

NARA Num.:

9361

RESTRICTION CODES

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Bills Received at the White House

Date received and
notification to OMB: 11/19/2002

Last day for action: 11/30/2002

S.1214

Official Title

An Act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

518788



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 22, 2002

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1214 - Maritime Transportation Security Act of 2002
Sponsors - Senator Hollings (D) South Carolina and 14 cosponsors

Last Day for Action

November 30, 2002 - Saturday

Purpose

(1) Establishes a program to improve security in U.S. ports and maritime operations;
(2) authorizes FY 2003 appropriations for the Coast Guard; and (3) amends law enforcement, marine safety, environmental, and other statutory provisions related to the Coast Guard and other maritime programs.

Agency Recommendations

Office of Management and Budget

Approval (Signing statement
attached)

Department of Transportation

Approval

Department of Justice

Approval

National Transportation Safety Board

No objection

Department of Commerce

No objection (Informally)

Department of Labor

No objection (Informally)

Department of the Treasury

No objection (Informally)

General Services Administration

No objection (Informally)

Nuclear Regulatory Commission

No objection (Informally)

Department of Health and Human Services

Defers (Informally)

Department of the Interior

Defers (Informally)

Department of Energy

No comment (Informally)

Federal Communications Commission

No comment (Informally)

Federal Emergency Management Agency

No comment (Informally)

Office of National Drug Control Policy

No comment (Informally)

Discussion

S. 1214 reflects a House-Senate compromise on proposals to improve port and maritime security. The enrolled bill also authorizes appropriations for the Coast Guard and revises numerous Coast Guard-related statutory provisions. The enrolled bill's most significant provisions are described below. Other important provisions are summarized in the Attachment.

Maritime Security Program

Responsibilities of the Secretary of Homeland Security. Unless otherwise stated, references in S. 1214 (and this memo) to "the Secretary" refer to the Secretary of the Department in which the Coast Guard is located. The Coast Guard, which is currently located in the Department of Transportation, will be transferred to the Department of Homeland Security pursuant to the Homeland Security Act of 2002. (Under both current law and the Homeland Security Act, the Coast Guard would operate as a part of the Department of the Navy upon a declaration of war or the direction of the President.)

Vulnerability and Risk Assessments. S. 1214 would require the Secretary to make an initial assessment of the types of vessels and U.S. facilities that pose a high risk of involvement in transportation security incidents that could disrupt the economy or transportation system, or cause significant loss of life or environmental damage. Such facilities would include not only those directly involved in port operations, but other shoreside facilities vulnerable to terrorism such as nuclear power plants and chemical factories.

The Secretary would then be responsible for performing detailed vulnerability assessments of all vessels and maritime facilities in the identified categories. These assessments would address physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, and other areas identified by the Secretary. The Secretary could accept assessments conducted by or on behalf of vessel or facility owners that meet the Department's standards.

The Secretary would also be responsible for assessing the effectiveness of the anti-terrorism measures maintained by foreign ports from which vessels servicing the United States depart, and to identify ports that pose high risks to international commerce. The Secretary would be required to notify foreign governments found not to maintain effective anti-terrorism measures, and to make port security training available to the officials of such ports in conjunction with the Department of State. The Secretary would also be authorized to bar vessels departing from such high risk ports or carrying cargo originating in or transshipped through such ports from entry into U.S. ports unless they met special conditions specified by the Secretary.

The Secretary would be required to develop a system to collect, integrate, and analyze information concerning vessels operating in or bound for U.S. waters, including information on the cargo, passengers, and crew of such vessels. The report of the conferees on the enrolled bill emphasized that it is anticipated that such intelligence will be used to develop risk assessments of vessels entering U.S. waters so that those which pose the greatest risk can be searched before they enter U.S. ports.

Maritime Transportation Security Plans. S. 1214 would require the development of national, area, and facility level plans to assure that problems identified in vulnerability assessments are addressed.

The Secretary would be required to prepare a National Maritime Transportation Security Plan to deter and minimize damage from transportation security incidents. The Plan would identify security vulnerabilities and resources, and assign Federal, state and local responsibilities for minimizing damage from transportation security incidents. In particular, the Plan would be required to prescribe a surveillance system to assure that security incidents and imminent threats are promptly noted and acted upon. It would also include plans for reestablishing the flow of cargo as soon as possible should a security incident occur. The Plan would designate areas for which Area Maritime Transportation Security Plans would be required, and designate Coast Guard officials to serve as Federal Maritime Security Coordinators for each of these areas. Actions by Federal agencies to deter and minimize damage from transportation security incidents would be required to conform to the Plan "to the greatest extent possible."

Area Maritime Security Coordinators would be required to develop Area Maritime Transportation Security Plans that would have to be approved by the Secretary. Owners of vessels and facilities previously identified as high-risk by the Secretary would be required to develop individual vessel and facility security plans and security incident response plans. (Facilities and vessels of the Department of Defense would not be subject to this requirement.) Security plans would have to be submitted to the Secretary within 6 months of the issuance of interim final regulations setting forth the requirements of such plans. Any plan which has not been approved by the Secretary within 12 months of the issuance of such regulations would not be permitted to remain in effect. Security incident response plans, which could be included in security plans, would be required to detail how a facility or vessel would respond to a security incident or other emergency, including procedures for notifying the Federal Emergency Management Agency and other relevant Federal agencies. Area, facility, and vessel plans would have to be updated every five years.

The enrolled bill specifies that information developed in connection with these plans is "not required to be disclosed to the public."

Maritime Transportation Security Grants. S. 1214 would establish a program of grants to be awarded to port authorities, state and local governments, and facility operators in an "equitable manner" to reimburse them for eligible costs connected with implementing area or facility Maritime Transportation Security Plans. Grants could be used to defray eligible expenditures previously made by recipients, but could not exceed 75 percent of the cost of projects costing \$25,000 or more unless the Secretary of Transportation determines the project has special merit and would not be completed without Federal assistance. The enrolled bill specifies that this grant program would be administered by the Secretary of Transportation through the Maritime Administration. It therefore would not be among the Coast Guard programs transferred to the Department of Homeland Security.

Personnel Security. The Secretary would be required to issue regulations restricting entrance to vessels, or to other maritime facilities designated by the Secretary as secure areas, to persons to whom biometric transportation security cards have been issued, or who are authorized to be in the area and are accompanied by a person to whom a card has been issued. Maritime Transportation Security Plans developed by vessels and facilities would be required to specify areas that would be limited to individuals possessing transportation security cards.

The Secretary would be required to issue cards to all persons whose positions require access to such facilities unless they are determined to be transportation security risks pursuant to regulations issued by the Secretary. Factors to be considered in determining whether individuals are transportation security risks would include whether they are in this country legally, and whether they have been convicted within the preceding 7 years or released from prison within the preceding 5 years for committing certain felonies. The Secretary would also be required to issue regulations detailing standards and procedures for considering waivers and appeals of determinations that individuals are transportation security risks.

The enrolled bill would require the Department of Justice to perform background records checks upon the request of the Secretary of persons whose eligibility to work in secure areas is being evaluated. Information gathered in the process of determining eligibility could be shared with other Federal agencies, but employers could only be informed of whether an employee had been issued a biometric transportation security card.

The Secretary would also be authorized to prescribe identification requirements for crew members of foreign vessels calling on U.S. ports. The enrolled bill would "encourage" the Secretary to negotiate an international agreement that will enable the U.S. to establish the identities of all seafarers on vessels within its jurisdiction. Should the Secretary fail to negotiate an agreement within 24 months of enactment, the Secretary would be required to transmit to the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee a draft of legislation that would establish a uniform comprehensive identification system for seafarers.

Cargo Security. The Secretary would be required to implement a system for identifying, tracking, and screening containerized cargo shipped through U.S. ports. S. 1214 would also require the development of performance standards to improve the security of containerized cargo such as standards for locks and seals and mechanisms for indicating whether tampering has occurred.

The enrolled bill would require carriers to provide the Customs Service with electronically filed cargo manifest information in advance of entering a U.S. port. The Customs Service would be required to share this information with other Federal Departments.

