



Office of Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

**Homeland
Security**

April 17, 2014

The Honorable Jay Rockefeller
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Rockefeller:

This letter sets forth the Administration's views on H.R. 4005, the "Coast Guard and Maritime Transportation Act of 2014", as passed by the House of Representatives.

Overview

The Administration strongly opposes H.R. 4005, as passed by the House of Representatives. As explained below, the bill would sharply increase the cost of shipping emergency food aid, potentially denying relief to more than 2 million persons in need annually. Additionally, H.R. 4005 would degrade federal marine safety regimes, increase risks within the maritime operational environment, and both increase the Coast Guard's operating costs and prevent the Service from realizing planned savings. Moreover, while H.R. 4005 incorporates several Coast Guard legislative proposals, the bill does not include other Coast Guard legislative proposals, some of which are critical to the Coast Guard's response capacity.

The Administration, however, believes that the objectionable provisions of the bill, as discussed below, as well as other concerns, can be addressed during Senate consideration of the measure. We stand ready to work with the Committee as it takes up this bill and related legislation.

Discussion

Substantive operational objections.—The Administration strongly opposes the following sections and recommends that the Senate strike these provisions in their entirety:

- Sec. 218. Technical corrections to title 14.—The Administration strongly opposes paragraph (3) of section 218, which would require the Commandant of the Coast Guard to maintain Coast Guard vessels to American Bureau of Shipping classification even after delivery. Based on past experience, this requirement would increase costs by more than \$10 million annually and could delay the ability of the Coast Guard to repair vessels when they suffer certain casualties. For this reason, the Administration urges the Senate to strike section 218 in its entirety.
- Sec. 302. International ice patrol reform.—The Administration strongly opposes section 302, which would bar the use of Coast Guard vessels and aircraft to carry out the International Ice Patrol in any given fiscal year unless the United States Government collects reimbursements for certain ice patrol-related costs that the Coast Guard incurred during the preceding fiscal year. In terms of effect, if the bar had been in place in fiscal year 2013, it would have placed some 94 million tons of commercial activity (including 3 million tons of commercial activity attributable to United States-flagged vessels) at risk in order to compel the collection of approximately \$3 million that the United States Government has temporarily elected not to collect from the Nation's most trusted allies. In the end, the risk could trigger an increase in Coast Guard search and rescue activities—operations that the United States would be obliged to provide, that are more dangerous than the patrols themselves, and that, under certain circumstances, could be far more costly than the \$3 million in reimbursements that the United States might otherwise recover. Separately, the Administration notes that section 302, if strictly construed, would allow only 30 days for the United States Government to bill and collect before the bar would take effect (*i.e.*, from the end of the patrol season until the beginning of the next fiscal year) and the funds to be credited to Coast Guard appropriations would lapse. As a matter of public policy and as a matter of international comity, the Administration does not believe that this vital safety function should be contingent on a ministerial act of collections. For these reasons, the Administration urges the Senate to strike section 302 in its entirety.
- Sec. 312. Uninspected passenger vessels in the Virgin Islands.—The Administration strongly opposes section 312, which would compel the Secretary of Homeland Security to exempt certain passenger vessels that are otherwise subject to the requirements of United States law so long as such vessels are in compliance with the safety regime of the United Kingdom in effect on January 1, 2014. The provision would compel the Secretary to determine the sufficiency of compliance under the inspection regime of the United Kingdom. As well, the provision fails to incorporate the safety standards of the United Kingdom as those standards may evolve. In light of the potential adverse impact that this could have on vessel and passenger safety, the Administration urges the Senate to strike section 312 in its entirety.

