



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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April 1, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Committee on Transportation and Infrastructure
FROM: Committee on Transportation and Infrastructure Staff
SUBJECT: Committee on Transportation and Infrastructure Markup

PURPOSE OF MARKUP

On Thursday, April 2, 2009, at 11:00 a.m., in room 2167 of the Rayburn House Office Building, the Committee on Transportation and Infrastructure is scheduled to mark up H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009"; H.R. 1746, the "Pre-Disaster Mitigation Act of 2009"; H.R. 1747, the "Great Lakes Icebreaker Replacement Act"; H.R. 1178, to direct the Comptroller General of the United States to conduct a study on the use of Civil Air Patrol personnel and resources to support homeland security missions, and for other purposes; H. Res. 313, supporting the goals and ideals of National Public Works Week; and H. Res. 269, supporting the goals of Motorcycle Safety Awareness Month.

H.R. 1665, THE "COAST GUARD ACQUISITION REFORM ACT OF 2009"

Background

Coast Guard capital expenditures are funded through Congressional appropriations to the Acquisition, Construction, and Improvement ("AC&I") account, which funds expenses related to "acquisition, construction, renovation, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto; and maintenance, rehabilitation, lease and operation of facilities and equipment."¹ The total Coast Guard AC&I appropriation for fiscal year 2009 is approximately \$1.5 billion; this figure is an increase of approximately \$369 million (32.8 percent) over the fiscal year 2008 appropriated level of \$1.2 billion.

¹ Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329).

The largest single acquisition program funded through the AC&I budget is the Deepwater acquisition program, which received more than \$1 billion in the Omnibus Appropriations Act, 2009 (P.L. 111-8) (to be available until September 30, 2013). The Coast Guard's Deepwater program is a multi-year acquisition program that will upgrade or replace the service's existing surface and air assets; the program will also modernize command and control information technology systems that the service relies on to manage asset deployments.

Of the funds made available for the Deepwater program, approximately \$245 million was appropriated for aircraft and approximately \$571 million was appropriated for surface ships. As of January 2009, the Coast Guard's Acquisition Directorate was implementing 18 AC&I acquisition initiatives with individual acquisition baseline costs exceeding \$10 million. According to the most recent acquisition program baseline for the Deepwater program, the Deepwater acquisitions are currently projected to cost a total of \$24 billion and to require 25 years to complete. However, at the Subcommittee on Coast Guard and Maritime Transportation hearing on Coast Guard acquisition policies and programs on March 24, 2009, the Coast Guard testified that the total cost of the Deepwater program is now projected to exceed \$26 billion.

Major AC&I procurements with acquisition baselines exceeding \$100 million include: the National Security Cutter, which is the largest individual and most technologically advanced cutter to be acquired under the Deepwater program; the Fast Response Cutter, which will eventually replace the Coast Guard's existing 110-foot patrol boats; and the Rescue 21 command, control, and communications system procurement (a non-Deepwater acquisition), which is intended to replace the Coast Guard's National Distress Response System with an upgraded Very High Frequency-Frequency Modulated (VHF-FM) communications system.

The Coast Guard's acquisition programs, including the Deepwater acquisition and the Rescue 21 program, have been plagued by a series of procurement failures, are hundreds of millions of dollars over budget and years behind schedule.

H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009"

H.R. 1665 is based on H.R. 6999, the "Deepwater Acquisition Reform Act of 2008". However, the scope of this legislation has been expanded to address all Coast Guard acquisitions (not just Deepwater) and all phases of an acquisition from design of an asset through testing and acceptance of a new asset.

H.R. 1665 would strengthen the Coast Guard's acquisition management processes by building on reforms that the Coast Guard has already implemented. Specifically, the legislation ensures the effective definition of operational requirements to guide acquisition efforts, and requires the service to: develop processes to ensure that the trade-offs among performance, cost, and schedule are understood and assessed for each acquisition; complete testing and evaluation of all major assets acquired by it to ensure that they meet the highest standards of quality and all contractual requirements; and develop independent cost estimates for the service's largest acquisitions. The legislation also requires the appointment of a Chief Acquisition Officer who, at the Commandant's choice, can be either a civilian or military officer, but who must be a Level III-certified project manager ("PM") and have at least 10 years of professional experience in acquisition management. Further, the legislation requires the appointment of Level III-certified PMs to manage

the Coast Guard's largest acquisitions. The legislation prohibits the Coast Guard's use of lead systems integrators beginning on September 30, 2011.

