

111TH CONGRESS
1ST SESSION

S. 1385

To amend title 46, United States Code, to improve port safety and security.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. LAUTENBERG (for himself, Mr. ROCKEFELLER, Mrs. HUTCHISON, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 46, United States Code, to improve port safety and security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Maritime Hazardous
5 Cargo Security Act”.

1 **SEC. 2. INTERNATIONAL COMMITTEE FOR THE SAFE AND**
2 **SECURE TRANSPORTATION OF ESPECIALLY**
3 **HAZARDOUS CARGO.**

4 (a) IN GENERAL.—Chapter 701 of title 46, United
5 States Code, is amended by inserting after section 70109
6 the following:

7 **“§ 70109A. International committee for the safe and**
8 **secure transportation of especially haz-**
9 **ardous cargo**

10 “(a) IN GENERAL.—The Secretary, in consultation
11 with the Secretary of State and other appropriate entities,
12 is authorized to promote, in a manner consistent with
13 international treaties, conventions, and agreements to
14 which the United States is a party, the establishment of
15 a committee within the International Maritime Organiza-
16 tion that includes representatives of United States trading
17 partners that supply tank, bulk, or break-bulk vessel ship-
18 ments of especially hazardous cargo to the United States.

19 “(b) SAFE AND SECURE LOADING, UNLOADING, AND
20 TRANSPORTATION OF ESPECIALLY HAZARDOUS CAR-
21 GOES.—In carrying out this section, the Secretary, in co-
22 operation with the International Maritime Organization
23 and in consultation with the International Standards Or-
24 ganization and shipping industry stakeholders, shall de-
25 velop protocols, procedures, standards, and requirements
26 for receiving, handling, loading, unloading, vessel crewing,

1 and transportation of especially hazardous cargo to pro-
 2 mote the safe and secure operation of ports, facilities, and
 3 vessels that transport especially hazardous cargo to the
 4 United States.

5 “(c) DEADLINES.—The Secretary shall—

6 “(1) initiate the development of the committee
 7 within 180 days after the date of enactment of the
 8 Maritime Hazardous Cargo Security Act; and

9 “(2) endeavor to have the protocols, procedures,
 10 standards, and requirements developed by the com-
 11 mittee take effect within 3 years after the date of
 12 enactment of that Act.

13 “(d) REPORTS.—The Secretary shall report annually
 14 to the Senate Committee on Commerce, Science, and
 15 Transportation, the House of Representatives Committee
 16 on Transportation and Infrastructure, and the House of
 17 Representatives Committee on Homeland Security on the
 18 development, implementation, and administration of the
 19 protocols, procedures, standards, and requirements devel-
 20 oped by the committee established under subsection (a).”.

21 (b) CONFORMING AMENDMENT.—The chapter anal-
 22 ysis for chapter 701 of title 46, United States Code, is
 23 amended by inserting after the item relating the section
 24 70109 the following:

“70109A. International committee for the safe and secure transportation of es-
 pecially hazardous cargo.”.

1 **SEC. 3. INTERNATIONAL SHIP AND PORT FACILITY SECUR-**
 2 **RITY CODE.**

3 (a) IN GENERAL.—Chapter 701 of title 46, United
 4 States Code, is amended by inserting after section 70110
 5 the following:

6 **“70110A. Port safety and security validations**

7 “(a) IN GENERAL.—The Secretary, in consultation
 8 with the Secretary of State, shall, in a manner consistent
 9 with international treaties, conventions, and agreements
 10 to which the United States is a party, develop and imple-
 11 ment a voluntary program under which foreign ports and
 12 facilities can certify their compliance with applicable Inter-
 13 national Ship and Port Facility Code standards.

14 “(b) THIRD-PARTY VALIDATION.—

15 “(1) IN GENERAL.—In carrying out this sec-
 16 tion, the Secretary, in cooperation with the Inter-
 17 national Maritime Organization and the Inter-
 18 national Standards Organization, shall develop and
 19 implement a program under which independent,
 20 third-party entities are certified to validate a foreign
 21 port’s or facility’s compliance under the program de-
 22 veloped under subsection (a).