- Sec. 313. Offshore supply vessel third-party inspection.—The Administration strongly opposes section 313. This provision would require the Secretary of Homeland Security, at the request of an owner or operator of an offshore supply vessel, to delegate the Secretary’s certificate-of-inspection authorities to the very classification society that is in the vessel owner’s or operator’s direct employ. Such a requirement would create a conflict of interest and the possibility of harm to lives and property. The Administration therefore urges the Senate to strike section 313 in its entirety.
- Sec. 316. Enforcement.—The Administration strongly opposes section 316, which would amend 46 U.S.C. § 55305 (commonly known as the “cargo preference” statute) to eliminate critical expert consultation and public comment requirements. By eliminating required consultation with programmatic experts (*i.e.*, the other departments, agencies, organizations, and persons that fund, furnish, procure and deliver cargoes), the provision needlessly risks programmatic inefficiencies and on-the-ground operational problems. As well, by explicitly authorizing that the Secretary of Transportation forego public comment in drafting the implementing regulations, the provision ignores the input of business, non-profit, and other stakeholders affected by the regulations. As advanced by President Obama’s Executive Order 13563, the Federal Government greatly benefits from public input in the rulemaking process. Under the Administrative Procedure Act, the Secretary already has authority to directly issue final rules where appropriate, so this change only serves to undermine the principles of public participation and transparency. In light of the potential adverse impact this could have on United States Government agencies and their humanitarian and other programs, including life-saving emergency food aid programs, the Administration urges the Senate to strike section 316 in its entirety.
- Sec. 318. Minimum Tonnage.—The Administration strongly opposes section 318, which would increase from 50 percent to 75 percent the tonnage of United States agricultural commodities from the Department of Agriculture-appropriated food aid programs required to be shipped on United States flag ships by the Department of Agriculture and the United States Agency for International Development. This requirement would increase costs of shipping food aid by about \$75 million or more, funding that would otherwise allow more than 2 million people – mainly those in emergency food crises – to receive life-saving food each year. The combined effect of this provision with the recent elimination of the Maritime Administration’s ocean freight differential reimbursements in the Bipartisan Budget Act of 2013 reduces that number of people – again, mostly those in crises – who can be fed annually by 4 million. This would have grave effects on United States humanitarian assistance programs. The Administration therefore urges the Senate to strike section 318 in its entirety.

Other substantive concerns.—Additionally, the following sections raise substantive concerns:

- Sec. 206. Determinations.—The Administration opposes section 206, which would require Secretary of Homeland Security to make future navigability determinations by rulemaking only. The Coast Guard makes navigability determinations (approximately 80 per year) to determine whether the Service has jurisdiction to conduct its missions as listed in 14 U.S.C. § 2. The Coast Guard does not have its own, independent criteria for determining navigability. Instead, Coast Guard personnel apply long-standing, well-settled case law to determine whether a waterway is navigable or not. Thus, the Coast Guard exercises very little agency discretion in making navigability determinations. Section 206 would superimpose the existing federal rulemaking process upon that analysis, which would be cumbersome and costly. While public input may be useful in some cases, for example, to determine whether a waterway has historically been used for commerce, there are other, less cumbersome mechanisms to seek that input. More importantly, the Coast Guard is gravely concerned about the potential retroactive effect of this proposal. The vast majority of commercial waterways in the United States have already been the subject of a navigability determination by the Coast Guard or the United States Army Corps of Engineers. To require a rulemaking to re-determine the navigability of the Mississippi River, for example, would be a pointless waste of taxpayer dollars. While the Administration stands ready to work with Members of Congress to address the underlying concerns that gave rise to this provision, the Administration must object to this approach. The Administration recommends that the Senate strike section 206 in its entirety.
- Sec. 211. Inventory of real property.—The Administration opposes section 211, which would require the Commandant of the Coast Guard to establish an inventory of all Coast Guard real property, including descriptions, assessment of physical conditions, fair market value, and decisions on the need to retain or divest land. The Administration does not oppose the purpose of this provision, but must object to the insurmountable resource strain that the provision, as drafted, would impose. Additionally, determining the fair market value of real property prematurely would be a costly, possibly wasteful endeavor given that certain parcels under the Coast Guard's administrative jurisdiction have no ready physical or economic equivalent for comparison and that any value assigned as the fair market value of a parcel (other than the value fixed at point of offering) may prove meaningless. For these reasons, the Administration recommends that the Senate either delete this provision in its entirety or amend it to provide a more workable framework for the preparation of an inventory.
- Sec. 216. Maintaining Medium Endurance Cutter mission capability.—The Administration opposes section 216, as drafted, as the prescribed criteria would result in a report that does not present an accurate reflection of Coast Guard Cutter operations and planning. The Administration stands ready to work with the Senate to develop more meaningful criteria.