Sea Marshals and Maritime Safety-Security Teams. The enrolled bill would authorize armed Coast Guard personnel to act as "sea marshals" to protect vessels and facilities. It would also require the Secretary to establish maritime safety and security teams that may be rapidly deployed to respond to terrorist threats or other emergencies. Team members would have to be qualified to perform a broad range of safety, police, and anti-terrorism functions specified in the enrolled bill. The number and location of such teams would be determined by the Secretary.

Vessel Identification and Tracking Systems. S. 1214 would require that specified categories of vessels operating in U.S. waters be equipped with automatic identification systems to be specified under regulations issued by the Secretary. Such systems include position indicating transponders and electronic charting or position displays. The Secretary would also be authorized to implement a long-range automated vessel tracking system for all vessels in U.S. waters that are equipped with the necessary satellite technology.

Authorizations of Appropriations

Coast Guard. S. 1214 would authorize total FY 2003 appropriations of \$5.9 billion for the Coast Guard, consistent with your request. The enrolled bill would also authorize an end-of-year active duty personnel level of 45,500, and specify that if a war or national emergency is in effect at the end of any fiscal year, the President may defer the effectiveness of any end-of-year limitation until six months after the war or national emergency has ended.

Department of Transportation. The enrolled bill would authorize appropriations of "such sums as may be necessary" for FYs 2003-2008 to the Department of Transportation for the maritime transportation security grants described above. It would also authorize appropriations to the Department of Transportation of \$15 million for port security research and development grants and \$5.5 million for the training of maritime security professionals for each of FYs 2003-2008. Unlike programs administered by the Coast Guard, these programs would not be transferred to the Department of Homeland Security. Finally, S. 1214 would authorize FY 2003 appropriations of \$500,000 for grants to the American Merchant Marine Veterans Memorial Committee to construct an addition to the American Merchant Marine Memorial Wall of Honor at the Los Angeles Maritime Museum in San Pedro, California.

Under Secretary of Transportation for Policy

S. 1214 would create a Presidentially-appointed, Senate-confirmed position of Under Secretary of Transportation for Policy within the Department of Transportation. The Administration proposed that this position be created.

Agency Views

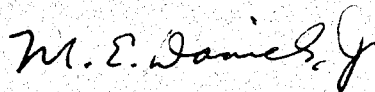
The Department of Transportation recommends approval of S. 1214, and advises that the enrolled bill is "[s]tructured on a template developed by the Department [and] achieves the Department's goals for maritime security."

The Department of Justice recommends approval of S. 1214, but has provided a proposed signing statement that addresses constitutional concerns.

Conclusion and Recommendations

We join Transportation and Justice in recommending approval of S. 1214, which passed the Senate by unanimous consent and the House by voice vote.

Attached for your consideration is a signing statement that is based on the language submitted by Justice. It has been reviewed and approved by the Departments of Transportation and Justice and by the White House Counsel's Office.



Mitchell E. Daniels, Jr.
Director

Enclosures

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Other Provisions of S. 1214

Prohibition of New Maritime User Fees

The enrolled bill would reinstate a statutory provision that expired on September 30, 2001, prohibiting the Secretary of Transportation from planning or implementing any maritime user fee that was not in effect before January 1, 1998. The restored prohibition would expire on September 30, 2006.

Law Enforcement Provisions

The enrolled bill would:

- Extend the Coast Guard's law enforcement jurisdiction to 24 nautical miles from U.S. shores for enforcement of drug laws (the outer limit of the U.S. contiguous zone) and 12 nautical miles (the outer limit of the U.S. territorial waters) for all other laws.
- Clarify the circumstances under which the Government can seize a vessel that participates in illicit drug smuggling.
- Authorize the Coast Guard to accept the transfer of seven patrol craft from the Department of Defense for use in drug interdiction and other law enforcement operations.
- Authorize the Coast Guard to operate a Caribbean Support Tender to provide training and technical assistance for foreign coast guards, navies, and other maritime services; and to provide medical and dental care to participating foreign military personnel and their dependents during their service on the tender.
- Increase penalties for the negligent operation or interfering with the safe operation of vessels from \$1,000 to \$5,000 in the case of recreational vessels and \$25,000 in the case of other vessels.
- Prohibit vessels forfeited to the U.S. Government for breaches of U.S. laws from obtaining certificates of documentation with fisheries endorsements.

Environmental Provisions

The enrolled bill would authorize the Coast Guard to borrow up to \$100 million from the Oil Spill Liability Trust Fund when the existing limit of \$50 million in unappropriated funds is inadequate to deal with a discharge or threatened discharge. The Coast Guard would be required to notify Congress of the circumstances of such borrowings, and to repay the Fund as removal costs are recovered from responsible parties.

The bill also would extend the Deepwater Port Act to permit the construction of "deepwater ports" (facilities for loading and offloading ships located on platforms several miles offshore) that handle liquefied natural gas. Currently, deepwater ports may load or offload liquefied natural gas only if they are primarily licensed to load and unload oil.

Finally, the enrolled bill would specify that discharges of agricultural residue from vessels shall be governed exclusively by the terms of an international agreement known as Marpol Annex V, as implemented by the Act to Prevent Pollution from Ships. The Coast Guard had previously announced its intent to regulate these discharges under other statutes.

Maritime Safety

The enrolled bill would:

- Require foreign flag vessels to monitor inter-ship radio-telephone safety and distress frequencies when operating in U.S. waters.
- Extend requirements of the Vessel Bridge-to-Bridge Radiotelephone Act to require vessels, dredges, and floating plants to carry radiotelephones throughout the U.S. Territorial Sea.
- Require the Commandant of the Coast Guard to ensure that all Coast Guard personnel are equipped with adequate safety equipment, including hypothermia protective clothing where appropriate, while performing search and rescue missions.
- Authorize the Coast Guard to conduct marine casualty investigations involving foreign vessels in areas outside U.S. territorial waters consistent with the practices and procedures of international law.

Coast Guard Personnel

The enrolled bill's provisions regarding Coast Guard personnel would:

- Conform statutory provisions regarding Coast Guard severance pay to those which apply to the Department of Defense.
- Authorize compensatory absence from duty for Coast Guard military personnel serving at isolated duty stations under certain circumstances.
- Prescribe procedures under which promotion selection boards may accelerate the promotion of certain outstanding officers by placing them at the top of selection lists.
- Revise promotion procedures for Coast Guard Reserve Officers.
- Authorize the Coast Guard to continue certain captains, commanders, and lieutenant commanders on active service who would otherwise be scheduled to retire because they had not been selected for promotion.
- Authorize the Coast Guard to provide financial assistance to eligible enlisted Coast Guard Reservists, not on active duty, for expenses incurred while pursuing baccalaureate or post-baccalaureate degrees on a full time basis.
- Permit the Coast Guard to pay death gratuities to personal representatives of Coast Guard Auxiliarists who die in the line of duty, to the same extent that death gratuities are paid on behalf of Federal employees.
- Increase the maximum rank of the director of the Coast Guard band from commander to captain.

Coast Guard Management

The enrolled bill's provisions regarding management of the Coast Guard would:

- Establish safety standards for land-based Coast Guard facilities involved in search and rescue activities.
- Authorize the Coast Guard to use certain vessels of the U.S. Navy for training.

- Authorize the Coast Guard to lease lighthouse property to non-Federal entities for periods not to exceed 30 years.

Coast Guard Housing Authorities

The Coast Guard's authority to enter into contracts and investments with private parties to acquire or construct military family housing and military unaccompanied housing expired on October 1, 2001. The enrolled bill would extend this authority until October 1, 2006, and double the total budget authority the Coast Guard may devote to annually to such contracts and investments from \$20 million to \$40 million. The enrolled bill would also authorize the Coast Guard to implement a demonstration project for the acquisition or construction of military family housing and military unaccompanied housing at the Coast Guard installation in Kodiak, Alaska.

Finally, the enrolled bill would specifically include small businesses participating in the Small Business Administration's 8(a) program among parties with whom the Coast Guard may contract, and require that such firms be utilized "to the maximum amount possible" in implementing the demonstration project in Kodiak, Alaska.

Regulatory Exceptions and Exemptions

Several provisions of S. 1214 would provide relief from normally applicable regulatory requirements for several named vessels. These provisions would require the Department of Transportation to:

- Issue vessel documentation to 27 named vessels qualifying them to participate in the United States coastwise trade. These vessels would otherwise be ineligible for documentation under the Jones Act because they were constructed and/or repaired outside of the United States.
- Prescribe a tonnage measurement to a named vessel that would qualify it to provide service as small passenger vessel.
- Exempt two named vessels that served as World War II Victory Ships from certain passenger vessel inspection requirements so long as they continue to be owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners.

