

letter signed by the OCS facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) Owners or operators of OCS facilities not in service on or before December 31, 2003, must comply with the requirements in paragraph (a) of this section 60 days prior to beginning operations or by December 31, 2003, whichever is later.

(c) The cognizant District Commander will examine each submission for compliance with this part and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

\* \* \* \* \*

■ 18. In § 106.415, redesignate paragraph (a)(3) as paragraph (a)(4) and add new paragraph (a)(3) to read as follows:

**§ 106.415 Amendment and audit.**

(a) \* \* \*

(3) Nothing in this section should be construed as limiting the OCS facility owner or operator from the timely implementation of such additional security measures not enumerated in the approved FSP as necessary to address exigent security situations. In such cases, the owner or operator must notify the cognizant District Commander by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

\* \* \* \* \*

Dated: October 8, 2003.

**Thomas H. Collins,**

*Admiral, Coast Guard, Commandant.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 26, 161, 164, and 165**

[USCG-2003-14757]

RIN 1625-AA67

**Automatic Identification System; Vessel Carriage Requirement**

AGENCY: Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with changes, the temporary interim rule that amends port and waterway regulations and implements the Automatic Identification System (AIS) carriage requirements of the Maritime Transportation Security Act of 2002 (MTSA) and the International Maritime Organization requirements adopted under International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended.

This rule is one in a series of final rules published in today's **Federal Register**. To best understand this rule, first read the final rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in today's **Federal Register**.

**DATES:** This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2003-14757 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

You may inspect the material incorporated by reference at room 1409, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-267-6277. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this final rule, call Mr. Jorge Arroyo, U.S. Coast Guard Office of Vessel Traffic Management (G-MWV), by telephone 202-267-6277, toll-free telephone 1-800-842-8740 ext. 7-6277, or electronic mail [jarroyo@comdt.uscg.mil](mailto:jarroyo@comdt.uscg.mil). If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled "Automatic Identification System; Vessel Carriage Requirement" in the **Federal Register** (68 FR 39353). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41913).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled "Implementation of National Maritime Security Initiatives" that contained comments in that temporary interim rule, plus comments on the "Automated Identification System; Carriage Requirement" temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same comment to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider, in this Final Rule, comments received after the period for receipt of comments closed on July 31, 2003. Copies of late-received comments on AIS will be placed into the docket for the separate AIS Notice and request for comments that was published on July 1, 2003 (USCG 2003-14878; 68 FR 39369).

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the "Discussion of Comments and Changes" section of this preamble. A transcript of this meeting is available in the docket, where indicated under **ADDRESSES**.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. We will place a copy of the unofficial complete regulatory text in

the docket, where indicated under **ADDRESSES**.

#### **Public Meetings for Rulemakings Related to Vessel Traffic Service**

The Coast Guard held a public meeting on October 28, 1998, in New Orleans, Louisiana. The meeting was announced in a notice published in the **Federal Register** on September 18, 1998 (63 FR 49939). This meeting gave the Coast Guard the opportunity to discuss the Vessel Traffic Service (VTS) concept on the Lower Mississippi River and the envisioned use of automatic identification system technology in the VTS. At this 1998 meeting, we reported the preliminary results of tests conducted on the Lower Mississippi River using precursor AIS. The proposed VTS on the Lower Mississippi River is not discussed in this rulemaking because it is the subject of a separate rulemaking titled "Vessel Traffic Service Lower Mississippi River" (65 FR 24616, April 26, 2000; docket [USCG-1998-4399]). We copied those comments regarding AIS that were submitted to the VTS Lower Mississippi River docket and placed those copies in the docket for this final rule for historical purposes. However, most of those comments were not addressed in the preamble discussion of the temporary interim rule because they were no longer applicable or because they addressed a previous version of AIS and not the version required by this final rule.

Over the past few years, the Coast Guard has made AIS presentations at various public forums including Federal advisory committee meetings (Towing Safety Advisory Committee, National Offshore Safety Advisory Committee, Houston-Galveston Navigation Safety Advisory Committee and Navigation Safety Advisory Council). Moreover, the AIS-based Ports and Waterways Safety System project being installed at the VTS Lower Mississippi River is regularly discussed at the Lower Mississippi River Waterway Safety Advisory Committee meetings.