A section-by-section of H.R. 1665 is attached to the Summary of Subject Matter.

Prior Legislative and Oversight Activities

In the 110th Congress, the Subcommittee held three hearings on the Coast Guard's Deepwater acquisition program. On January 30, 2007, the Subcommittee met and received testimony regarding Deepwater acquisitions. In addition, on March 8, 2007, the Subcommittee met to consider the Bush Administration's fiscal year 2008 budget request for the U.S. Coast Guard, and also received testimony from the Coast Guard, the Inspector General of the Department of Homeland Security and the Government Accountability Office on the Deepwater acquisition program. On June 12, 2007, the Subcommittee met and received an update from the Coast Guard Commandant on steps taken to improve the management of the Deepwater contract.

On April 18, 2007, the Committee on Transportation and Infrastructure convened a hearing to review the results of an investigation of the Deepwater program conducted by Committee investigation staff regarding contract management and decision-making processes by the Coast Guard and ICGS (the private sector lead systems integrator for Deepwater).

On June 14, 2007, Subcommittee on Coast Guard and Maritime Transportation Chairman Elijah E. Cummings introduced H.R. 2722, the "Integrated Deepwater Program Reform Act". On July 30, 2007, the Committee reported the bill, as amended, favorably to the House. H. Rept. 110-270. On July 31, 2007, the House passed H.R. 2722 by a vote of 426-0.

On September 23, 2008, Chairman Cummings introduced H.R. 6999, the "Integrated Deepwater Program Reform Act of 2008". On September 27, 2008, the House passed H.R. 6999. The Senate did not complete action on the legislation.

In the 111th Congress, on March 23, 2009, Chairman Cummings introduced H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009". On that same date, the Subcommittee on Coast Guard and Maritime Transportation held a hearing on the Coast Guard's acquisition policies and programs.

Amendments

No amendments are expected at this time.

H.R. 1746, THE “PRE-DISASTER MITIGATION ACT OF 2009”

Background

In the 1990s, under the leadership of Federal Emergency Management Agency (FEMA) Administrator James Lee Witt, FEMA developed a predisaster mitigation pilot program known as “Project Impact”. Congress appropriated funds for Project Impact in each of fiscal years 1998, 1999, and 2001. The Pre-Disaster Mitigation (PDM) program is the successor to the Project Impact pilot program.

The PDM program was first authorized in the Disaster Mitigation Act of 2000 (P.L. 106-390).² The program is administered by FEMA through its Mitigation Division. It is authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).³ Pursuant to section 203(m) of the Stafford Act, the PDM program terminates on September 30, 2009, unless Congress reauthorizes the program.⁴

The PDM program provides cost-effective technical and financial assistance to state and local governments to reduce injuries, loss of life, and damage to property caused by natural hazards. Examples of mitigation activities include the seismic strengthening of buildings and infrastructure, acquiring repetitively flooded homes, installing shutters and shatter resistant windows in hurricane-prone areas, and the building of “safe rooms” in houses and other buildings to protect from high winds. For instance, in 2005, FEMA provided PDM program funds to finance roll-down storm shutter systems at five fire stations in Broward County, Florida. Soon after completion of the project, Hurricane Wilma struck Florida. The retrofitted fire stations were not damaged and were able to operate effectively during and after the storm.

The PDM program provides grants to States, Territories, Tribal governments, and local communities on a competitive basis, with each State receiving a statutory minimum of \$500,000 or one percent of the funds appropriated whichever is less.⁵ The Federal share of the costs of PDM projects is up to 75 percent, or up to 90 percent for small or impoverished communities.