- Sec. 314. Survival craft.—The Administration will not oppose the survival craft requirements set out in subsection (a), notwithstanding the published conclusion that such requirements will not have a significant effect on vessel safety and the likelihood that economic impact of the requirement will delay the attendant rulemaking process. The Administration, however, opposes the reporting requirement, set out in subsection (b), as it would require the Coast Guard to replicate the review that the Service produced in August 2013. The Administration recommends that the Senate amend section 314 to strike the subsection (b) reporting requirement.

Sec. 319. Merchant Marine Personnel Advisory Committee.—Currently, the Merchant Marine Personnel Advisory Committee is a discretionary advisory committee in the service of the Coast Guard. While the Administration supports the concept of statutorily authorizing the Merchant Marine Personnel Advisory Committee, the Administration must oppose section 319 in its entirety. Significantly, section 319 would impose a reporting requirement that is extremely onerous and almost completely dependent upon the cooperation of other International Maritime Organization Member States that have credentialing programs that are not readily comparable to the United States' program. The Administration has no means or authority to compel other States to provide the information requested for the report. More importantly, the reporting requirement would impose a burden on the Committee members that is beyond the normal scope of such volunteer service. The Administration is cognizant of the burden that it imposes on the Committee members; it must oppose any provision that would unduly burden the members further. Further, the Administration strongly objects to certain provisions of the proposed text that would significantly alter the Committee's current operational structure. Section 319 would authorize Committee members to elect a Chairman and Vice Chairman. The Administration believes that the Commandant of the Coast Guard should retain the authority to appoint the Chairman and the Vice Chairman as this approach reduces the potential risk of divisiveness within the Committee if proposed members are not elected unanimously. Additionally, the Administration believes that the requirement that the State maritime academy representatives be jointly recommended could result in that position becoming vacant. In light of these deficiencies and other reasons, the Administration must oppose section 319 and urges the Senate to delete this provision in its entirety.

Separately, the Merchant Marine Personnel Advisory Committee, at its March 12, 2014, meeting, took up the matter of section 319 and concluded that it could not support the provision. Like the Coast Guard, the Committee is concerned that section 319 would make certain changes to the current membership structure of the Committee that would render it less effective and remove authority from the Commandant of the Coast Guard in choosing the Chairman and Vice Chairman of the Committee. And like the Coast Guard, the Committee has grave concerns with the report required under section 319. From the viewpoint of the Committee

members, they are volunteers, and the reporting requirement would impose an unreasonable burden in terms of more meetings per year and extensive travel abroad. Further, the Committee does not have the authority to compel other States to provide the information necessary to complete the report nor do the 3 flag States of the International Maritime Organization with the greatest vessel tonnage have credentialing programs comparable to the United States. The Administration notes that the Committee's views on section 319 were not solicited. Nonetheless, given the Committee's and the Administration's like concerns with section 319, the Administration urges the Senate to delete this provision in its entirety.

- Sec. 601. Distant water tuna fleet.—The Administration cannot support section 601, which would both remove the requirement that foreign citizens employed in licensed positions on purse seine fishing vessels hold a license or certificate that is issued in accordance with the standards established by the 1995 amendments to the Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and repeal the authority of the Secretary of Homeland Security to determine that foreign credentials are equivalent to the requirements prescribed for credentials under United States law – two statutory regimes designed that, in part, promote the maritime safety of the United States fleet. The Administration also objects to (1) the removal of the requirement for vessels in this fleet to make at least one annual call to a port in American Samoa or Guam, as determined by the Coast Guard; and (2) the removal of the requirement for an annual safety examination performed by the Coast Guard. These fishing vessels operate in remote areas of the Pacific, at great distances from search and rescue assets and often not in proximity of any other vessel. Without an annual United States port call or annual safety examination, there may not be any contact with these vessels by the Coast Guard in a two to three year time span. Given that the United States distant water tuna fleet has had one of the highest fatality rates of any United States fishing fleet, the Administration believes that this provision would only exacerbate that unfortunate reality. For this reason, the Department cannot support section 601 and urges the Senate to delete this provision in its entirety.