The Houston-Galveston Navigation Safety Advisory Committee and Lower Mississippi River Waterway Safety Advisory Committee are federally chartered advisory committees charged with making recommendations to the Coast Guard on matters relating to the safe and efficient transit of vessels on their respective waterways. These open forums have afforded the public, particularly those in the Gulf of Mexico and Mississippi River areas, the opportunity to comment on both VTS Lower Mississippi River and AIS issues.

The public's input was taken into account throughout this final rule.

#### **Background and Purpose**

Section 5004 of the Oil Pollution Act of 1990, as codified in 33 U.S.C. 2734, directed the Coast Guard to operate additional equipment, as necessary, to provide surveillance of tank vessels transiting Prince William Sound, Alaska. We have done so since 1994 through a system then known as "Automated Dependent Surveillance." Advances have taken place with this technology, now referred to as AIS. Section 102 of the Maritime Transportation Security Act of 2002 (MTSA) mandates that AIS be installed and operating on most commercial and passenger vessels on all navigable waters of the United States.

The version of AIS required by this final rule automatically broadcasts vessel and voyage-related information that is received by other AIS-equipped ships and shore stations. In the ship-to-shore mode, AIS enhances maritime domain awareness and allows for the efficient exchange of vessel traffic information that previously was only available via voice communications with a VTS. In ship-to-ship mode, an AIS provides essential information to other vessels, such as name, position, course, and speed that is not otherwise readily available on board vessels. In either mode, an AIS enhances the mariner's situational awareness, makes possible the accurate exchange of navigational information, mitigates the risk of collision through reliable passing arrangements, and facilitates vessel traffic management, while simultaneously reducing voice radiotelephone transmissions.

AIS has achieved acceptance through worldwide adoption of performance and technical standards developed to ensure commonality, universality, and interoperability. These recommendations have now been established and adopted as standards by the following diverse international bodies: The International Maritime Organization (IMO), the International Telecommunications Union (ITU), and the International Electrotechnical Commission (IEC). Further, installation of such equipment is required on vessels subject to the International Convention for the Safety of Life at Sea, 1974, (SOLAS), as amended.

The "Automatic Identification System; Vessel Carriage Requirement" temporary interim rule provides a comprehensive discussion on the applicability and compliance dates, AIS testing, the need for standardization, existing AIS-like systems, and the ports

and waterways safety system. This information will not be duplicated in this final rule, but remains available at the **Federal Register** (68 FR 39353) and in the docket for this rule (USCG-2003-14757).

#### **Discussion of Comments and Changes**

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG-2003-14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

#### *General*

One commenter requested that we extend the compliance date for passenger and fishing vessels to December 31, 2005, to take advantage of prospective, potentially lower cost, AIS devices.

We believe the costs of AIS will continue to decrease as more manufacturers, models and types are brought to market. We also welcome all efforts of international standards bodies and manufacturers, to date, to design and produce cost-effective AIS equipment. As these improved or less costly devices are submitted for type approval, the Coast Guard will decide whether they meet our requirements and the intent of the MTSA, and if need be, we will amend this rule accordingly to permit their use.

Twenty-one commenters stated various reasons why they opposed a carriage requirement for AIS. Three commenters stated that AIS would not provide increased security to vessels or ports, arguing that knowing the location of larger, slower vessels does not eliminate any threat and that smaller, more agile recreational vessels are more accessible to terrorists. Seven commenters stated that AIS has very limited security benefits, is technically limited due to its line-of-sight range, and to the extent it does work, it works equally well for governmental authorities and those who choose to do harm. Four commenters stated that AIS installation will not provide vessel operators with information on the identity of other commercial craft that is

not already available through basic visual or radio means. Three commenters stated that VTS areas would not receive information on non-applicable vessels that could pose threats. Eight commenters stated that the estimated cost would be a burden that most companies would be unable to bear. One commenter stated that the installation would distract the captain's attention from surrounding non-commercial recreational traffic and will clutter the pilothouse. One commenter stated that AIS is an outdated technology.

We acknowledge these limitations; however, we believe that AIS has the potential to mitigate collisions and the risk of a transportation security incident, as defined in the MTSA. We recognize that a single sensor, such as AIS, will not likely prevent a transportation security incident alone, but if AIS can have a mitigating effect on just a single collision or transportation security incident, the security benefit could be significant. Furthermore, under the MTSA, the Coast Guard is required to implement AIS carriage.

One commenter stated that costs for annual repairs and for the replacement of the AIS unit need to be calculated.