The enrolled bill would also, with no further action required by the Department of Transportation, grant statutory waivers authorizing the transfer of a named vessel to foreign ownership or control.

Advisory Committees

The enrolled bill would:

- Require the establishment of a National Maritime Security Advisory Committee and of Area Maritime Security Advisory Committees for each U.S. port.
- Require the Coast Guard to evaluate the effectiveness of existing local harbor safety coordinating committees in the United States and to test the feasibility of extending such committees in small and medium-sized ports. The enrolled bill would also make the Federal Advisory Committee Act inapplicable to harbor safety committees.
- Extend the termination dates of six named Federal advisory committees related to maritime safety.

Reports

Preservation of Reporting Requirements. The enrolled bill would prohibit application of the Federal Reports Elimination and Sunset Act of 1995 to terminate reports required by several statutory provisions. These provisions require reports regarding Coast Guard operations and expenditures, marine casualties, user fees, public port conditions, the Federal Maritime Commission's activities, and interagency coordination of oil pollution research.

Termination of Reporting Requirements. The enrolled bill would eliminate a statutory requirement that the Department of Transportation submit an annual report on the Oil Spill Liability Trust Fund to Congress.

New Reporting Requirements. The enrolled bill would require the Department in which the Coast Guard is located to submit reports to the Senate Commerce, Science, and Transportation and the House Transportation and Infrastructure Committees:

- Within 60 days of enactment, on the status of efforts to modernize the National Distress and Response System.
- Within 90 days of enactment, comparing the amounts the Coast Guard spent on its various missions before and after the terrorist attacks of September 11, 2001, and providing estimates of the amounts necessary to restore Coast Guard's activity levels for all missions to those that existed before that date.
- Within 180 days of enactment, on the Coast Guard's performance objectives regarding each of its missions.

- Within six months, providing a proposal and rationale for funding Maritime Transportation Security Grants to eliminate identified security deficiencies for FYs 2003-2008. Thereafter, annual reports on progress in eliminating identified security deficiencies would be required.
- Annually, on the Coast Guard's readiness to perform defense-related responsibilities.
- Prior to making the results public, on the results of a required study on the impact on Coast Guard officer retention of designating outstanding officers on promotion lists.

Other Provisions

Other provisions of S. 1214 would:

- Permit only specified vessels, except in the case of a vessel in distress, to perform certain vessel escort towing assistance operations within the navigable waters of the United States.
- Revise procedures for recording and discharging certain maritime liens.
- Authorize the Department of Transportation to issue temporary merchant mariner documents for periods not to exceed 120 days to certain personnel.
- Exempt entertainment and service personnel who have no navigation duties and are employed on vessels engaged solely in domestic service from the requirement to obtain merchant mariner's documents.
- Authorize the transfer of specified Federal real property under specified conditions in Portland, Maine; Clallam County, Washington; Monterey County, California; and Hampton Township and Traverse City, Michigan.
- Amend the statutory definition of "small passenger vessel."
- Eliminate the requirement for filing an original commercial document (e.g., for a ship mortgage) within ten days of the date it has been filed electronically.

- Authorize the Coast Guard to continue to offer assistance to organizations involved in preserving Great Lakes lighthouses and to promptly release information regarding the timing of designations of Coast Guard lighthouses on the Great Lakes as surplus property.
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**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

November 21, 2002

The Honorable Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, D.C. 20503-0001

Dear Mr. Daniels:

This letter offers the views of the Department of Transportation on S.1214, an enrolled bill

"To amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes."

The Department strongly supports the Maritime Transportation Security Act of 2002. S.1214 enhances security measures at U.S. seaports and on waterways, establishes a port security grant program overseen by the Maritime Administration, and authorizes the funds and personnel levels necessary for the Coast Guard to conduct its vital missions of terrorism prevention and response, national security, search and rescue, illegal drug and migrant interdiction, environmental protection, promotion of safe and efficient commercial navigation, and fisheries enforcement. It contains twenty-six provisions sought by the Coast Guard since its last authorization act in 1998. It also includes a provision realigning responsibility in the Department of Transportation by creating an Under Secretary of Transportation for Policy.

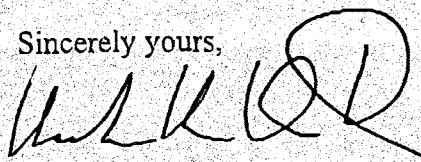
S. 1214 authorizes the Secretary, through the Maritime Administration, to establish a grant program to allocate funds to port authorities, facility operators and State and local agencies required to provide security services, similar to the grants recently provided for port security. Recognizing the significant needs remaining in this area, the Department fully supports this component of S. 1214. The funds to be made available under the program will allow the Department to assist ports with their responsibility to be in compliance with applicable security plans, and will be a key in bridging the gap between security plans and the implementation of actual security measures. The program will also assist in the development of security technologies intended specifically for port security.

The legislation will heighten national awareness of the need for collective action and facilitate development of a coordinated interagency and public-private approach to ports and waterways safety and security. It will assist in the prevention of, and response to, terrorist attacks and will otherwise enhance port security by providing for seaport security threat assessments and security plans. The legislation requires a comprehensive security plan for the nation's 361 commercial seaports and calls for a national standard

for biometric security cards for transportation workers. It authorizes an expansion of the armed Sea Marshal program and includes an extension of Magnuson Act jurisdiction to twelve miles. Structured on the template developed by the Department, S. 1214 achieves the Department's goals for maritime security. The enrolled bill ensures a continued commitment to preserving and enhancing national security programs, keeping cargo and passenger traffic moving safely and efficiently, and assuring that America's marine transportation system is ready for the increased threats and demands of the 21st century.

The Department of Transportation recommends that the President sign the enrolled bill.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Kirk K. Van Tine', with a large, stylized circular flourish at the end.

Kirk K. Van Tine

Withdrawal Marker

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[responds to your request for the views and recommendation of the Department of Justice] - To: The Honorable Mitchell E. Daniels - From: Daniel J. Bryant	2	11/22/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
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COLLECTION:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

11/25/2002 [S. 1214] [771618]

FRC ID:

6363

FOIA IDs and Segments:

OA Num.:

9470

NARA Num.:

9361

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.



Office of the Chairman

National Transportation Safety Board

Washington, D.C. 20594

November 22, 2002

Mr. James J. Jukes
Assistant Director for
Legislative Reference
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503-0001

Dear Mr. Jukes:

This is in response to your request for a position on enrolled bill S. 1214, the Maritime Transportation Security Act of 2002.

The National Transportation Safety Board does not object to President Bush signing this legislation. If you have questions, please do not hesitate to contact us.

Sincerely,

Carol J. Carmody
Acting Chairman

OFFICE OF THE EXECUTIVE CLERK
TRACKING SHEET FOR PRESIDENTIAL DOCUMENTS

TITLE: _____

S. 1214
Ports Bill

TYPE DOCUMENT:

PROCLAMATION

LETTER(S)

EXECUTIVE ORDER

MESSAGE TO THE CONGRESS/SENATE

MEMORANDUM

STATEMENT BY THE PRESIDENT

DECISION MEMORANDUM

SIGNING STATEMENT

DETERMINATION (numbered)

TREATY/CONVENTION/AGREEMENT, etc.

OTHER: _____

RECEIVED: (Advance: 11/22/02 Time: 7 a.m. (p.m.)
In final: / /02 Time: a.m./p.m.

SENT TO CORRESPONDENCE FOR TYPING IN FINAL:

(Advance: / /02 Time: a.m./p.m.
In final: / /02 Time: a.m./p.m.

TO HARRIET MIERS' OFFICE:

(For staffing: 11/25/02 Time: 8 a.m. (p.m.)
In final: / /02 Time: a.m./p.m.

*INFO, INCLUDING STENCIL AND DISC, TO PRESS OFFICE:

Date: / /02 Time: a.m./p.m.
POSTED: / /02 Time: a.m./p.m.

NOTIFICATIONS:

(Person/time)

NSC (#____), when appropriate -- Desk Officer;
W.H. Situation Room -- x6-9425.