In 2007, 47 States, seven Tribal governments, and three Territories submitted applications for 430 communities requesting \$292 million – about three times the available funding of \$100 million.⁶ In 2008, 45 States, five Tribal governments, and one Territory submitted 485 applications requesting \$318.6 million – almost three times the available funding of \$114 million. In 2009, 46 States, six Tribal governments, and six Territories submitted 485 applications requesting \$310.3 million – more than three times the available funding of \$90 million.⁷

FEMA’s mitigation programs, including the PDM program and the post-disaster Hazard Mitigation Grant Program (HMGP) authorized by section 404 of the Stafford Act, are effective in accomplishing their goals of reducing the risk of future damage, hardship, and loss from all hazards.

² Section 102 of P.L. 106-390.

³ 42 U.S.C. 5133.

⁴ Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. 42 U.S.C. 5133(m).

⁵ Section 203(f) of the Stafford Act. 42 U.S.C. 5133(f).

⁶ Potential Cost Savings from the Pre-Disaster Mitigation Program, Congressional Budget Office, September 2007, p. 1.

⁷ Source: FEMA

A number of reports, including two mandated by Congress, have cited the cost-effectiveness of these programs. In 2005, the Multihazard Mitigation Council, an advisory body of the National Institute of Building Sciences, found “that a dollar spent on mitigation saves society an average of \$4.”⁸ The Council found that flood mitigation measures yield even greater savings.⁹

Pursuant to section 209 of the Disaster Mitigation Act of 2000, as amended, the Congressional Budget Office (CBO) completed a study in September 2007 estimating the reduction in Federal disaster assistance that is likely to result from the PDM program.¹⁰ CBO estimated that PDM-funded projects from 2004 to June 2007 had total costs of almost \$500 million and that the reduction in future losses associated with those projects is \$1.6 billion (present value).¹¹ According to CBO, “on average, future losses are reduced by about \$3 (measured in discounted present value) for each \$1 spent on those projects, including both federal and nonfederal spending.”¹²

H.R. 1746, the “Pre-Disaster Mitigation Act of 2009”

H.R.1746, the “Pre-Disaster Mitigation Act of 2009”, reauthorizes the PDM program for three years and eliminates the sunset of the program in current law. The bill requires grants to States to be awarded on a competitive basis, although each State is provided a minimum amount of \$575,000 or one percent of the funds appropriated whichever is less.¹³ In this way, the bill increases the minimum amount that each State receives under the program from \$500,000 to \$575,000, and codifies the competitive selection process of the program as currently administered by FEMA. The bill maintains the current maximum each state can receive, which is fifteen percent of the funds appropriated. The bill authorizes \$250 million for each of fiscal years 2009 through 2011 for the Pre-Disaster Mitigation program.

Prior Legislative and Oversight Activity

In 2000, Congress enacted the Disaster Mitigation Act of 2000 (P.L. 106-390). In 2005, Congress reauthorized the program through fiscal year 2008 (P.L. 109-139). In 2008, Congress extended the authorization of the program for one year through fiscal year 2009 (P.L. 110-329). Under current law, the Pre-Disaster Mitigation program terminates on September 30, 2009, unless Congress reauthorizes the program.

On April 30, 2008, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on FEMA’s Pre-Disaster Mitigation program.

On May 21, 2008, Chairman James L. Oberstar introduced H. R. 6109, the “Pre-Disaster Mitigation Act of 2008”. On May 22, 2008, the Committee on Transportation and Infrastructure ordered H.R. 6109 reported favorably to the House by voice vote. On June 19, 2008, the

⁸Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities, Multihazard Mitigation Council, National Institute of Building Sciences, 2005, p. 5. Congress mandated this report pursuant to the Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 Senate Rept. 106-161.

⁹ *Id.*

¹⁰ Potential Cost Savings from the Pre-Disaster Mitigation Program, Congressional Budget Office, September 2007, p. 1.

¹¹ *Id.*, p. 2.

¹² *Id.*, p. 1.

¹³ Section 203(f) of the Stafford Act. 42 U.S.C. 5133(f).

Committee reported the bill to the House. H. Rept. 110-725. On June 23, 2008, the House passed H.R. 6109 by voice vote.