Additional Concerns.—The following provisions raise additional concerns:

- Sec. 209. Mission need statement.—Section 209 would require the Commandant of the Coast Guard to submit an integrated major acquisition mission need statement in conjunction with the President's budget submission in 2016, 2019, and every 4 years thereafter. It is not feasible for the Coast Guard to complete a comprehensive mission need statement in the timelines provided; thus, this provision would unnecessarily constrain Coast Guard resources. More importantly, this provision is contrary to Coast Guard acquisition policy and Department of Homeland Security Acquisition Management Directive 102-01, which requires a mission need statement with each major acquisition project proposal as opposed to a combined mission need statement for multiple

acquisitions. The Administration stands ready to brief any Member of Congress, the Member's staff, or the staff of any congressional committee with regard to any acquisition program's status upon request. For these reasons, the Administration urges the Senate to delete this provision in its entirety.

- Sec. 214. Icebreakers.—The provision is unclear as to how the Administration would differentiate between capabilities that may be required by more than one agency—specifically, those capabilities where the Coast Guard is statutorily obliged to support the mission of another federal agency. The Administration stands ready to work with the Senate to address concerns with this deficiency.
- Sec. 217. Coast Guard administrative savings.—Section 217 would amend section 346 of the Transportation Security Act of 2002 requiring the Secretary of the department in which the Coast Guard is operating to submit a report on the implementation of the Rescue 21 project in Alaska and in Coast Guard sectors Upper Mississippi River, Lower Mississippi River, and Ohio River Valley. The Administration believes that it is more appropriate for the Commandant of the Coast Guard to provide this report than the Secretary of Homeland Security and recommends that the Senate amend this provision accordingly.
- Sec. 220. Aviation capability in the Great Lakes region.—Current law vests, in the Secretary of Homeland Security, the authority to request and accept transfer of H-60 helicopters from other military agencies and to expend authorized funds to convert those helicopters to MH-60T configuration. Under one legal theory, section 220 simply restates that authority; under another legal theory, however, section 220 could be construed as necessary to supplement the Secretary's existing authority – suggesting, in part, that current law is deficient. The Administration will no longer support restatements of law that serve no specific purpose. Given that the Secretary is vested with the statutory authority to request and accept direct military-to-military transfers, the language of section 220 is redundant and unnecessary. For this reason, the Administration opposes section 220 and urges the Senate to delete this provision in its entirety.
- Sec. 221. E-LORAN.—On December 29, 2009, the Secretary of Homeland Security – after having consulted with international partners, evaluated the current state of marine navigation, and determined that no major marine electronics equipment provider sells LORAN-C receivers – certified that the system infrastructure is not needed as a backup to the Global Positioning System or to meet any other federal navigation requirement. Based on the Secretary's certification, Congress eliminated some \$36 million in funding for LORAN-related activities. Four years into the dismantling of the LORAN system, section 221 would both revisit the termination decision and delay the ongoing dismantling of that infrastructure. Furthermore, delaying the sale of LORAN properties could preclude the Coast Guard from realizing maintenance cost reductions associated with divestiture of unnecessary sites. The Administration

cannot support this retrograde effect and, thus, urges the Senate to delete this provision in its entirety.