(Person/time)

Ginger Gregory, x6-2230, Legislative Affairs
(for messages to the Congress)

(Person/time)

(Other)

(Person/time)

(Other)

OTHER INFORMATION:

Memo to the Record

Date: 02/24/2017

Collection: Executive Clerk, Office of

Series: Saunders, G. Timothy (Tim) – Bill Files

Folder Title: 11/25/2002 [S. 1214] [771618]

RE: 107th Congress 2d Session House of Representatives Report 107-777

A copy of the report entitled “Maritime Transportation Security Act of 2002” is included at this location in this folder.

It was not scanned. It can be viewed at <https://www.congress.gov/107/crpt/hrpt777/CRPT-107hrpt777.pdf>. If this link is broken, please contact the George W. Bush Presidential Library archives for additional information regarding this item.

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-22-02 7:45 PM ACTION / CONCURRENCE / COMMENT DUE BY: 11-23-02 5:00 PMSubject: ENROLLED BILL, S. 1214 - MARITIME TRANSPORTATION SECURITY ACT OF 2002

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	IRASTORZA	☐	☐
BARTLETT	☒	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☒	☐
BOLTEN	☒	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☐
CALIO	☒	☐	RICE	☒	☐
CONNAUGHTON	☐	☐	RIDGE	☒	☐
DANIELS	☐	☒	ROVE	☒	☐
FLEISCHER	☐	☐	SPELLINGS	☒	☐
GERSON	☐	☐	CLERK	☐	☐
GONZALES	☒	☐	_____	☐	☐
HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X 5-3458, FAX 5-6148, BY 5:00 PM, SATURDAY, NOVEMBER 23, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE. THANK YOU.

OK - No Comment

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 22, 2002

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1214 - Maritime Transportation Security Act of 2002
Sponsors - Senator Hollings (D) South Carolina and 14 cosponsors

Last Day for Action

November 30, 2002 - Saturday

Purpose

(1) Establishes a program to improve security in U.S. ports and maritime operations;
(2) authorizes FY 2003 appropriations for the Coast Guard; and (3) amends law enforcement, marine safety, environmental, and other statutory provisions related to the Coast Guard and other maritime programs.

Agency Recommendations

Office of Management and Budget

Approval (Signing statement
attached)

Department of Transportation

Approval

Department of Justice

Approval

National Transportation Safety Board

No objection

Department of Commerce

No objection (Informally)

Department of Labor

No objection (Informally)

Department of the Treasury

No objection (Informally)

General Services Administration

No objection (Informally)

Nuclear Regulatory Commission

No objection (Informally)

Department of Health and Human Services

Defers (Informally)

Department of the Interior

Defers (Informally)

Department of Energy

No comment (Informally)

Federal Communications Commission

No comment (Informally)

Federal Emergency Management Agency

No comment (Informally)

Office of National Drug Control Policy

No comment (Informally)

Discussion

S. 1214 reflects a House-Senate compromise on proposals to improve port and maritime security. The enrolled bill also authorizes appropriations for the Coast Guard and revises numerous Coast Guard-related statutory provisions. The enrolled bill's most significant provisions are described below. Other important provisions are summarized in the Attachment.

Maritime Security Program

Responsibilities of the Secretary of Homeland Security. Unless otherwise stated, references in S. 1214 (and this memo) to "the Secretary" refer to the Secretary of the Department in which the Coast Guard is located. The Coast Guard, which is currently located in the Department of Transportation, will be transferred to the Department of Homeland Security pursuant to the Homeland Security Act of 2002. (Under both current law and the Homeland Security Act, the Coast Guard would operate as a part of the Department of the Navy upon a declaration of war or the direction of the President.)

Vulnerability and Risk Assessments. S. 1214 would require the Secretary to make an initial assessment of the types of vessels and U.S. facilities that pose a high risk of involvement in transportation security incidents that could disrupt the economy or transportation system, or cause significant loss of life or environmental damage. Such facilities would include not only those directly involved in port operations, but other shoreside facilities vulnerable to terrorism such as nuclear power plants and chemical factories.

The Secretary would then be responsible for performing detailed vulnerability assessments of all vessels and maritime facilities in the identified categories. These assessments would address physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, and other areas identified by the Secretary. The Secretary could accept assessments conducted by or on behalf of vessel or facility owners that meet the Department's standards.

The Secretary would also be responsible for assessing the effectiveness of the anti-terrorism measures maintained by foreign ports from which vessels servicing the United States depart, and to identify ports that pose high risks to international commerce. The Secretary would be required to notify foreign governments found not to maintain effective anti-terrorism measures, and to make port security training available to the officials of such ports in conjunction with the Department of State. The Secretary would also be authorized to bar vessels departing from such high risk ports or carrying cargo originating in or transshipped through such ports from entry into U.S. ports unless they met special conditions specified by the Secretary.

The Secretary would be required to develop a system to collect, integrate, and analyze information concerning vessels operating in or bound for U.S. waters, including information on the cargo, passengers, and crew of such vessels. The report of the conferees on the enrolled bill emphasized that it is anticipated that such intelligence will be used to develop risk assessments of vessels entering U.S. waters so that those which pose the greatest risk can be searched before they enter U.S. ports.

Maritime Transportation Security Plans. S. 1214 would require the development of national, area, and facility level plans to assure that problems identified in vulnerability assessments are addressed.

The Secretary would be required to prepare a National Maritime Transportation Security Plan to deter and minimize damage from transportation security incidents. The Plan would identify security vulnerabilities and resources, and assign Federal, state and local responsibilities for minimizing damage from transportation security incidents. In particular, the Plan would be required to prescribe a surveillance system to assure that security incidents and imminent threats are promptly noted and acted upon. It would also include plans for reestablishing the flow of cargo as soon as possible should a security incident occur. The Plan would designate areas for which Area Maritime Transportation Security Plans would be required, and designate Coast Guard officials to serve as Federal Maritime Security Coordinators for each of these areas. Actions by Federal agencies to deter and minimize damage from transportation security incidents would be required to conform to the Plan "to the greatest extent possible."

Area Maritime Security Coordinators would be required to develop Area Maritime Transportation Security Plans that would have to be approved by the Secretary. Owners of vessels and facilities previously identified as high-risk by the Secretary would be required to develop individual vessel and facility security plans and security incident response plans. (Facilities and vessels of the Department of Defense would not be subject to this requirement.) Security plans would have to be submitted to the Secretary within 6 months of the issuance of interim final regulations setting forth the requirements of such plans. Any plan which has not been approved by the Secretary within 12 months of the issuance of such regulations would not be permitted to remain in effect. Security incident response plans, which could be included in security plans, would be required to detail how a facility or vessel would respond to a security incident or other emergency, including procedures for notifying the Federal Emergency Management Agency and other relevant Federal agencies. Area, facility, and vessel plans would have to be updated every five years.

The enrolled bill specifies that information developed in connection with these plans is "not required to be disclosed to the public."

Maritime Transportation Security Grants. S. 1214 would establish a program of grants to be awarded to port authorities, state and local governments, and facility operators in an "equitable manner" to reimburse them for eligible costs connected with implementing area or facility Maritime Transportation Security Plans. Grants could be used to defray eligible expenditures previously made by recipients, but could not exceed 75 percent of the cost of projects costing \$25,000 or more unless the Secretary of Transportation determines the project has special merit and would not be completed without Federal assistance. The enrolled bill specifies that this grant program would be administered by the Secretary of Transportation through the Maritime Administration. It therefore would not be among the Coast Guard programs transferred to the Department of Homeland Security.

Personnel Security. The Secretary would be required to issue regulations restricting entrance to vessels, or to other maritime facilities designated by the Secretary as secure areas, to persons to whom biometric transportation security cards have been issued, or who are authorized to be in the area and are accompanied by a person to whom a card has been issued. Maritime Transportation Security Plans developed by vessels and facilities would be required to specify areas that would be limited to individuals possessing transportation security cards.

The Secretary would be required to issue cards to all persons whose positions require access to such facilities unless they are determined to be transportation security risks pursuant to regulations issued by the Secretary. Factors to be considered in determining whether individuals are transportation security risks would include whether they are in this country legally, and whether they have been convicted within the preceding 7 years or released from prison within the preceding 5 years for committing certain felonies. The Secretary would also be required to issue regulations detailing standards and procedures for considering waivers and appeals of determinations that individuals are transportation security risks.