The Regulatory Assessment and Initial Regulatory Flexibility Act Analysis, available in the docket for this rule (USCG-2003-14757), included detailed estimates for annual repairs and periodic replacement. The summary included in the temporary interim rule reflects these costs.

One commenter believes it is inappropriate to analyze the economic impact of the cost using the "percentage of annual revenue that is first-year AIS cost," stating that it would be more appropriate to analyze the impact of the cost as a percentage of the net revenue of small businesses.

We recognize that using net revenues to determine the cost of this rule to small businesses would provide a more accurate picture of the effects of this rule on those entities, however this information is not available to the public. Thus, we used the information that is publicly available, the percentage of annual revenue, to analyze the economic impact of the cost of implementation on small businesses.

One commenter stated that our regulatory analysis is unclear as to whether the benefit assessment for AIS accounts for domestic vessels operating in VTS areas only, or applies to the entire inland waterway system.

In order to quantify the benefits of AIS implementation, the Coast Guard reviewed Marine Casualty Incident

Reports from 1993-1999 that involved the vessel populations affected by the temporary interim rule. This included domestic vessels operating in VTS areas, not the entire inland waterway system.

One commenter agreed with our economic analysis regarding AIS and with our assessment that the cost of AIS installation for the domestic fleet far outweighs the benefit.

While monetized safety benefits produced a low benefit-cost ratio, Congress mandated an AIS carriage requirement that included domestic vessels in 46 U.S.C. 70114 of the MTSA. In addition, we believe that AIS is critical to maritime domain awareness and, although our assessment could not quantify or monetize the benefits of the security contribution of AIS, we believe it has the potential to mitigate the consequences of a transportation security incident as described in the MTSA.

Nine commenters noted that AIS is duplicative of existing systems because fishing vessels are currently equipped with Vessel Monitoring System (VMS), which already fulfills the AIS monitoring aspect. Two commenters requested that existing satellite tracking systems, such as the VMS used by the National Marine Fisheries Service (NMFS) be allowed as an alternative to the AIS requirement.

As discussed in the "Existing AIS-Like Systems" section of the preamble to the temporary interim rule, there are many precursor and competing tracking systems in use today, VMS is just one of them. VMS is a system required by the NMFS as a means to monitor and enforce compliance with NMFS requirements. VMS relies upon International Mobile Satellite Organization (INMARSAT C) communication service providers to schedule or poll, one-way, traffic reports from the vessel to NMFS. AIS, conversely, is an open, two-way, non-proprietary system that is autonomous and self-organizing, requiring no shoreside commands for its operations. AIS is also a short-range VHF-FM system that provides a vessel's location more frequently than VMS. This permits AIS to be both a safety and security tool. Furthermore, AIS is not limited to one-way communications or tied to proprietary software or communications services, and AIS signals can be monitored from shore and from other vessels to provide greater maritime domain awareness.

One commenter recommended that we rewrite the final rule in plain language so that vessel owners and operators can easily understand the

carriage requirements and technical specifications.

We have attempted to make these final regulations as clear as possible. However, using plain language would require a complete rewrite of 33 CFR parts 26, 161, 164, and 165, which is beyond the scope of this rule.

Two commenters requested that the Coast Guard allow industry alternative programs as provided for in both facility and vessel security rules.

We are unable, at this time, to approve industry alternative programs for AIS. We do believe that it is a subject worthy of consideration, and welcome comments and suggestions on potential alternative programs for the AIS carriage requirement. We have published in the **Federal Register** (68 FR 55643) a notice reopening the comment period on our previously published notice titled "Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters" (USCG 2003-14878; July 1, 2003; 68 FR 39369). Please send your comments on the use of an alternative program to that docket.

One commenter stated that the AIS regulation represents an unfunded mandate, stating that further discussion of funding for AIS purchase and maintenance is needed because vessel owners should not be expected to fund this.

As stated in the temporary interim rule and below, this final rule is exempted from assessing the effects of the regulatory action as required by the Unfunded Mandate Reform Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)). We are aware of the burden this rule places on industry. In order to re-evaluate this burden, we have amended the applicability section for this final rule (discussed below), and will reopen the comment period on our previously published notice titled "Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters" (USCG 2003-14878; July 1, 2003; 68 FR 39369).

One commenter stated that vessels carrying AIS equipment should be released from liability whenever they are involved in a collision with a vessel that is not carrying AIS equipment.