23 “(2) PROGRAM COMPONENTS.—The inter-
 24 national program shall include—

25 “(A) international inspection protocols and
 26 procedures;

1 “(B) minimum validation standards to en-
2 sure a port or facility meets the applicable
3 International Ship and Port Facility Code
4 standards;

5 “(C) recognition for foreign ports or facili-
6 ties that exceed the minimum standards;

7 “(D) uniform performance metrics by
8 which inspection validations are to be con-
9 ducted;

10 “(E) a process for notifying a port or facil-
11 ity, and its host nation, of areas of concern
12 about the port’s or facility’s failure to comply
13 with International Ship and Port Facility Code
14 standards;

15 “(F) provisional or probationary valida-
16 tions;

17 “(G) conditions under which routine moni-
18 toring is to occur if a port or facility receives
19 a provisional or probationary validation;

20 “(H) a process by which failed validations
21 can be appealed; and

22 “(I) an appropriate cycle for re-inspection
23 and validation.

24 “(c) CERTIFICATION OF THIRD PARTY ENTITIES.—

25 The Secretary may not certify a third party entity to vali-

1 date ports or facilities under subsection (b) unless the en-
2 tity—

3 “(1) is a recognized security organization (as
4 defined in the applicable International Ship and Port
5 Facility Code Standard);

6 “(2) demonstrates to the satisfaction of the
7 Secretary the ability to perform validations in ac-
8 cordance with the standards, protocols, procedures,
9 and requirements established by the program imple-
10 mented under subsection (a); and

11 “(3) has no beneficial interest in or any direct
12 control over the port and facilities being inspected
13 and validated.

14 “(d) MONITORING—The Secretary shall regularly
15 monitor and audit the operations of each third party entity
16 conducting validations under this section to ensure that
17 it is meeting the minimum standards, operating protocols,
18 procedures, and requirements established by international
19 agreement.

20 “(e) REVOCATION.—The Secretary shall revoke the
21 certification of any entity determined by the Secretary not
22 to meet the minimum standards, operating protocol, pro-
23 cedures, and requirements established by international
24 agreement for third party entity validations.

1 “(f) PROTECTION OF SECURITY AND PROPRIETARY
 2 INFORMATION.—In carrying out this section, the Sec-
 3 retary shall take appropriate actions to protect from dis-
 4 closure information that—

5 “(1) is security sensitive, proprietary, or busi-
 6 ness sensitive; or

7 “(2) is otherwise not appropriately in the public
 8 domain.

9 “(g) DEADLINES.—The Secretary shall—

10 “(1) initiate procedures to carry out this section
 11 within 180 days after the date of enactment of the
 12 Maritime Hazardous Cargo Security Act; and

13 “(2) develop standards under subsection (b) for
 14 third party validation within 2 years after the date
 15 of enactment of that Act.

16 “(h) REPORTS.—The Secretary shall report annually
 17 to the Senate Committee on Commerce, Science, and
 18 Transportation, the House of Representatives Committee
 19 on Transportation and Infrastructure, and the House of
 20 Representatives Committee on Homeland Security on ac-
 21 tivities conducted pursuant to this section.”.

22 (c) CONFORMING AMENDMENT.—The chapter anal-
 23 ysis for chapter 701 of title 46, United States Code, is
 24 amended by inserting after the item relating to section
 25 70110 the following:

“70110A. Port safety and security validations.”.

1 **SEC. 4. SAFETY AND SECURITY ASSISTANCE FOR FOREIGN**
 2 **PORTS.**

3 (a) IN GENERAL.—Section 70110(e)(1) of title 46,
 4 United States Code, is amended by striking the second
 5 sentence and inserting the following: “The Secretary shall
 6 establish a strategic plan to utilize those assistance pro-
 7 grams to assist ports and facilities that are found by the
 8 Secretary under subsection (a) not to maintain effective
 9 antiterrorism measures in the implementation of port se-
 10 curity antiterrorism measures.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 70110 of title 46, United States
 13 Code, is amended—

14 (A) by inserting “**or facilities**” after
 15 “**ports**” in the section heading;

16 (B) by inserting “or facility” after “port”
 17 each place it appears; and

18 (C) by striking “PORTS” in the heading
 19 for subsection (e) and inserting “PORTS, FA-
 20 CILITIES,”.

21 (2) The chapter analysis for chapter 701 of title
 22 46, United States Code, is amended by striking the
 23 item relating to section 70110 and inserting the fol-
 24 lowing:

“70110. Actions and assistance for foreign ports or facilities and United States territories.”.

1 **SEC. 5. COAST GUARD PORT ASSISTANCE PROGRAM.**

2 Section 70110 of title 46, United States Code, is
3 amended by adding at the end thereof the following:

4 “(f) COAST GUARD ASSISTANCE PROGRAM.—

5 “(1) IN GENERAL.—The Secretary may lend,
6 lease, donate, or otherwise provide equipment, and
7 provide technical training and support, to the owner
8 or operator of a foreign port or facility—

9 “(A) to assist in bringing the port or facil-
10 ity into compliance with applicable International
11 Ship and Port Facility Code standards;

12 “(B) to assist the port or facility in meet-
13 ing standards established under section 70109A
14 of this chapter; and

15 “(C) to assist the port or facility in exceed-
16 ing the standards described in subparagraph
17 (A) and (B).