The enrolled bill would require the Department of Justice to perform background records checks upon the request of the Secretary of persons whose eligibility to work in secure areas is being evaluated. Information gathered in the process of determining eligibility could be shared with other Federal agencies, but employers could only be informed of whether an employee had been issued a biometric transportation security card.

The Secretary would also be authorized to prescribe identification requirements for crew members of foreign vessels calling on U.S. ports. The enrolled bill would "encourage" the Secretary to negotiate an international agreement that will enable the U.S. to establish the identities of all seafarers on vessels within its jurisdiction. Should the Secretary fail to negotiate an agreement within 24 months of enactment, the Secretary would be required to transmit to the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee a draft of legislation that would establish a uniform comprehensive identification system for seafarers.

Cargo Security. The Secretary would be required to implement a system for identifying, tracking, and screening containerized cargo shipped through U.S. ports. S. 1214 would also require the development of performance standards to improve the security of containerized cargo such as standards for locks and seals and mechanisms for indicating whether tampering has occurred.

The enrolled bill would require carriers to provide the Customs Service with electronically filed cargo manifest information in advance of entering a U.S. port. The Customs Service would be required to share this information with other Federal Departments.

Sea Marshals and Maritime Safety-Security Teams. The enrolled bill would authorize armed Coast Guard personnel to act as "sea marshals" to protect vessels and facilities. It would also require the Secretary to establish maritime safety and security teams that may be rapidly deployed to respond to terrorist threats or other emergencies. Team members would have to be qualified to perform a broad range of safety, police, and anti-terrorism functions specified in the enrolled bill. The number and location of such teams would be determined by the Secretary.

Vessel Identification and Tracking Systems. S. 1214 would require that specified categories of vessels operating in U.S. waters be equipped with automatic identification systems to be specified under regulations issued by the Secretary. Such systems include position indicating transponders and electronic charting or position displays. The Secretary would also be authorized to implement a long-range automated vessel tracking system for all vessels in U.S. waters that are equipped with the necessary satellite technology.

Authorizations of Appropriations

Coast Guard. S. 1214 would authorize total FY 2003 appropriations of \$5.9 billion for the Coast Guard, consistent with your request. The enrolled bill would also authorize an end-of-year active duty personnel level of 45,500, and specify that if a war or national emergency is in effect at the end of any fiscal year, the President may defer the effectiveness of any end-of-year limitation until six months after the war or national emergency has ended.

Department of Transportation. The enrolled bill would authorize appropriations of "such sums as may be necessary" for FYs 2003-2008 to the Department of Transportation for the maritime transportation security grants described above. It would also authorize appropriations to the Department of Transportation of \$15 million for port security research and development grants and \$5.5 million for the training of maritime security professionals for each of FYs 2003-2008. Unlike programs administered by the Coast Guard, these programs would not be transferred to the Department of Homeland Security. Finally, S. 1214 would authorize FY 2003 appropriations of \$500,000 for grants to the American Merchant Marine Veterans Memorial Committee to construct an addition to the American Merchant Marine Memorial Wall of Honor at the Los Angeles Maritime Museum in San Pedro, California.

Under Secretary of Transportation for Policy

S. 1214 would create a Presidentially-appointed, Senate-confirmed position of Under Secretary of Transportation for Policy within the Department of Transportation. The Administration proposed that this position be created.

Agency Views

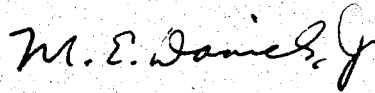
The Department of Transportation recommends approval of S. 1214, and advises that the enrolled bill is "[s]tructured on a template developed by the Department [and] achieves the Department's goals for maritime security."

The Department of Justice recommends approval of S. 1214, but has provided a proposed signing statement that addresses constitutional concerns.

Conclusion and Recommendations

We join Transportation and Justice in recommending approval of S. 1214, which passed the Senate by unanimous consent and the House by voice vote.

Attached for your consideration is a signing statement that is based on the language submitted by Justice. It has been reviewed and approved by the Departments of Transportation and Justice and by the White House Counsel's Office.



Mitchell E. Daniels, Jr.
Director

Enclosures

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	STATEMENT BY THE PRESIDENT	1	N.D.	P5;

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11/25/2002 [S. 1214] [771618]

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Other Provisions of S. 1214

Prohibition of New Maritime User Fees

The enrolled bill would reinstate a statutory provision that expired on September 30, 2001, prohibiting the Secretary of Transportation from planning or implementing any maritime user fee that was not in effect before January 1, 1998. The restored prohibition would expire on September 30, 2006.

Law Enforcement Provisions

The enrolled bill would:

- Extend the Coast Guard's law enforcement jurisdiction to 24 nautical miles from U.S. shores for enforcement of drug laws (the outer limit of the U.S. contiguous zone) and 12 nautical miles (the outer limit of the U.S. territorial waters) for all other laws.
- Clarify the circumstances under which the Government can seize a vessel that participates in illicit drug smuggling.
- Authorize the Coast Guard to accept the transfer of seven patrol craft from the Department of Defense for use in drug interdiction and other law enforcement operations.
- Authorize the Coast Guard to operate a Caribbean Support Tender to provide training and technical assistance for foreign coast guards, navies, and other maritime services; and to provide medical and dental care to participating foreign military personnel and their dependents during their service on the tender.
- Increase penalties for the negligent operation or interfering with the safe operation of vessels from \$1,000 to \$5,000 in the case of recreational vessels and \$25,000 in the case of other vessels.
- Prohibit vessels forfeited to the U.S. Government for breaches of U.S. laws from obtaining certificates of documentation with fisheries endorsements.

Environmental Provisions

The enrolled bill would authorize the Coast Guard to borrow up to \$100 million from the Oil Spill Liability Trust Fund when the existing limit of \$50 million in unappropriated funds is inadequate to deal with a discharge or threatened discharge. The Coast Guard would be required to notify Congress of the circumstances of such borrowings, and to repay the Fund as removal costs are recovered from responsible parties.

The bill also would extend the Deepwater Port Act to permit the construction of "deepwater ports" (facilities for loading and offloading ships located on platforms several miles offshore) that handle liquefied natural gas. Currently, deepwater ports may load or offload liquefied natural gas only if they are primarily licensed to load and unload oil.

Finally, the enrolled bill would specify that discharges of agricultural residue from vessels shall be governed exclusively by the terms of an international agreement known as Marpol Annex V, as implemented by the Act to Prevent Pollution from Ships. The Coast Guard had previously announced its intent to regulate these discharges under other statutes.

Maritime Safety

The enrolled bill would:

- Require foreign flag vessels to monitor inter-ship radio-telephone safety and distress frequencies when operating in U.S. waters.
- Extend requirements of the Vessel Bridge-to-Bridge Radiotelephone Act to require vessels, dredges, and floating plants to carry radiotelephones throughout the U.S. Territorial Sea.
- Require the Commandant of the Coast Guard to ensure that all Coast Guard personnel are equipped with adequate safety equipment, including hypothermia protective clothing where appropriate, while performing search and rescue missions.
- Authorize the Coast Guard to conduct marine casualty investigations involving foreign vessels in areas outside U.S. territorial waters consistent with the practices and procedures of international law.

Coast Guard Personnel

The enrolled bill's provisions regarding Coast Guard personnel would:

- Conform statutory provisions regarding Coast Guard severance pay to those which apply to the Department of Defense.
- Authorize compensatory absence from duty for Coast Guard military personnel serving at isolated duty stations under certain circumstances.
- Prescribe procedures under which promotion selection boards may accelerate the promotion of certain outstanding officers by placing them at the top of selection lists.
- Revise promotion procedures for Coast Guard Reserve Officers.
- Authorize the Coast Guard to continue certain captains, commanders, and lieutenant commanders on active service who would otherwise be scheduled to retire because they had not been selected for promotion.
- Authorize the Coast Guard to provide financial assistance to eligible enlisted Coast Guard Reservists, not on active duty, for expenses incurred while pursuing baccalaureate or post-baccalaureate degrees on a full time basis.
- Permit the Coast Guard to pay death gratuities to personal representatives of Coast Guard Auxiliarists who die in the line of duty, to the same extent that death gratuities are paid on behalf of Federal employees.
- Increase the maximum rank of the director of the Coast Guard band from commander to captain.