While we appreciate the points raised concerning potential liability, the issue of liability is beyond the scope of this rule. No provision of the MTSA addresses liability, either to expressly limit liability or to address immunity from liability. Determinations of liability require a fact-laden inquiry on a case-by-case basis, and typically require complex analyses regarding matters such as choice of law, contracts,

and international conventions. Additionally, we note that carrying AIS does not relieve mariners from following all applicable navigation rules, and therefore may not be enough reason to relieve vessel owners and operators of liability.

#### *Applicability*

Five commenters supported our approach to AIS implementation. Three commenters expressed enthusiastic support for the AIS system, and agreed with the time schedule and criteria for SOLAS and domestic AIS carriage. Two commenters supported the decision to phase-in the requirements of the AIS regulation, and supported implementing the AIS requirements as a security measure, rather than as a safety tool.

One commenter asked whether U.S. government research ships are required to have AIS installed. If yes, the commenter asked what the time frame required for this installation is. Another commenter asked whether law enforcement and military vessels will carry AIS.

Sections 164.01(c) and 164.46(a)(1) were amended or added by the temporary interim rule (68 FR 39367) and state that the rules do not apply to government or non-commercial vessels. Therefore, these regulations do not apply to military, government, or public vessels so long as they are not used commercially. We do, however, encourage these vessels to voluntarily use AIS, as operational conditions may warrant, as will the Coast Guard fleet.

One commenter requested that the implementation date for AIS in the St. Mary's River Vessel Traffic Service (VTS) area be changed to January 31, 2005, from December 31, 2003, as published in the temporary interim rule, arguing that the December 31, 2003, implementation date is impractical based on vessel operations in the locks.

We agree that having the implementation deadline towards the end of a limited shipping season is impractical, but we do not agree with changing the date to January 31, 2005, because that date is beyond the deadline date established by the MTSA. In response, we have amended 33 CFR 164.46(a)(3) to apply uniformly to all VTS areas by December 31, 2004. We have made conforming amendments to §§ 164.43 and 165.1704 to reflect this change.

We received 47 comments requesting changes to the applicability of the AIS carriage requirement. Two commenters requested that passenger vessels be exempt from this rule. Two commenters asked why AIS is being required on vessels 65 feet and over. Four

commenters disagreed in general with the applicability of the AIS rule. Two commenters asked the Coast Guard to suspend the AIS requirements for the domestic fleet. Two commenters asked that we exempt commercial marine assistance vessels that operate in a limited geographical area. One commenter requested that we exempt sailing vessels from the AIS requirement. One commenter suggested that we exempt charter boats. Eleven commenters requested that fishing vessels also be exempt from or be given a waiver from this rule, citing high costs and minimal benefits. Eight commenters urged the Coast Guard to amend the AIS carriage requirement to apply to passenger vessels carrying more than 150 passengers, not 50 passengers, stating that this would ease the regulatory burden for the most economically vulnerable companies, improve the cost-benefit ratio for the domestic fleet, and align with the applicability requirements in 33 CFR subchapter H. Ten commenters asked whether the requirements for AIS carriage apply if a vessel spends periods of reduced operations in a VTS area but conducts commercial operations only outside the VTS. One of these commenters further added that the AIS requirement could impose unintended consequences on VTS ports and shipyards because owners may now decide to moor their vessels to non-VTS areas.

Congress mandated an AIS carriage requirement on commercial vessels over 65-feet in length in 46 U.S.C. 70114, and provided explicit deadlines for AIS in the MTSA, § 102(e). Under the MTSA, the Coast Guard is granted discretion as to which passenger vessels should be required to have AIS. In crafting the temporary interim rule, the Coast Guard took into consideration that Vessel Bridge-to-Bridge Radiotelephone and Vessel Movement Reporting System (VMRS) requirements apply to passenger vessels over 100 gross tonnage and those certificated to carry 50 passengers, and that this population comprises a large segment of VTS users. We believe that AIS is a key component in providing safety and security in VTS and VMRS areas and should cover as many vessels as practicable, including smaller passenger vessels. Nevertheless, the Coast Guard is removing the AIS carriage requirement for commercial fishing vessels and small passenger vessels certificated to carry less than 151 passengers. The Coast Guard is amending § 164.46(a)(3) accordingly and will reengage the public with respect to applicability and carriage requirements

for small passenger vessels and commercial fishing vessels.