18 “(2) CONDITIONS.—The Secretary—

19 “(A) shall provide such assistance based
20 upon an assessment of the risks to the security
21 of the United States and the inability of the
22 owner or operator of the port or facility other-
23 wise to bring the port or facility into compli-
24 ance with those standards and to maintain or
25 exceed compliance with them;

“(B) may not provide such assistance unless the facility or port has been subjected to a comprehensive port security assessment by the Coast Guard or a third party entity certified by the Secretary under section 70110A(b) to validate foreign port or facility compliance with International Ship and Port Facility Code standards; and

“(C) may only lend, lease, or otherwise provide equipment that the Secretary has first determined is not required by the Coast Guard for the performance of its missions.”.

**SEC. 6. NATIONAL STRATEGY FOR WATERSIDE SECURITY
OF LIQUEFIED NATURAL GAS AND OTHER ES-
PECIALLY HAZARDOUS CARGOES.**

(a) STUDY AND EVALUATION.—

(1) IN GENERAL.—The Secretary, acting through the Commandant, shall—

(A) initiate a national study to identify measures to improve the security of maritime transportation of liquefied natural gas and other especially hazardous cargoes; and

(B) coordinate with other Federal agencies, the National Maritime Security Advisory Committee, and appropriate State and local

1 government officials through the Area Maritime
2 Security Committees and other existing coordi-
3 nating committees, to evaluate the waterside se-
4 curity of vessels carrying, and waterfront facili-
5 ties handling, especially hazardous cargo.

6 (2) MATTERS TO BE INCLUDED.—The study
7 conducted under this section shall include—

8 (A) an analysis of existing risk assessment
9 data relating to waterside security generated by
10 the Coast Guard and Area Maritime Security
11 Committees as part of the Maritime Security
12 Risk Assessment Model;

13 (B) a review and analysis of appropriate
14 roles and responsibilities of maritime stake-
15 holders, including Federal, State and local law
16 enforcement and industry security personnel,
17 responsible for waterside security of vessels car-
18 rying, and waterfront facilities handling, espe-
19 cially hazardous cargo;

20 (C) recommendations for risk-sensitive
21 measures to improve waterside security of ves-
22 sels carrying, and waterfront facilities handling,
23 especially hazardous cargo;

24 (D) identification of security funding alter-
25 natives, including an analysis of the potential

1 for cost-sharing by public and private sectors;
2 and

3 (E) recommendations regarding oper-
4 ational standards and training qualifications for
5 personnel conducting waterside security for ves-
6 sels carrying, and waterfront facilities handling,
7 especially hazardous cargo.

8 (3) INFORMATION PROTECTION.—In carrying
9 out the coordination necessary to effectively com-
10 plete the study, the Commandant shall implement
11 measures to ensure the protection of any special sen-
12 sitive information or classified information collected,
13 reviewed, or shared during collaborative engagement
14 with maritime stakeholders and other Government
15 entities.

16 (4) REPORT.—Not later than 12 months after
17 the date of enactment of this Act, the Secretary, act-
18 ing through the Commandant of the Coast Guard,
19 shall submit to the Committee on Transportation
20 and Infrastructure and the Committee on Homeland
21 Security of the House of Representatives, and the
22 Committee on Commerce, Science, and Transpor-
23 tation and the Committee on Homeland Security
24 and Governmental Affairs of the Senate a report on
25 the results of the study under this section.

1 (b) DEVELOPMENT OF NATIONAL STRATEGY.—Not
 2 later than 18 months after the date of enactment of this
 3 Act, the Secretary, acting through the Commandant, shall
 4 develop, in conjunction with appropriate Federal agencies,
 5 a national strategy for the waterside security of vessels
 6 carrying, and waterfront facilities handling, especially haz-
 7 ardous cargo. The strategy shall utilize the results of the
 8 study required by subsection (a).

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 10 are authorized to be appropriated to the Secretary
 11 \$2,000,000 for all necessary expenses as may be required
 12 to carry out the purposes of this section, including travel,
 13 conference expenses, document development, printing and
 14 reproduction, and contractor support. Amounts made
 15 available under this subsection shall remain available until
 16 expended.