Coast Guard Management

The enrolled bill's provisions regarding management of the Coast Guard would:

- Establish safety standards for land-based Coast Guard facilities involved in search and rescue activities.
- Authorize the Coast Guard to use certain vessels of the U.S. Navy for training.

- Authorize the Coast Guard to lease lighthouse property to non-Federal entities for periods not to exceed 30 years.

Coast Guard Housing Authorities

The Coast Guard's authority to enter into contracts and investments with private parties to acquire or construct military family housing and military unaccompanied housing expired on October 1, 2001. The enrolled bill would extend this authority until October 1, 2006, and double the total budget authority the Coast Guard may devote to annually to such contracts and investments from \$20 million to \$40 million. The enrolled bill would also authorize the Coast Guard to implement a demonstration project for the acquisition or construction of military family housing and military unaccompanied housing at the Coast Guard installation in Kodiak, Alaska.

Finally, the enrolled bill would specifically include small businesses participating in the Small Business Administration's 8(a) program among parties with whom the Coast Guard may contract, and require that such firms be utilized "to the maximum amount possible" in implementing the demonstration project in Kodiak, Alaska.

Regulatory Exceptions and Exemptions

Several provisions of S. 1214 would provide relief from normally applicable regulatory requirements for several named vessels. These provisions would require the Department of Transportation to:

- Issue vessel documentation to 27 named vessels qualifying them to participate in the United States coastwise trade. These vessels would otherwise be ineligible for documentation under the Jones Act because they were constructed and/or repaired outside of the United States.
- Prescribe a tonnage measurement to a named vessel that would qualify it to provide service as small passenger vessel.
- Exempt two named vessels that served as World War II Victory Ships from certain passenger vessel inspection requirements so long as they continue to be owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners.

The enrolled bill would also, with no further action required by the Department of Transportation, grant statutory waivers authorizing the transfer of a named vessel to foreign ownership or control.

Advisory Committees

The enrolled bill would:

- Require the establishment of a National Maritime Security Advisory Committee and of Area Maritime Security Advisory Committees for each U.S. port.
- Require the Coast Guard to evaluate the effectiveness of existing local harbor safety coordinating committees in the United States and to test the feasibility of extending such committees in small and medium-sized ports. The enrolled bill would also make the Federal Advisory Committee Act inapplicable to harbor safety committees.
- Extend the termination dates of six named Federal advisory committees related to maritime safety.

Reports

Preservation of Reporting Requirements. The enrolled bill would prohibit application of the Federal Reports Elimination and Sunset Act of 1995 to terminate reports required by several statutory provisions. These provisions require reports regarding Coast Guard operations and expenditures, marine casualties, user fees, public port conditions, the Federal Maritime Commission's activities, and interagency coordination of oil pollution research.

Termination of Reporting Requirements. The enrolled bill would eliminate a statutory requirement that the Department of Transportation submit an annual report on the Oil Spill Liability Trust Fund to Congress.

New Reporting Requirements. The enrolled bill would require the Department in which the Coast Guard is located to submit reports to the Senate Commerce, Science, and Transportation and the House Transportation and Infrastructure Committees:

- Within 60 days of enactment, on the status of efforts to modernize the National Distress and Response System.
- Within 90 days of enactment, comparing the amounts the Coast Guard spent on its various missions before and after the terrorist attacks of September 11, 2001, and providing estimates of the amounts necessary to restore Coast Guard's activity levels for all missions to those that existed before that date.
- Within 180 days of enactment, on the Coast Guard's performance objectives regarding each of its missions.

- Within six months, providing a proposal and rationale for funding Maritime Transportation Security Grants to eliminate identified security deficiencies for FYs 2003-2008. Thereafter, annual reports on progress in eliminating identified security deficiencies would be required.
- Annually, on the Coast Guard's readiness to perform defense-related responsibilities.
- Prior to making the results public, on the results of a required study on the impact on Coast Guard officer retention of designating outstanding officers on promotion lists.

Other Provisions

Other provisions of S. 1214 would:

- Permit only specified vessels, except in the case of a vessel in distress, to perform certain vessel escort towing assistance operations within the navigable waters of the United States.
- Revise procedures for recording and discharging certain maritime liens.
- Authorize the Department of Transportation to issue temporary merchant mariner documents for periods not to exceed 120 days to certain personnel.
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- Authorize the Secretary to issue regulations delegating to certified private entities the authority to issue temporary certificates of documentation for recreational vessels.

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-22-02 7:45 PM ACTION / CONCURRENCE / COMMENT DUE BY: 11-23-02 5:00 PM

ENROLLED BILL, S. 1214 - MARITIME TRANSPORTATION SECURITY ACT OF

Subject: 2002

02 NOV 25 AM 11:54

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	HUBBARD	☐	☐
CARD	☒	☐	IRASTORZA	☐	☐
BARTLETT	☒	☐	JOHNSON	☐	☐
BLAKEMAN	☐	☐	LINDSEY	☒	☐
BOLTEN	☒	☐	MARBURGER	☐	☐
BRIDGELAND	☐	☐	MIERS	☐	☐
CALIO	☒	☐	RICE	☒	☐
CONNAUGHTON	☐	☐	RIDGE	☒	☐
DANIELS	☐	☒	ROVE	☒	☐
FLEISCHER	☐	☐	SPELLINGS	☒	☐
GERSON	☐	☐	CLERK	☐	☐
GONZALES	☒	☐	_____	☐	☐
HAGIN	☐	☐	_____	☐	☐
HAWKINS	☒	☐	_____	☐	☐

REMARKS:

PLEASE FORWARD COMMENTS TO JIM JUKES, X 5-3458, FAX 5-6148, BY 5:00 PM, SATURDAY, NOVEMBER 23, 2002, WITH A COPY TO THE STAFF SECRETARY'S OFFICE. THANK YOU.

RESPONSE:

Legislation Affair (Howard) - ok

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 22, 2002

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1214 - Maritime Transportation Security Act of 2002
Sponsors - Senator Hollings (D) South Carolina and 14 cosponsors

Last Day for Action

November 30, 2002 - Saturday

Purpose

(1) Establishes a program to improve security in U.S. ports and maritime operations;
(2) authorizes FY 2003 appropriations for the Coast Guard; and (3) amends law enforcement, marine safety, environmental, and other statutory provisions related to the Coast Guard and other maritime programs.

Agency Recommendations

Office of Management and Budget

Approval (Signing statement
attached)

Department of Transportation

Approval

Department of Justice

Approval

National Transportation Safety Board

No objection

Department of Commerce

No objection (Informally)

Department of Labor

No objection (Informally)

Department of the Treasury

No objection (Informally)

General Services Administration

No objection (Informally)

Nuclear Regulatory Commission

No objection (Informally)

Department of Health and Human Services

Defers (Informally)

Department of the Interior

Defers (Informally)

Department of Energy

No comment (Informally)

Federal Communications Commission

No comment (Informally)

Federal Emergency Management Agency

No comment (Informally)

Office of National Drug Control Policy

No comment (Informally)

Discussion

S. 1214 reflects a House-Senate compromise on proposals to improve port and maritime security. The enrolled bill also authorizes appropriations for the Coast Guard and revises numerous Coast Guard-related statutory provisions. The enrolled bill's most significant provisions are described below. Other important provisions are summarized in the Attachment.

Maritime Security Program

Responsibilities of the Secretary of Homeland Security. Unless otherwise stated, references in S. 1214 (and this memo) to "the Secretary" refer to the Secretary of the Department in which the Coast Guard is located. The Coast Guard, which is currently located in the Department of Transportation, will be transferred to the Department of Homeland Security pursuant to the Homeland Security Act of 2002. (Under both current law and the Homeland Security Act, the Coast Guard would operate as a part of the Department of the Navy upon a declaration of war or the direction of the President.)

Vulnerability and Risk Assessments. S. 1214 would require the Secretary to make an initial assessment of the types of vessels and U.S. facilities that pose a high risk of involvement in transportation security incidents that could disrupt the economy or transportation system, or cause significant loss of life or environmental damage. Such facilities would include not only those directly involved in port operations, but other shoreside facilities vulnerable to terrorism such as nuclear power plants and chemical factories.