On July 30, 2008, Chairman James L. Oberstar introduced H. R. 6658, the “Disaster Response, Recovery, and Mitigation Enhancement Act of 2008”, which included reauthorization of the Pre-Disaster Mitigation program. On July 31, 2008, the Committee ordered H.R. 6658 reported favorably to the House by voice vote.

On March 26, 2009, Chairman James L. Oberstar introduced H.R. 1746, the “Pre-Disaster Mitigation Act of 2009”.

Amendments

No amendments are expected at this time.

H.R. 1747, THE “GREAT LAKES ICEBREAKER REPLACEMENT ACT”

Background

H.R. 1747, the “Great Lakes Icebreaker Replacement Act”, recognizes the need to replace a Coast Guard icebreaker on the Great Lakes with a new icebreaker and authorizes appropriations for this Coast Guard project. Five of the Coast Guard’s icebreakers on the Great Lakes are nearing the end of their useful lives and two of the buoytenders that the Coast Guard uses to break ice cannot handle heavy ice conditions. As a result, in the spring of 2008, U.S.-flag ships on the Lakes sustained \$1.3 million in damage to their hulls because the Coast Guard was unable to keep the channels open.

During “ice season” alone, 20 percent of the iron ore needed for the nation’s manufacturing heartland are carried by Great Lakes vessels. In the 2006-2007 ice season, 10.4 million tons of iron ore were moved on the Great Lakes and supported 100,000 jobs at steel mills and 300,000 jobs at supplier industries.

Electrical power in the region is also supported by icebreakers that help ensure that commercial vessels move over 6.4 million tons of coal to power plants in the region.

In 2006, the Coast Guard accepted delivery of the Coast Guard icebreaker MACKINAW. The Coast Guard could use this design to build a sister ship that could set and maintain buoys during the spring, summer, and fall and then break ice for commercial vessels during the winter months.

H.R. 1747, the “Great Lakes Icebreaker Replacement Act”

H.R. 1747 authorizes \$153 million for the design and construction of a new replacement icebreaker for the Great Lakes.

Prior Legislative and Oversight Activity

On March 26, 2009, Chairman James L. Oberstar introduced H.R. 1747, the “Great Lakes Icebreaker Replacement Act”. This bill has not been introduced in a previous Congress.

Amendments

No amendments are expected at this time.

H.R. 1178, TO DIRECT THE COMPTROLLER GENERAL OF THE UNITED STATES TO CONDUCT A STUDY ON THE USE OF CIVIL AIR PATROL PERSONNEL AND RESOURCES TO SUPPORT HOMELAND SECURITY MISSIONS, AND FOR OTHER PURPOSES

Background

H.R. 1178 directs the Comptroller General to conduct a study of the functions and capabilities of the Civil Air Patrol to support the homeland security missions of State, local and tribal governments and the Department of Homeland Security.

H.R. 1178, to direct the Comptroller General of the United States to conduct a study on the use of Civil Air Patrol personnel and resources to support homeland security missions, and for other purposes

H.R. 1178 requires the Comptroller General to conduct a study to assess the Civil Air Patrol’s ability to assist homeland security missions with: aerial reconnaissance or communications, capabilities for collective response, exercise and training, and other items determined appropriate by the Comptroller General. The report is due within 180 days of the date of enactment and will focus on the cost-effectiveness of using the Civil Air Patrol to support a security mission and whether current mechanisms and agreements are sufficient or whether new agreements between Federal agencies and the Civil Air Patrol are necessary to request support. The report must be reviewed and analyzed by the Secretary of Homeland Security, with any recommendations for further action presented to Congress within 90 days.

Prior Legislative and Oversight Activities

On February 25, 2009, Representative Charles W. Dent introduced H.R. 1178.

In the 110th Congress, this bill was introduced as H.R. 1333; it had not been introduced in a previous Congress. On May 13, 2008, the Committee on Transportation and Infrastructure met to consider H.R. 1333, and adopted an amendment in the nature of a substitute to the bill by voice vote, and ordered H.R. 1333, as amended, reported favorably to the House by voice vote with a quorum present. On June 12, 2008, the Committee reported the bill, as amended, to the House. H. Rept. 110-691, Part II.