To that end, the Coast Guard published in the **Federal Register** (68 FR 55643) a notice that reopened the comment period on our previously published notice titled "Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters" (USCG 2003-14878; July 1, 2003; 68 FR 39369). The notice reopening the comment period included additional questions regarding expanding AIS carriage to small passenger vessels, whether infrequent VTS users (*e.g.*, fishing vessels) should be exempt from the AIS requirement, and whether exemptions may be granted by the VTS as a deviation request, as opposed to the written notification required in 33 CFR 164.55. By this action, we hope to generate further comments, discussion, and contributions from prospective mandatory users of AIS that we will then consider as we continue forward with future AIS rulemakings.

Five commenters stated that the AIS carriage requirement should be universal, arguing that an AIS carriage requirement that does not apply to every vessel, including recreational vessels, is of limited value as either a security or a safety tool.

We agree that AIS would provide the greatest benefit if all vessels were required to be equipped with an AIS unit. However, as with any new technology, AIS carriage must be implemented prudently. Therefore, the Coast Guard has chosen to implement AIS domestically beginning in VTS areas (as denoted in table 161.12(c), and will consider expanding AIS carriage to other waterways in consideration of comments received on our previously published notice titled "Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters" (USCG 2003-14878; July 1, 2003; 68 FR 39369). Additionally, the AIS carriage requirements found in the MTSA do not apply to recreational vessels.

Upon further review, we have amended § 164.02 to clarify applicability for foreign vessels.

#### *Technical*

One commenter supported the AIS unit standardization proposal presented in the temporary interim rule.

One commenter asked if vessels that use an electronic chart to display AIS targets must have the chart updated and corrected to the latest Broadcast Notice to Mariners. The same commenter also asked if a vessel would still have to carry nautical charts if it uses an Electronic Chart Display and

Information System (ECDIS) to display AIS targets.

Mariners are advised that U.S. regulations or SOLAS requirements have always called for paper charts that are relied upon for the navigation of the vessel to be correct and up to date, regardless of whether they have AIS or can view vessels on an electronic chart.

One commenter expressed concerns over the electronic display of AIS data, stating that the technical limitations of commercial radar or ECDIS to merge data from the AIS is an issue.

We acknowledge the concerns expressed by the commenter. There are no international standards, at this time, for a manufacturer to rely upon to assure AIS buyers that an AIS may be properly integrated into other display devices. All AIS units come with a display that allows the user to input AIS information (e.g., vessel identity, dimensions, navigation status, antenna location) and to access all information received from other units. AIS also has multiple output options that facilitate using or integrating AIS data on other navigational systems, such as radar, Advanced Radar Plotting Aid (ARPA), ECDIS, and electronic charts. We have purposely not required this integration, or chosen a one-size fits all approach to graphical displays, in order to leave the choice with the mariner, who is best positioned to decide which output option suits the mariner's vessel and operation. Additionally, we are working diligently on this matter, commissioning the Transportation Research Board to develop recommendations for us, and working with various standards bodies to develop guidelines and standards.

One commenter stated that the IMO guidelines on installation of AIS devices might not be well suited for smaller vessels.

We agree; the IMO Installation Guidelines (particularly regarding antenna placement) are not well suited for smaller vessels. We will develop further guidelines to assist these vessel owners and operators with the installation of their AIS, and will place a copy in the docket and post a copy on our website at [http://www.navcen.uscg.gov/enav/ais/AIS\\_carriage\\_reqmts.htm](http://www.navcen.uscg.gov/enav/ais/AIS_carriage_reqmts.htm) as soon as we have completed these guidelines.

One commenter asked whether AIS would require a backup power source.

Given the importance and value of AIS data to possible search and rescue efforts, we have begun work with IMO to require back-up power requirements, similar to those imposed on Global Maritime Distress and Safety System (GMDSS) equipment. Should these requirements be adopted by IMO, we

will propose regulatory amendments in a separate rulemaking to do the same for those vessels subject to SOLAS and strongly encourage the same on other vessels that transit the high seas.

Five commenters asked the Coast Guard to consider its ability to develop and support the public infrastructure necessary to fully support AIS and the availability of the radio-frequency bandwidth, citing the Coast Guard's recent history with similar projects (e.g., GMDSS). Five commenters asked us to resolve questions involving frequency allocation, stating that vessel operators should not be required to keep track of different frequency requirements and manually adjust their AIS units for each VTS area. Three commenters stated that it is up to the Coast Guard, not the FCC, to ensure that frequencies are available for AIS use.