- Sec. 301. Treatment of fishing permits.—The Administration notes that proposed 46 U.S.C. § 31310(b)(1) is superfluous, may have unintended effects beyond clarifying the scope of maritime liens on fishing permits. For this reason, the Administration recommends that Congress delete proposed 46 U.S.C. § 31310(b)(1). Additionally, the Administration notes that, while the intent of proposed 46 U.S.C. § 31310(c) is not entirely clear, it seems to provide clarity with regard to the Secretary of Commerce’s authority. The Administration therefore recommends that Congress delete proposed paragraphs (1) and (2) of proposed 46 U.S.C. § 31310(c) so as not to put limitations on the authority of the Secretary of Commerce.
- Sec. 309. Crediting time in the sea services.—Section 309, as currently drafted, would authorize the Secretary of Homeland Security to issue a license to any applicant, regardless of the applicant’s veteran status, who has “at least 3 months of qualifying service on vessels of the uniformed services . . . within the 7-year period immediately preceding the date of application” The Administration would have no objection to this provision if it were amended to ensure that only applicants, who are former armed service members and who have at least 5 months of qualifying service within the previous 5 years immediately preceding the date of application, are eligible. The Administration strongly believes that limiting the applicant pool to former military members and narrowing the recency requirements are in the best interest of maritime safety.
- Section 311. Clarification of high-risk waters.—The Administration notes that section 311 would amend 46 U.S.C. § 55305(e) to require, as the second element of the definition for “high-risk waters”, that the Secretary of Transportation determine whether an act of piracy is likely to occur, based on documented acts of piracy that occurred in such waters during the 12-month period preceding the date on which an applicable voyage begins. The Administration notes that this requirement would create a near impossible burden for the Secretary of Transportation as piracy is, by its nature, not a wholly predictable, rational act. For this reason, the Administration recommends that the Senate strike the proposed subparagraph (B) text from the proposed restatement of 46 U.S.C. § 55305(e)(2) text and insert the following:

“(B) in which the Coast Guard-approved ship-specific piracy security plan demonstrates the need for armed security while transiting high risk waters.”.

- Section 401. Authorization of Appropriations.—In Fiscal Year 2013, the Federal Maritime Commission, even without full staffing and near cessation of travel, training, and hiring, was forced to furlough all of its non-exempt employees for a total of six days. These furlough days resulted in delays in the Commission’s

service to the shipping industry and the public: applications from non-vessel operating common carriers and ocean freight forwarders for licenses were not processed, complaints filed by the public were not heard, foreign restrictive practices were not addressed, and potentially anti-competitive practices were not monitored. The appropriated sum of \$24,669,000 for Fiscal Year 2014 provided the Commission with much needed resources to avoid reductions in force and furloughs. The Fiscal Year 2014 budget also allows the Commission to take the first essential steps toward implementation of an information technology improvement program that has been long delayed. This is the first year of a five-year initiative to upgrade, refresh and modernize the agency's information technology infrastructure and systems necessary for the provision of statutorily mandated services. The authorization limitation of \$24,700,000 for each of Fiscal Year 2015 and Fiscal Year 2016 could result in limitations on the Commission's ability to continue to make these necessary information technology infrastructure improvements with disastrous effect on the condition and performance of the agency's information technology infrastructure, and might not cover cost of living or step increases for our already reduced full-time employee full-time equivalent level and inflation for already reduced operating expenses.

- Section 402. Terms of Commissioners.—The Federal Maritime Commission functions best at its full complement of five Commissioners. Section 402 should therefore be amended to permit members whose terms have expired to continue to serve until a successor has been “appointed and qualified,” without the limitation to “a period not to exceed one year.” Though the Commission could continue to function with fewer than five Commissioners, it is possible that an even number of Commissioners could result in deadlocked voting, which could render the Commission less effective in fulfilling its statutory responsibilities. At some point, through attrition and automatically expiring terms, the Commission could be hamstrung by vacancies. Also, the proposed language regarding conflict of interest does not appear to align with current Federal ethics regulations. For example, Office of Government Ethics regulations typically refer to “financial” interests instead of pecuniary interests (section 402(a)(4)(A)). Likewise, in the same subsection, the meaning of the language “hold an official relation to” is not clear. In section 402(a)(4)(B), it is unclear whether both paid and unpaid activities are prohibited in connection with “another business, vocation, or employment.” Office of Government Ethics regulations currently provide that a “Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment.” 5 CFR § 2635.804(a). It is unclear whether the limitation imposed in section 402(a)(4)(B) is intended to have a broader scope than the Office of Government Ethics regulation. We recommend that Congress seek feedback directly from Office of Government Ethics on how to best address the Committee's concerns regarding conflicts of interest.