On June 18, 2008, the House passed H.R. 1333 by voice vote under suspension of the Rules of the House of Representatives.

Amendments

Representative Dent is expected to offer an amendment which makes technical corrections to the bill. No other amendments are expected at this time.

H. RES. 313, SUPPORTING THE GOALS AND IDEALS OF NATIONAL PUBLIC WORKS WEEK

Background

A “Public works” is loosely defined as projects or programs carried out by the federal or state government for the benefit of the community. The Committee on Transportation and Infrastructure has jurisdiction over several public works programs: transportation systems, including rail, highways, and public transit; levees; water supply infrastructure; sewage and refuse disposal systems; public buildings; and other structures and facilities.

Public works infrastructure, facilities, and services provide safety, health, and economic assurances for both large and small populations. These services could not be provided in the efficient and effective method in which they are without the skill of public works professionals, such as engineers, administrators, and servicemen.

National Public Works Week is observed each year during May. Spearheaded by the American Public Works Association, the following groups are also cosponsoring efforts to increase awareness of the dedication of public works professionals during this week: American Council of Engineering Companies, American Society of Civil Engineers, American Shore & Beach Preservation Association, the Associated General Contractors of America, National Association of Clean Water Agencies, National Association of Water Companies, the Water Environment Federation, and American Road and Transportation Builders Association.

House Resolution 313 recognizes the contribution of public works professionals to communities across the country by recognizing this year’s National Public Works Week: May 17 through 23, 2009.

Prior Legislative and Oversight Activities

In the 110th Congress, on May 1, 2007, Committee on Transportation and Infrastructure Chairman James L. Oberstar introduced H. Res. 352, supporting the goals and ideals of National Public Works Week for the year 2007. On May 2, 2007, the Committee on Transportation and Infrastructure met in open session and ordered H. Res. 352 reported favorably to the House by voice vote with a quorum present. On May 8, 2007, the Committee reported the resolution to the House. H. Rept. 110-135. On May 15, 2007, the House agreed to H. Res. 352 by voice vote under suspension of the Rules of the House of Representatives.

On April 23, 2008, Chairman Oberstar introduced H. Res. 1137, supporting the goals and ideals of National Public Works Week for the year of 2008. On May 7, 2008, the Subcommittee on Water Resources and Environment agreed to H. Res. 1137 and favorably recommended it to the Committee on Transportation and Infrastructure by voice vote. On May 15, 2008, the Committee on Transportation and Infrastructure met in open session and ordered H. Res. 1137 reported

favorably to the House by voice vote with a quorum present. On May 19, 2008, the Committee reported the resolution to the House. H. Rept. 110-654. On May 21, 2008, the House agreed to H. Res. 1137 by voice vote under suspension of the Rules of the House of Representatives.

On April 1, 2009, Chairman James L. Oberstar introduced H. Res. 313.

Amendments

No amendments are expected at this time.

H. RES. 269, SUPPORTING THE GOALS OF MOTORCYCLE SAFETY AWARENESS MONTH

Background

H. Res. 269 supports the goals of Motorcycle Safety Awareness Month.

This resolution expresses support for the goals of Motorcycle Safety Awareness Month, recognizes the important contribution motorcycles bring to the variety of transportation options, encourages all road users to be more aware of motorcycles and motorcyclists' safety, and encourages all riders to receive appropriate training and practice safe riding skills at all times.

The National Highway Traffic Safety Administration (NHTSA) promotes Motorcycle Safety Awareness Month to encourage riders to always wear helmets and other protective gear, never drink and ride, be properly licensed, and receive training, and to remind all riders and motorists to always share the road.

Motorcycles represent a valuable component of the transportation network in our nation. In 2006 there were approximately 6.7 million registered motorcycles in the United States. Motorcycles continue to grow in popularity each year with motorcycle registrations increasing by over 60 percent from 1998 to 2005. The rising popularity of motorcycles can be attributed to the benefits of motorcycle usage, including greater fuel-efficiency, and can lead to decreased roadway congestion while inflicting very little wear and tear on American roadways. The United States is the world leader in advancing motorcycle safety, promoting education, licensing, use of protective gear, and motorcycle awareness.