The Secretary would then be responsible for performing detailed vulnerability assessments of all vessels and maritime facilities in the identified categories. These assessments would address physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, and other areas identified by the Secretary. The Secretary could accept assessments conducted by or on behalf of vessel or facility owners that meet the Department's standards.

The Secretary would also be responsible for assessing the effectiveness of the anti-terrorism measures maintained by foreign ports from which vessels servicing the United States depart, and to identify ports that pose high risks to international commerce. The Secretary would be required to notify foreign governments found not to maintain effective anti-terrorism measures, and to make port security training available to the officials of such ports in conjunction with the Department of State. The Secretary would also be authorized to bar vessels departing from such high risk ports or carrying cargo originating in or transshipped through such ports from entry into U.S. ports unless they met special conditions specified by the Secretary.

The Secretary would be required to develop a system to collect, integrate, and analyze information concerning vessels operating in or bound for U.S. waters, including information on the cargo, passengers, and crew of such vessels. The report of the conferees on the enrolled bill emphasized that it is anticipated that such intelligence will be used to develop risk assessments of vessels entering U.S. waters so that those which pose the greatest risk can be searched before they enter U.S. ports.

Maritime Transportation Security Plans. S. 1214 would require the development of national, area, and facility level plans to assure that problems identified in vulnerability assessments are addressed.

The Secretary would be required to prepare a National Maritime Transportation Security Plan to deter and minimize damage from transportation security incidents. The Plan would identify security vulnerabilities and resources, and assign Federal, state and local responsibilities for minimizing damage from transportation security incidents. In particular, the Plan would be required to prescribe a surveillance system to assure that security incidents and imminent threats are promptly noted and acted upon. It would also include plans for reestablishing the flow of cargo as soon as possible should a security incident occur. The Plan would designate areas for which Area Maritime Transportation Security Plans would be required, and designate Coast Guard officials to serve as Federal Maritime Security Coordinators for each of these areas. Actions by Federal agencies to deter and minimize damage from transportation security incidents would be required to conform to the Plan "to the greatest extent possible."

Area Maritime Security Coordinators would be required to develop Area Maritime Transportation Security Plans that would have to be approved by the Secretary. Owners of vessels and facilities previously identified as high-risk by the Secretary would be required to develop individual vessel and facility security plans and security incident response plans. (Facilities and vessels of the Department of Defense would not be subject to this requirement.) Security plans would have to be submitted to the Secretary within 6 months of the issuance of interim final regulations setting forth the requirements of such plans. Any plan which has not been approved by the Secretary within 12 months of the issuance of such regulations would not be permitted to remain in effect. Security incident response plans, which could be included in security plans, would be required to detail how a facility or vessel would respond to a security incident or other emergency, including procedures for notifying the Federal Emergency Management Agency and other relevant Federal agencies. Area, facility, and vessel plans would have to be updated every five years.

The enrolled bill specifies that information developed in connection with these plans is "not required to be disclosed to the public."

Maritime Transportation Security Grants. S. 1214 would establish a program of grants to be awarded to port authorities, state and local governments, and facility operators in an "equitable manner" to reimburse them for eligible costs connected with implementing area or facility Maritime Transportation Security Plans. Grants could be used to defray eligible expenditures previously made by recipients, but could not exceed 75 percent of the cost of projects costing \$25,000 or more unless the Secretary of Transportation determines the project has special merit and would not be completed without Federal assistance. The enrolled bill specifies that this grant program would be administered by the Secretary of Transportation through the Maritime Administration. It therefore would not be among the Coast Guard programs transferred to the Department of Homeland Security.

Personnel Security. The Secretary would be required to issue regulations restricting entrance to vessels, or to other maritime facilities designated by the Secretary as secure areas, to persons to whom biometric transportation security cards have been issued, or who are authorized to be in the area and are accompanied by a person to whom a card has been issued. Maritime Transportation Security Plans developed by vessels and facilities would be required to specify areas that would be limited to individuals possessing transportation security cards.

The Secretary would be required to issue cards to all persons whose positions require access to such facilities unless they are determined to be transportation security risks pursuant to regulations issued by the Secretary. Factors to be considered in determining whether individuals are transportation security risks would include whether they are in this country legally, and whether they have been convicted within the preceding 7 years or released from prison within the preceding 5 years for committing certain felonies. The Secretary would also be required to issue regulations detailing standards and procedures for considering waivers and appeals of determinations that individuals are transportation security risks.

The enrolled bill would require the Department of Justice to perform background records checks upon the request of the Secretary of persons whose eligibility to work in secure areas is being evaluated. Information gathered in the process of determining eligibility could be shared with other Federal agencies, but employers could only be informed of whether an employee had been issued a biometric transportation security card.

The Secretary would also be authorized to prescribe identification requirements for crew members of foreign vessels calling on U.S. ports. The enrolled bill would "encourage" the Secretary to negotiate an international agreement that will enable the U.S. to establish the identities of all seafarers on vessels within its jurisdiction. Should the Secretary fail to negotiate an agreement within 24 months of enactment, the Secretary would be required to transmit to the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee a draft of legislation that would establish a uniform comprehensive identification system for seafarers.

Cargo Security. The Secretary would be required to implement a system for identifying, tracking, and screening containerized cargo shipped through U.S. ports. S. 1214 would also require the development of performance standards to improve the security of containerized cargo such as standards for locks and seals and mechanisms for indicating whether tampering has occurred.

The enrolled bill would require carriers to provide the Customs Service with electronically filed cargo manifest information in advance of entering a U.S. port. The Customs Service would be required to share this information with other Federal Departments.

Sea Marshals and Maritime Safety-Security Teams. The enrolled bill would authorize armed Coast Guard personnel to act as "sea marshals" to protect vessels and facilities. It would also require the Secretary to establish maritime safety and security teams that may be rapidly deployed to respond to terrorist threats or other emergencies. Team members would have to be qualified to perform a broad range of safety, police, and anti-terrorism functions specified in the enrolled bill. The number and location of such teams would be determined by the Secretary.

Vessel Identification and Tracking Systems. S. 1214 would require that specified categories of vessels operating in U.S. waters be equipped with automatic identification systems to be specified under regulations issued by the Secretary. Such systems include position indicating transponders and electronic charting or position displays. The Secretary would also be authorized to implement a long-range automated vessel tracking system for all vessels in U.S. waters that are equipped with the necessary satellite technology.

Authorizations of Appropriations

Coast Guard. S. 1214 would authorize total FY 2003 appropriations of \$5.9 billion for the Coast Guard, consistent with your request. The enrolled bill would also authorize an end-of-year active duty personnel level of 45,500, and specify that if a war or national emergency is in effect at the end of any fiscal year, the President may defer the effectiveness of any end-of-year limitation until six months after the war or national emergency has ended.

Department of Transportation. The enrolled bill would authorize appropriations of "such sums as may be necessary" for FYs 2003-2008 to the Department of Transportation for the maritime transportation security grants described above. It would also authorize appropriations to the Department of Transportation of \$15 million for port security research and development grants and \$5.5 million for the training of maritime security professionals for each of FYs 2003-2008. Unlike programs administered by the Coast Guard, these programs would not be transferred to the Department of Homeland Security. Finally, S. 1214 would authorize FY 2003 appropriations of \$500,000 for grants to the American Merchant Marine Veterans Memorial Committee to construct an addition to the American Merchant Marine Memorial Wall of Honor at the Los Angeles Maritime Museum in San Pedro, California.

Under Secretary of Transportation for Policy

S. 1214 would create a Presidentially-appointed, Senate-confirmed position of Under Secretary of Transportation for Policy within the Department of Transportation. The Administration proposed that this position be created.

Agency Views

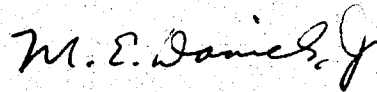
The Department of Transportation recommends approval of S. 1214, and advises that the enrolled bill is "[s]tructured on a template developed by the Department [and] achieves the Department's goals for maritime security."

The Department of Justice recommends approval of S. 1214, but has provided a proposed signing statement that addresses constitutional concerns.

Conclusion and Recommendations

We join Transportation and Justice in recommending approval of S. 1214, which passed the Senate by unanimous consent and the House by voice vote.

Attached for your consideration is a signing statement that is based on the language submitted by Justice. It has been reviewed and approved by the Departments of Transportation and Justice and by the White House Counsel's Office.