- Title V - Commercial Vessel Discharge Reform.—The Administration opposes Title V because it would permanently exempt discharges incidental to the normal operation of small commercial vessels (less than 79 feet in length) and commercial fishing vessels from regulation under the Clean Water Act. The Administration believes that discharges from small commercial vessels and fishing vessels pose the risk of an adverse cumulative effect on the waters of the United States. To the extent that federal law, such as the Act to Prevent Pollution from Ships, does not regulate these discharges, there should be some regulatory regime to help ensure that these harmful adverse impacts are appropriately controlled. The Administration is willing to work with the Senate on legislation that would address these discharges under a regime other than Clean Water Act permitting.
- Sec. 604. National maritime strategy.—Section 604 would require the Secretary of Transportation, in consultation with the Secretary of the department in which the Coast Guard is operating, to develop a National Maritime Strategy that identifies Federal regulations and policies that limit United States flag vessel competitiveness in international trade, including recommendations to make United States flag vessels more competitive. While the Administration supports section 604, the production of a strategy will require more than 60 days. The Administration therefore recommends that the Senate amend the provision to provide up to one year after enactment of the Act to complete the strategy. To avoid constitutional concerns, the Administration would not construe this provision as requiring legislative recommendations.
- Sec. 605. IMO Polar Code negotiations.—The Administration notes that the information that section 605 would compel the Secretary of Homeland Security to submit is currently conveyed through public meetings and outreach efforts under the auspices of the Department of State's Shipping Coordinating Committee. The Administration stands ready to brief any Member of Congress, the Member's staff, or the staff of any congressional committee upon request. As a matter of practice, and in the interest of conserving resources, the Administration will not support the imposition of an additional annual reporting requirement when the material is readily available in another form that can be expeditiously provided to Congress. For this reason, the Administration cannot support section 605 and recommends that the Senate delete this provision in its entirety.
- Sec. 607. Competition by United States flag vessels.—The Administration notes that, in September 2013, the Department of Homeland Security submitted a report that contains the information that the Committee on Transportation and Infrastructure seeks by way of section 607. As a matter of practice, and in the interest of conserving resources, the Administration will not support the imposition of an additional reporting requirement when the Coast Guard has already provided the material to Congress. As well, the Administration will not support the transfer of budget resources to another federal entity for the purposes

of replicating material that the Coast Guard has already provided to Congress. The Administration, therefore, recommends that the Senate delete this provision in its entirety.

- Sec. 609. Fishing safety grant programs.—Section 609 would extend the Fishing Safety Training Grant Program and the Fishing Safety Research Grant Program through fiscal year 2016. The current request for the Coast Guard does not include funding for either grant program, and future requests are not likely. In light of current spending restraints, the Administration urges the Senate to delete this provision.

Administration Proposals.—The legislative texts of sections 202 (Prevention and response workforces), 213 (Acquisition workforce expedited hiring authority), and 219 (Flag officers) of H.R. 4005 are substantively identical to the legislative texts of three Coast Guard legislative proposals. The Administration strongly supports these provisions and recommends that the Senate adopt them without further amendment. Additionally, H.R. 4005 incorporates legislative texts that are similar, but not identical, to five Coast Guard legislative proposals. The Administration urges the Senate to amend these provisions as follows:

