

safety and security of United States ports and waterways, including but not limited to—

- (1) the scope and degree of the risk or hazard involved;
- (2) vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;
- (3) port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;
- (4) the need for granting exemptions for the installation and use of equipment or devices for use with vessel traffic services for certain classes of small vessels, such as self-propelled fishing vessels and recreational vessels;
- (5) the proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;
- (6) environmental factors;
- (7) economic impact and effects;
- (8) existing vessel traffic services; and
- (9) local practices and customs, including voluntary arrangements and agreements within the maritime community; and

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

(Pub. L. 92-340, § 5, formerly title I, § 104, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1474; Pub. L. 107-295, title IV, § 443(2), Nov. 25, 2002, 116 Stat. 2132.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-295 substituted “safety, protection of the marine environment, and the safety and security of United States ports and waterways,” for “safety and protection of the marine environment,” in introductory provisions.

1978—Pub. L. 95-474 substituted provision relating to factors to be considered by the Secretary and to consultation by the Secretary with affected groups for provision relating to the issuance of rules and regulations by the Secretary.

STUDY OF DESIRABILITY AND FEASIBILITY OF SHORE-STATION SYSTEMS FOR MONITORING VESSELS

Section 3 of Pub. L. 95-474 authorized the Secretary, in consultation with the Secretary of Commerce and other appropriate departments or agencies of the Federal Government to study the desirability and feasibility of shore-station systems for monitoring vessels within the Fishery Conservation Zone as defined in former section 1802(8) of Title 16, Conservation, required the Secretary to report his findings to Congress, within two years after Oct. 17, 1978, and authorized appropriations for such study for fiscal years 1979 and 1980.

§ 1225. Waterfront safety

(a) In general

The Secretary may take such action as is necessary to—

- (1) prevent damage to, or the destruction of, any bridge or other structure on or in the nav-

igable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

(2) protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss. Such action may include, but need not be limited to—

- (A) establishing procedures, measures, and standards for the handling, loading, unloading, storage, stowage, and movement on the structure (including the emergency removal, control, and disposition) of explosives or other dangerous articles and substances, including oil or hazardous material as those terms are defined in section 2101 of title 46;
- (B) prescribing minimum safety equipment requirements for the structure to assure adequate protection from fire, explosion, natural disaster, and other serious accidents or casualties;
- (C) establishing water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and
- (D) establishing procedures for examination to assure compliance with the requirements prescribed under this section.

(b) State law

Nothing contained in this section, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those which may be prescribed by regulations hereunder.

(Pub. L. 92-340, § 6, formerly title I, § 105, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1475.)

CODIFICATION

In subsec. (a)(2)(A), “section 2101 of title 46” substituted for “section 4417a of the Revised Statutes [46 U.S.C. 391a]” on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

1978—Pub. L. 95-474 substituted provisions relating to waterfront safety for provision requiring the Secretary to report to Congress within one year his recommendations for legislation to achieve coordination between functions authorized under Pub. L. 92-340 and the functions of any other agencies and to eliminate duplication of these functions.

§ 1226. Port, harbor, and coastal facility security

(a) General authority

The Secretary may take actions described in subsection (b) of this section to prevent or respond to an act of terrorism against—

- (1) an individual, vessel, or public or commercial structure, that is—
 - (A) subject to the jurisdiction of the United States; and
 - (B) located within or adjacent to the marine environment; or
- (2) a vessel of the United States or an individual on board that vessel.

(b) Specific authority

Under subsection (a) of this section, the Secretary may—

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

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

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

(c) Nondisclosure of port security plans

Notwithstanding any other provision of law, information related to security plans, procedures, or programs for passenger vessels or passenger terminals authorized under this chapter is not required to be disclosed to the public.

(Pub. L. 92-340, § 7, as added Pub. L. 99-399, title IX, § 906, Aug. 27, 1986, 100 Stat. 890; amended Pub. L. 104-324, title III, § 302, Oct. 19, 1996, 110 Stat. 3917; Pub. L. 107-295, title I, § 107(a), Nov. 25, 2002, 116 Stat. 2088.)

PRIOR PROVISIONS

A prior section 1226, Pub. L. 92-340, § 7, formerly title I, § 106, July 10, 1972, 86 Stat. 427; renumbered § 7 and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1475, related to requirement respecting federally licensed pilots on any foreign or domestic self-propelled vessel engaged in the foreign trade when operating in the navigable waters of the United States in areas, etc., where a pilot is not otherwise required by State law, prior to repeal by Pub. L. 98-557, § 29(g), Oct. 30, 1984, 98 Stat. 2875.

AMENDMENTS

2002—Subsec. (b)(3). Pub. L. 107-295 added par. (3).
1996—Subsec. (c). Pub. L. 104-324 added subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON USE OF NON-COAST GUARD PERSONNEL

Pub. L. 107-295, title I, § 107(b), Nov. 25, 2002, 116 Stat. 2088, provided that: “The Secretary of the department in which the Coast Guard is operating shall evaluate and report to the Congress on—

“(1) the potential use of Federal, State, or local government personnel, and documented United States Merchant Marine personnel, to supplement Coast Guard personnel under section 7(b)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)(3));

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

“(3) the possibility of utilizing the United States Merchant Marine Academy, State maritime acad-

emies, or Coast Guard approved maritime industry schools in the United States, to provide training under that section.”

§ 1227. Investigatory powers

(a) Secretary

The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to any structure subject to this chapter, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States.

(b) Powers

In an investigation under this section, the Secretary may issue subpoenas to require the attendance of witnesses and the production of documents or other evidence relating to such incident, accident, or act. If any person refuses to obey a subpoena, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance with the subpoena. Any district court of the United States may, in the case of refusal to obey a subpoena, issue an order requiring compliance with the subpoena, and failure to obey the order may be punished by the court as contempt. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

(Pub. L. 92-340, § 8, formerly title I, § 107, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95-474, § 2, Oct. 17, 1978, 92 Stat. 1476.)

AMENDMENTS

1978—Pub. L. 95-474 substituted provision relating to the investigatory powers of the Secretary for provision relating to criminal penalties.

§ 1228. Conditions for entry to ports in the United States

(a) In general

No vessel, subject to the provisions of chapter 37 of title 46, shall operate in the navigable waters of the United States or transfer cargo or residue in any port or place under the jurisdiction of the United States, if such vessel—

(1) has a history of accidents, pollution incidents, or serious repair problems which, as determined by the Secretary, creates reason to believe that such vessel may be unsafe or may create a threat to the marine environment; or

(2) fails to comply with any applicable regulation issued under this chapter, chapter 37 of title 46, or under any other applicable law or treaty; or

(3) discharges oil or hazardous material in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party; or

(4) does not comply with any applicable vessel traffic service requirements; or

(5) is manned by one or more officers who are licensed by a certificating state which the Secretary has determined, pursuant to section 9101 of title 46, does not have standards for licensing and certification of seafarers which are comparable to or more stringent than