Mitchell E. Daniels, Jr.
Director

Enclosures

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	STATEMENT BY THE PRESIDENT	1	N.D.	P5;

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COLLECTION:

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SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

11/25/2002 [S. 1214] [771618]

FRC ID:

6363

OA Num.:

9470

NARA Num.:

9361

FOIA IDs and Segments:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Other Provisions of S. 1214

Prohibition of New Maritime User Fees

The enrolled bill would reinstate a statutory provision that expired on September 30, 2001, prohibiting the Secretary of Transportation from planning or implementing any maritime user fee that was not in effect before January 1, 1998. The restored prohibition would expire on September 30, 2006.

Law Enforcement Provisions

The enrolled bill would:

- Extend the Coast Guard's law enforcement jurisdiction to 24 nautical miles from U.S. shores for enforcement of drug laws (the outer limit of the U.S. contiguous zone) and 12 nautical miles (the outer limit of the U.S. territorial waters) for all other laws.
- Clarify the circumstances under which the Government can seize a vessel that participates in illicit drug smuggling.
- Authorize the Coast Guard to accept the transfer of seven patrol craft from the Department of Defense for use in drug interdiction and other law enforcement operations.
- Authorize the Coast Guard to operate a Caribbean Support Tender to provide training and technical assistance for foreign coast guards, navies, and other maritime services; and to provide medical and dental care to participating foreign military personnel and their dependents during their service on the tender.
- Increase penalties for the negligent operation or interfering with the safe operation of vessels from \$1,000 to \$5,000 in the case of recreational vessels and \$25,000 in the case of other vessels.
- Prohibit vessels forfeited to the U.S. Government for breaches of U.S. laws from obtaining certificates of documentation with fisheries endorsements.

Environmental Provisions

The enrolled bill would authorize the Coast Guard to borrow up to \$100 million from the Oil Spill Liability Trust Fund when the existing limit of \$50 million in unappropriated funds is inadequate to deal with a discharge or threatened discharge. The Coast Guard would be required to notify Congress of the circumstances of such borrowings, and to repay the Fund as removal costs are recovered from responsible parties.

The bill also would extend the Deepwater Port Act to permit the construction of "deepwater ports" (facilities for loading and offloading ships located on platforms several miles offshore) that handle liquefied natural gas. Currently, deepwater ports may load or offload liquefied natural gas only if they are primarily licensed to load and unload oil.

Finally, the enrolled bill would specify that discharges of agricultural residue from vessels shall be governed exclusively by the terms of an international agreement known as Marpol Annex V, as implemented by the Act to Prevent Pollution from Ships. The Coast Guard had previously announced its intent to regulate these discharges under other statutes.

Maritime Safety

The enrolled bill would:

- Require foreign flag vessels to monitor inter-ship radio-telephone safety and distress frequencies when operating in U.S. waters.
- Extend requirements of the Vessel Bridge-to-Bridge Radiotelephone Act to require vessels, dredges, and floating plants to carry radiotelephones throughout the U.S. Territorial Sea.
- Require the Commandant of the Coast Guard to ensure that all Coast Guard personnel are equipped with adequate safety equipment, including hypothermia protective clothing where appropriate, while performing search and rescue missions.
- Authorize the Coast Guard to conduct marine casualty investigations involving foreign vessels in areas outside U.S. territorial waters consistent with the practices and procedures of international law.

Coast Guard Personnel

The enrolled bill's provisions regarding Coast Guard personnel would:

- Conform statutory provisions regarding Coast Guard severance pay to those which apply to the Department of Defense.
- Authorize compensatory absence from duty for Coast Guard military personnel serving at isolated duty stations under certain circumstances.
- Prescribe procedures under which promotion selection boards may accelerate the promotion of certain outstanding officers by placing them at the top of selection lists.
- Revise promotion procedures for Coast Guard Reserve Officers.
- Authorize the Coast Guard to continue certain captains, commanders, and lieutenant commanders on active service who would otherwise be scheduled to retire because they had not been selected for promotion.
- Authorize the Coast Guard to provide financial assistance to eligible enlisted Coast Guard Reservists, not on active duty, for expenses incurred while pursuing baccalaureate or post-baccalaureate degrees on a full time basis.
- Permit the Coast Guard to pay death gratuities to personal representatives of Coast Guard Auxiliarists who die in the line of duty, to the same extent that death gratuities are paid on behalf of Federal employees.
- Increase the maximum rank of the director of the Coast Guard band from commander to captain.

Coast Guard Management

The enrolled bill's provisions regarding management of the Coast Guard would:

- Establish safety standards for land-based Coast Guard facilities involved in search and rescue activities.
- Authorize the Coast Guard to use certain vessels of the U.S. Navy for training.

- Authorize the Coast Guard to lease lighthouse property to non-Federal entities for periods not to exceed 30 years.

Coast Guard Housing Authorities

The Coast Guard's authority to enter into contracts and investments with private parties to acquire or construct military family housing and military unaccompanied housing expired on October 1, 2001. The enrolled bill would extend this authority until October 1, 2006, and double the total budget authority the Coast Guard may devote to annually to such contracts and investments from \$20 million to \$40 million. The enrolled bill would also authorize the Coast Guard to implement a demonstration project for the acquisition or construction of military family housing and military unaccompanied housing at the Coast Guard installation in Kodiak, Alaska.

Finally, the enrolled bill would specifically include small businesses participating in the Small Business Administration's 8(a) program among parties with whom the Coast Guard may contract, and require that such firms be utilized "to the maximum amount possible" in implementing the demonstration project in Kodiak, Alaska.

Regulatory Exceptions and Exemptions

Several provisions of S. 1214 would provide relief from normally applicable regulatory requirements for several named vessels. These provisions would require the Department of Transportation to:

- Issue vessel documentation to 27 named vessels qualifying them to participate in the United States coastwise trade. These vessels would otherwise be ineligible for documentation under the Jones Act because they were constructed and/or repaired outside of the United States.
- Prescribe a tonnage measurement to a named vessel that would qualify it to provide service as small passenger vessel.
- Exempt two named vessels that served as World War II Victory Ships from certain passenger vessel inspection requirements so long as they continue to be owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners.

The enrolled bill would also, with no further action required by the Department of Transportation, grant statutory waivers authorizing the transfer of a named vessel to foreign ownership or control.

Advisory Committees

The enrolled bill would:

- Require the establishment of a National Maritime Security Advisory Committee and of Area Maritime Security Advisory Committees for each U.S. port.
- Require the Coast Guard to evaluate the effectiveness of existing local harbor safety coordinating committees in the United States and to test the feasibility of extending such committees in small and medium-sized ports. The enrolled bill would also make the Federal Advisory Committee Act inapplicable to harbor safety committees.
- Extend the termination dates of six named Federal advisory committees related to maritime safety.

Reports

Preservation of Reporting Requirements. The enrolled bill would prohibit application of the Federal Reports Elimination and Sunset Act of 1995 to terminate reports required by several statutory provisions. These provisions require reports regarding Coast Guard operations and expenditures, marine casualties, user fees, public port conditions, the Federal Maritime Commission's activities, and interagency coordination of oil pollution research.

Termination of Reporting Requirements. The enrolled bill would eliminate a statutory requirement that the Department of Transportation submit an annual report on the Oil Spill Liability Trust Fund to Congress.

New Reporting Requirements. The enrolled bill would require the Department in which the Coast Guard is located to submit reports to the Senate Commerce, Science, and Transportation and the House Transportation and Infrastructure Committees:

- Within 60 days of enactment, on the status of efforts to modernize the National Distress and Response System.
- Within 90 days of enactment, comparing the amounts the Coast Guard spent on its various missions before and after the terrorist attacks of September 11, 2001, and providing estimates of the amounts necessary to restore Coast Guard's activity levels for all missions to those that existed before that date.
- Within 180 days of enactment, on the Coast Guard's performance objectives regarding each of its missions.

- Within six months, providing a proposal and rationale for funding Maritime Transportation Security Grants to eliminate identified security deficiencies for FYs 2003-2008. Thereafter, annual reports on progress in eliminating identified security deficiencies would be required.
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Statement	STATEMENT BY THE PRESIDENT - From: White House	2	11/25/2002	P5; Transferred

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