- Sec. 203. Centers of expertise.—Section 203 would restate 14 U.S.C. § 58(b), but omits a key element that is found in both current law and the Coast Guard’s legislative proposal that would permit a Center of Expertise to perform any other mission that the Commandant of the Coast Guard may specify. The Administration urges the Senate to amend this provision to restore this text; otherwise, the Administration would urge the Senate to delete this provision in its entirety.
- Sec. 204. Agreements.—Section 204 would restate existing cooperative authorities under a new provision of title 14, United States Code. In doing so, the section 204 restatement omits the Coast Guard-proposed authority to cooperate with foreign governments in collaborative research, development, testing, and evaluation endeavors. The Administration urges the Senate to amend this provision to restore this text.
- Sec. 212. Active duty for emergency augmentation of regular forces.—In terms of emergency recall authority, the Administration proposal would align the Secretary of Homeland Security’s authority with that of the Secretary of Defense so that all military services may respond in like manner in the event of a major disaster, emergency, or (in the case of the Coast Guard) a spill of national significance. Section 212, however, does not align the authorities of the two Secretaries and, significantly, does not incorporate the proposed legislative text to address the impact that a sustained activation or multiple sustained activations would have on the Coast Guard. The Administration urges the Senate to amend this provision to adopt the legislative text of the Coast Guard proposal.

- Sec. 306. Drug testing reporting.—The Administration supports section 306, which would require federal agencies to report positive drug results of a mariner who is an applicant for federal employment, but notes that it would not address the secondary effect whereby select federal agencies now require the “prior consent” of an employee to release positive drug testing results. The Administration urges the Senate to amend this provision by adopting the Coast Guard’s comprehensive proposal that would require federal agencies to report positive drug results of an individual (an employee or an applicant for federal employment) who holds a merchant mariner credential and a federal employee or applicant for federal employment who holds a merchant mariner credential to provide “prior consent” as a condition of holding the credential.
- Section 310. Treatment of abandoned seafarers.—The Administration is pleased that the House of Representatives has elected to take up the issue of abandoned seafarers, particularly those seafarers whom a vessel owner or operator abandons (or threatens to abandon) as a litigation tactic. Section 310 contains select elements from the Coast Guard’s legislative proposal, but modifies other provisions from the same proposal in ways that are overly broad. Currently, vessel owners and operators willingly incur the cost of paroling a crewmember/witness in exchange for the release of a vessel so that it may operate the vessel during the United States Government’s investigation of the alleged violation. Section 310, however, would require the Secretary of Homeland Security to reimburse vessel owners and operators who have provided such support for paroled a crewmember/witness. Rather than disturb the traditional practice of releasing a vessel under investigation to avoid the cost of reimbursement, the Administration seeks to limit the reimbursement mechanism along the lines that the Coast Guard has set out in its proposal. As such, the Administration urges the Senate to amend this provision to adopt the reimbursement mechanism as the Coast Guard has proposed.

Additionally, the Coast Guard transmitted 14 other legislative proposals, many of which would improve the execution of law or marine safety. The Administration recommends that the Senate consider adopting the following proposals:

- To adjust liability limits for natural gas deepwater ports.
- To align the period of limitation for claims against the Oil Spill Liability Trust Fund.
- To resolve an anomaly in venue under the Magnuson-Stevens Fishery Conservation and Management Act.
- To improve the administration of the Sport Fish Restoration and Boating Trust Fund.
- To address the subrogation of claims under the Oil Pollution Act.
- To improve the National Response System.
- To improve area contingency plans.

- To permit the recall of retired members for military justice purposes.
- To improve recreational vessel operator education.
- To establish minimum physical standards for all mariners.
- To address the carriage of flammable or combustible liquid cargo in bulk.
- To make data under the Vessel Identification System available for law enforcement purposes.
- To facilitate the activities of the Interagency Coordinating Committee on Oil Pollution Research.
- To make necessary technical corrections to the Coast Guard's bridge authorities.

Conclusion

The Administration appreciates the Senate's willingness to enact legislation that would strengthen United States maritime transportation and improve the Coast Guard's mission effectiveness. The Administration, notwithstanding its opposition to H.R. 4005, still believes that its concerns can be addressed and urges the Senate to consider the recommendations set forth in this letter.

I appreciate your interest in the Administration's concerns and input, and I look forward to working with you on future homeland security issues. If I may of further assistance, please contact me at (202) 447-5890.

Respectfully,

A handwritten signature in black ink, appearing to read "Brian de Vallance". The signature is fluid and cursive, written over a light gray rectangular background.

Brian de Vallance
Acting Assistant Secretary for Legislative Affairs