With the warmer spring weather arriving, the number of motorcycles on the roads will increase significantly. This will require increased alertness and awareness on the part of passenger vehicle drivers. The motorcycle community remains committed to the reduction of motorcycle crashes through licensing, training, education, enforcement, personal responsibility, and increased public awareness of the importance of motorcycle safety. Public awareness of motorcycle safety benefits everyone that uses our nation's roadways, not just motorcyclists, because it can lead to a decrease in car-motorcycle crashes. Statistics have found that per vehicle mile traveled, motorcyclists are roughly 37 times more likely than passenger car occupants to die in a traffic crash.

In 2007, motorcycle rider fatalities increased for the tenth straight year. According to NHTSA, between 1997 and 2007 there were 38,566 motorcyclist fatalities and 756,000 motorcyclist

injuries on U.S. roadways. In 2007 alone there were 5,154 motorcycle fatalities and 103,000 injuries, up from 2,116 fatalities and 53,000,000 injuries in 1997.

Throughout Motorcycle Safety Awareness Month, riders will be educated on the importance of following the rules of the roadway, being alert to other drivers, and always wearing protective gear such as a helmet. NHTSA estimates that helmets saved 1,784 motorcyclists' lives in 2007, and that 800 more lives could have been saved if the motorcyclists involved in fatal non-helmeted crashes had worn helmets.

Prior Legislative and Oversight Activities

In the 110th Congress, on April 26, 2007, Representative Michael C. Burgess introduced H. Res. 339, supporting the goals of Motorcycle Safety Awareness Month. On May 15, 2008, the Committee ordered the resolution reported favorably to the House. On May 19, 2008, the Committee reported the resolution to the House. H. Rept. 110-655. On May 21, 2008, the House agreed to H. Res. 339 by voice vote under suspension of the Rules of the House of Representatives.

On July 16, 2008, the Subcommittee on Highways and Transit held a hearing on the National Highway Traffic Safety Administration's highway safety programs.

In the 111th Congress, on March 19, 2009, Representative Gabrielle Giffords introduced H. Res. 269, supporting the goals of Motorcycle Safety Awareness Month.

Amendments

No amendments to the resolution are expected at this time.

Section-by-Section of H.R. 1665, the “Coast Guard Acquisition Reform Act of 2009”

Title I – Restriction on Use of Lead Systems Integrators

Section 101. Procurement Structure.

This section prohibits the use of a lead systems integrator beginning 180 days after the date of enactment of the Act. This section requires full and open competition for contracts issued by the Coast Guard and any lead systems integrator employed by the Coast Guard.

This section allows the Coast Guard to continue to use a lead systems integrator after the date that is 180 days after the date of enactment of the Act for the completion of National Security Cutters 2 and 3 and the National Distress and Response System Modernization Program (known as Rescue 21), which are on-going acquisitions. The Coast Guard is also permitted to use a lead systems integrator after the date that is 180 days after the date of enactment for certain other on-going acquisition efforts.

All exemptions for the use of a lead systems integrator except for National Security Cutters 2 and 3 and the Rescue 21 program expire on September 30, 2011; after that date, no private sector lead systems integrator can be used. The prohibition on the use of a private sector lead systems integrator could take effect earlier if the Commandant certifies that the Coast Guard has available the personnel and expertise within the service or through the use of contracts with private sector entities or agreements with other federal agencies to enable it to perform the function itself.

Title II – Coast Guard Acquisition Policy

Section 201. Operational requirements.

This section requires the Coast Guard to establish specific operational requirements for a new acquisition before awarding a production contract for the acquisition. The Coast Guard must also enable a full assessment of the trade-offs among performance, cost, and schedule to be made.

Section 202. Required Contract Terms.

This section requires the Commandant to put certain terms in all contracts for acquisitions with costs equal to or exceeding \$10,000,000. The required terms include the following terms and conditions:

- All certifications regarding contractor performance shall be made by the Coast Guard or an independent third-party; self-certification of compliance with performance requirements is not allowed.
- All contracts must designate the Coast Guard as the final technical authority for all requirements.
- All contracts shall measure the performance of contractors and subcontractors on the status of actual work performed, including the extent to which the work met cost and schedule requirements.