17 **SEC. 7. TRANSPORTATION SECURITY INCIDENT MITIGA-**
 18 **TION PLAN.**

19 Section 70103(b)(2) of title 46, United States Code,
 20 is amended—

21 (1) by redesignating subparagraphs (E)
 22 through (G) as subparagraphs (F) through (H), re-
 23 spectively; and

24 (2) by inserting after subparagraph (D) the fol-
 25 lowing:

1 “(E) establish regional response and recovery
 2 protocols to prepare for, respond to, mitigate
 3 against, and recover from a transportation security
 4 incident consistent with section 202 of the Security
 5 and Accountability for Every Port Act of 2006 (6
 6 U.S.C. 942) and section 70103(a) of title 46, United
 7 States Code;”.

8 **SEC. 8. INCIDENT COMMAND SYSTEM TRAINING.**

9 The Secretary shall ensure that Federal, State, and
 10 local personnel responsible for the safety and security of
 11 vessels in port carrying especially hazardous cargo have
 12 successfully completed training in the Department of
 13 Homeland Security’s incident command system protocols.

14 **SEC. 9. PRE-POSITIONING INTEROPERABLE COMMUNICA-**
 15 **TIONS EQUIPMENT AT INTERAGENCY OPER-**
 16 **ATIONAL CENTERS.**

17 Section 70107A of title 46, United States Code, is
 18 amended—

19 (1) by redesignating subsections (e) and (f) as
 20 subsections (f) and (g), respectively; and

21 (2) by inserting after subsection (d) the fol-
 22 lowing:

23 “(e) DEPLOYMENT OF INTEROPERABLE COMMUNICA-
 24 TIONS EQUIPMENT AT INTERAGENCY OPERATIONAL CEN-
 25 TERS.—

1 “(1) IN GENERAL.—The Secretary shall ensure
2 that interoperable communications technology is de-
3 ployed at all interagency operational centers estab-
4 lished under subsection (a).

5 “(2) CONSIDERATIONS.—In carrying out para-
6 graph (1), the Secretary shall consider the con-
7 tinuing technological evolution of communications
8 technologies and devices, with its implicit risk of ob-
9 solescence, and shall ensure, to the maximum extent
10 feasible, that a substantial part of the technology de-
11 ployed involves prenegotiated contracts and other ar-
12 rangements for rapid deployment of equipment, sup-
13 plies, and systems rather than the warehousing or
14 storage of equipment and supplies currently avail-
15 able at the time the technology is deployed.

16 “(3) REQUIREMENTS AND CHARACTERISTICS.—
17 The interoperable communications technology de-
18 ployed under paragraph (1) shall—

19 “(A) be capable of re-establishing commu-
20 nications when existing infrastructure is dam-
21 aged or destroyed in an emergency or a major
22 disaster;

23 “(B) include appropriate current, widely-
24 used equipment, such as Land Mobile Radio
25 Systems, cellular telephones and satellite equip-

1 ment, Cells-On-Wheels, Cells-On-Light-Trucks,
2 or other self-contained mobile cell sites that can
3 be towed, backup batteries, generators, fuel,
4 and computers;

5 “(C) include contracts (including
6 prenegotiated contracts) for rapid delivery of
7 the most current technology available from
8 commercial sources;

9 “(D) include arrangements for training to
10 ensure that personnel are familiar with the op-
11 eration of the equipment and devices to be de-
12 livered pursuant to such contracts; and

13 “(E) be utilized as appropriate during live
14 area exercises conducted by the United States
15 Coast Guard.

16 “(4) ADDITIONAL CHARACTERISTICS.—Portions
17 of the communications technology deployed under
18 paragraph (1) may be virtual and may include items
19 donated on an in-kind contribution basis.

20 “(5) RULE OF CONSTRUCTION.—Nothing in
21 this subsection shall be construed or interpreted to
22 preclude the use of funds under this section by the
23 Secretary for interim or long-term Internet Protocol-
24 based interoperable solutions, notwithstanding com-
25 pliance with the Project 25 standard.”.

1 **SEC. 10. DEFINITIONS.**

2 In this Act:

3 (1) **COMMANDANT.**—The term “Commandant”
4 means the Commandant of the Coast Guard.

5 (2) **ESPECIALLY HAZARDOUS CARGO.**—The
6 term “especially hazardous cargo” means anhydrous
7 ammonia, ammonium nitrate, chlorine, liquefied nat-
8 ural gas, liquefied petroleum gas, and any other sub-
9 stance or materials identified as an especially haz-
10 ardous cargo by the Secretary of the department in
11 which the Coast Guard is operating.

12 (3) **SECRETARY.**—The term “Secretary” means
13 the Secretary of the department in which the Coast
14 Guard is operating.

○