We have considered our ability to develop and support the public infrastructure necessary to fully support AIS. We have chosen to require carriage of AIS in those areas that are being upgraded through our Ports and Waterways Safety System acquisition program. The Coast Guard does not have the authority to designate frequencies for AIS use, therefore, we requested and received frequency authorizations from the Federal Communication Commission (FCC) and the National Telecommunication and Information Agency (NTIA). Pending a rulemaking by FCC, we rely on the FCC decision stated in FCC Notice DA-02-1362 that states that the Commission "will consider the use of shipborne AIS equipment to be authorized by existing ship station licenses, including vessels that are licensed by rule." We agree that the operation of AIS should be seamless to the user, who should not be required to manually adjust their AIS units for each VTS area. FCC policies currently authorize the use of AIS frequencies (AIS1, Channel 87B, 161.975 MHz and AIS2, Channel 88B, 162.025 MHz) on existing ship station licenses. Should AIS frequency management be required due to the unavailability of AIS1 or AIS2 in any one VTS area, we intend to have the infrastructure in place to perform frequency management through the base station capabilities of AIS.

Five commenters stated that interference to adjacent channels would potentially result in the loss of property and life at sea.

AIS devices must fully comply with ITU and IEC standards and undergo an additional level of review not applicable to most other FCC type certified devices prior to being authorized to operate in the VHF marine band. Further, IMO has developed detailed guidelines (IMO SN/

Circ. 227) to be followed regarding the installation of AIS. These guidelines have been incorporated by reference into this regulation, as a requirement, in 33 CFR 164.03 and 164.46.

Notwithstanding this requirement, as is the case with any radiating or receiving radio device, there is always a possibility for radio interference when numerous emission devices are operating in the near vicinity of each other, particularly in a congested and noisy environment as exists on the VHF FM maritime band. The Coast Guard will be diligent in monitoring AIS use for interferences and will promptly mitigate them by enforcing the required installation guidelines, through the AIS type approval process, and through frequency plan coordination with existing public coast station licensees.

One commenter noted that the interference to adjacent channels from the currently adopted AIS carriage requirement is an unconstitutional taking of private property without just compensation.

The Coast Guard does not believe the MTSA or these regulations effect a taking, *inter alia*, because these regulations rely on FCC decisions to authorize existing shipboard licensees to operate AIS on the AIS frequencies. See FCC Public Notice DA-02-1622 (June 13, 2002). Additionally, we do not believe that the commenter's license constitutes a sufficient property interest to justify its position that this regulation constitutes a "taking." Finally, even assuming, without admitting that there is a legally cognizable property interest in the commenter's license, this regulation does not create such an interference with the commenter's use of that license as to constitute a regulatory taking in violation of the Constitution.

One commenter asked whether a fleet manager could buy an AIS base station to assist with the company dispatch and logistics.

Shoreside AIS stations, mistakenly referred to by some as AIS base stations, are subject to FCC regulation and licensing. FCC Notice DA-02-1362 permits the use of AIS by ship station licenses but did not address its similar use by VHF shore stations. Shoreside AIS stations enhance the AIS network because they control matters regarding frequency management, power setting, and allocation of AIS data slots, which are all functions that will be performed by the Coast Guard or another government entity.

Three commenters stated that the utility of AIS is considerably diminished if the system, as installed, is not capable of relaying information from

an automatic position indicating system and gyrocompass.

We recognize that the information provided by external sensors, such as a transmitting heading device, speed log, or navigation lights, to an AIS in accordance with the standards incorporated by reference in this regulation will provide the additional benefit to the user, as would integrating AIS with the existing on board navigation equipment. However, this integration technology and its accompanying standards are still being developed, thus, we did not require them. Each U.S. type approved AIS has a timing and positioning component built-in (*e.g.*, Global Positioning System) and the lack of additional sensor input does not diminish the utility of the AIS in providing for security and navigational safety.

One commenter asked whether AIS is an electronic aid to navigation as that term is used in 33 CFR 66.01-1, which states: "With the exception of radar beacons (racons) and shore-based radar stations, operation of electronic aids to navigation as private aids will not be authorized."