- TEMPEST standards for an asset shall be those in use by the Navy for the type of asset for which the TEMPEST test is required. TEMPEST (not an acronym – it is a formerly classified DOD code word from the 1950s) is the short name referring to investigation, study, and control of compromising emanations from telecommunications and Automated Information Systems equipment. TEMPEST testing is comprised of visual and instrumented inspections to ensure compliance with emission security requirements.
- For contracts for an Offshore Patrol Cutter (a large cutter – but slightly smaller than the National Security Cutters), the contracts shall specify the service life, hull fatigue life, and days underway under specific sea conditions the ship will be built to meet.

Section 203. Life-Cycle Cost Estimates.

This section requires the Coast Guard to develop life-cycle cost estimates for projects expected to cost more than \$10 million and to result in the development of assets with service lives of 10 years.

The section also requires the Coast Guard to develop independent life-cycle cost estimates for acquisitions that have total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000. These life-cycle costs estimates must be updated as the acquisition prepares to cross each acquisition milestone.

Section 204. Test and Evaluation.

This section requires the Coast Guard to develop and approve a formal Test and Evaluation Master Plan (TEMP), which will guide all developmental and operational testing on acquisitions with costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000.

As part of the TEMP, the service is required to identify and resolve any safety concerns with new assets. A safety concern is defined as any hazard that is likely to cause serious bodily injury or death to a Coast Guard member or that could cause major damage to the asset. If such problems are found before a contract for the production of an asset is issued, they must be resolved before a contract is issued, or, if a contract for any level of production is issued before they are resolved, the safety concerns must be reported to Congress along with an explanation of why the service is proceeding with a contract for any level of production of the asset before the issue is resolved together with an explanation of how it will be resolved. If a safety concern is found in an asset already in some level of production, the service must communicate the concern to Congress and explain how it will be resolved.

Section 205. Capability Standards.

This section imposes requirements on specific asset types.

- The section requires that all new vessels other than the National Security Cutter (which is already under construction) be classified by the American Bureau of Shipping.

- It requires that TEMPEST testing be performed by an authorized independent third party.
- It requires that before a contract is signed to resolve the hull fatigue issues with National Security Cutters 1 and 2, the Coast Guard must provide Congress a description of the measures that will be performed and conduct a cost-benefit analysis of the measures.
- It requires that aircraft be assessed by a third party for airworthiness.

Section 206. Acquisition Program Reports.

This section requires the Coast Guard to report to Congress for any acquisition with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000 the key performance parameters the asset will be built to achieve, the systems with which the asset will be interoperable, the anticipated unit cost for the asset, and a detailed schedule for the asset's acquisition process showing when the asset will be completed and when it will be fully deployed.

Section 207. Undefined Contractual Actions.

This section prohibits the Coast Guard from entering an undefinitized contractual action unless it is approved by the Head of Contracting Activity. Undefinitized Contractual Actions are procurements for which the contractual terms, specifications, or price are not agreed upon before the performance of the contract is begun.

If an undefinitized contractual action is approved, this section sets specific conditions on such actions, including how much money can be paid before the contract is definitized.

Exceptions are provided for contracting actions relating to contingency operations, operations in response to emergency situations, and operations in response to disasters designated by the President under the Stafford Act.

Section 208. Guidance on Excess Pass-through Charges.

This section requires the Commandant to issue guidance to ensure that excessive pass-through charges are not paid by the Coast Guard on work performed by subcontractors to a lead systems integrator. Excessive pass-through charges are defined as charges to the Government by a contractor or subcontractor that are overhead or profit on work performed by a lower-tier subcontractor other than reasonable charges for the direct costs of managing the lower-tier subcontractors.

Section 209. Acquisition of Major Capabilities: Alternatives Analysis.

This section requires that before the Coast Guard acquires an asset that is experimental or technically immature or that has total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000, the service must commission from a third-party an alternatives analysis of the asset to be acquired.

The section specifies what the alternatives analysis must cover, including an assessment of the technical maturity of the asset, whether different quantities or combinations of assets could meet the service's mission needs, the safety record of the asset, and the full life-cycle costs of the asset.

Section 210. Cost Overruns and Delays.

This section specifies that for any acquisition with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000, the Coast Guard must report to Congress when a cost overrun of greater than 10 percent is likely to occur, a delay of more than 180 days is likely to occur, or a failure for a new asset or class of assets is anticipated. The report must include a description of the cause of the reportable event and a plan for fixing the issue.

If an acquisition with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000 is likely to experience a breach of more than 20 percent or a delay of more than 12 months, the Coast Guard must certify that the asset is essential to the service, that there are no alternatives to the asset, that new cost or schedule estimates are reasonable, and that the management structure for the asset is adequate.

Section 211. Report on Former Coast Guard Officials Employed By Contractors to the Agency.

This section requires the Comptroller General to report annually on those Flag-level officers and Members of the Senior Executive Service who have left the Coast Guard within the past 5 years and are now receiving compensation for employment from a Coast Guard contractor.

A Coast Guard contractor is defined as any person receiving at least \$10,000,000 in contractor awards from the Coast Guard.

Section 212. Department of Defense Consultation.

This section requires the Commandant to make arrangements as appropriate for assistance in contracting and acquisition programming with the Secretary of Defense.

Title III-Coast Guard Personnel

Section 301. Chief Acquisition Officer.

This section establishes the Chief Acquisition Officer position within the Coast Guard. The section requires that the person appointed to the position be either a Rear Admiral or a civilian member of the Senior Executive Service. It requires that the person appointed to the position have a Level III Program Management certification and 10 years of acquisition experience, of which at least 4 shall have been spent managing a program with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000. Further, this section requires that all Flag-level officers serving in the Acquisition Directorate meet these same standards. The section lists those types of positions (such as program executive officer, program manager, and deputy program manager) that constitute qualifying experience. These requirements become effective beginning October 1, 2011 (which is the same date when the use of the Lead Systems Integrator is fully prohibited).

This section also requires that design and related acquisition issues elevated to the Chief Acquisition Officer for resolution be reported to Congress within 45 days of the elevation.

Section 302. Improvements in Coast Guard Acquisition Management.

This section makes a number of changes in the Coast Guard's management of its acquisition personnel and policies, including:

- It requires that anyone assigned to be the program manager of a program with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000 be a Level III certified program manager.
- It requires the Commandant to maintain all technical authorities for projects with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000.
- It requires the Commandant to designate positions in the acquisition workforce and ensure that individuals assigned to these positions have the expertise to carry them out.
- It further requires the Coast Guard to report annually on the adequacy of its acquisition workforce to meet anticipated acquisition workloads in the coming year.
- Further, this section states that no preference for military personnel shall be shown in appointments to the acquisition workforce – and requires the Commandant to ensure that appropriate career paths are available for military and civilian personnel in the acquisition workforce.
- The section requires the Coast Guard to take into account the need to maintain a balanced workforce in the acquisition field in which women and members of racial and ethnic minorities are appropriately represented.
- It requires the Coast Guard to issue guidance for major systems acquisition programs on the qualifications, responsibilities, tenure, and accountability of program managers and to develop a comprehensive strategy to enhance the role of program managers.

Section 303. Recognition of Coast Guard Personnel for Excellence in the Acquisition of Products and Services.

This section requires the Commandant to implement a program to recognize excellent performance by individuals and teams that have contributed to the long-term success of a Coast Guard acquisition effort.

Section 304. Enhanced Status Quo Officer Promotion System.

This section provides the Coast Guard the authority to retain and promote officers that have specialized skills in order to meet the needs of the Coast Guard. The current Coast Guard promotion system provides the Coast Guard with generalists and does not readily allow for officer specialties.

Section 305. Acquisition Workforce Expedited Hiring.

This section allows the Commandant to designate acquisition positions as “shortage category positions” and to use the authorities in 3304, 5333, and 5753 of Title 5 to recruit and appoint highly qualified people directly to these positions. This provision sunsets on September 30, 2012.