AIS is a navigational aid, but not necessarily an aid to navigation, as that term is used in 33 CFR part 66. In addition to increasing maritime domain awareness for security purposes, shipborne AIS is intended for collision avoidance, and not intended to be relied upon or referred to, as a buoy, lighthouse, or racon would be. AIS standards allow for the creation of AIS aids to navigation, and should we choose to use these aids, they will be catalogued in the Coast Guard's Light List as all other aids to navigation currently are.

One commenter stated that the Coast Guard must resolve questions over patent rights for the AIS standard prior to implementing a domestic carriage requirement.

Prospective AIS users should not be concerned with any patent issues regarding AIS or any other shipboard equipment. These are matters that need only be worked out by manufacturers of the devices and any patent holders.

One commenter asked whether vessels would be required to provide a Maritime Mobile Service Identifier (MMSI) and Universal Time Coordinated (UTC), stating that not all vessels currently have an MMSI. This commenter also asked how a vessel operator can be confident that the target identified on an AIS is who it says it is, if AIS units can be purchased from any commercial source, and an MMSI obtained from an FCC agent.

One goal of AIS is to lessen the reporting required by mariners. However, certain information and data input is necessary for the proper operation of an AIS. Many of these data fields are inputted only once, such as the vessel's identity, MMSI, dimensions, and antenna location. MMSI and UTC are critical to AIS; the MMSI (defined in note 1 to Table 161.12(c) of 33 CFR 161.12), which we have amended for clarity, provides a unique identifier for each AIS user, and the UTC is relied upon by the system to properly manage the AIS data link and network. UTC is provided internally by the AIS unit, and requires no input by the user. MMSI does need to be entered by the user, and is noted on the ship's station radio license issued by the FCC. Because user error is always possible, we urge users to be vigilant and request that you notify the nearest COTP if you encounter improper AIS usage.

#### Operations

One commenter recommended rewording § 164.46(a) because as presently drafted it could be incorrectly interpreted to mean that manufacturer self-certification of equipment to the listed standards would be sufficient.

We agree and have amended § 164.46(a) to require "type approved AIS."

One commenter stated that AIS is unnecessary because collision avoidance is best accomplished with an alert watch that is monitoring VHF channels, radar, GPS chart plotters, and depth sounders. This commenter stated that these technologies are already found on fishing vessels and it is not apparent that the addition of AIS will result in any significant benefit over maintaining a good watch.

We agree that competent and attentive watchkeeping is paramount to prudent navigation. We further note that prudent mariners are required to use all means available to avoid a collision. AIS is the latest navigation system to assist watchkeepers in the performance of their duties. None of the existing technologies found on commercial fishing vessels can accurately identify other vessels to the extent that AIS can. Additionally, in our analysis of costs and benefits, we found examples of marine casualties involving commercial fishing vessels that could have been prevented or mitigated with the use of AIS. More details on these casualties can be found in the Regulatory Assessment and Initial Regulatory Flexibility Act Analysis located in the docket for this rule (USCG-2003-14757).

One commenter asked us several questions regarding whether use of an AIS would satisfy various "Rules of the Road" under the International Regulations for Preventing Collisions at Sea (COLREGS) or the Inland Navigation Rules (33 U.S.C. 2000 and 1201, *et seq.*), such as the requirement for a lookout, the provision regarding safe speed, provisions regarding risk of collision, and coordinating passing arrangements.

AIS is the latest of the available means a mariner will have to prevent collisions at sea. It is not intended to replace any of the existing means commonly and traditionally used by mariners to ascertain the risk of collision such as radar, Automatic Radar Plotting Aids (ARPA), lookouts, binoculars, visual bearings, relative position maneuvering boards, and EDCIS, but it can certainly supplement them. AIS provides mariners with near real-time information regarding another vessel's identity, dimensions, speed over ground, course over ground, navigation status, and heading. It will aid mariners in identifying other vessels in restricted visibility, and those that would be indistinguishable in radar sea clutter. It displays the bearing and range of other AIS-equipped vessels and provides another means of reliable communication by using ship-to-ship addressed text messages. In the future VTSs will be able to relay information on vessels not carrying AIS to AIS users. However, AIS should not be relied upon as the sole means to determine risk of collision, safe speed, or to avoid collision.

In the temporary interim rule, we discussed that AIS can assist mariners in coordinating passing arrangements. AIS will allow mariners to accurately identify a vessel by name and call sign to effectively make passing arrangements, thus replacing vague radio calls such as "vessel off my port bow" with more descriptive calls such as "vessel NAME/Call sign, bearing XXX degrees and XX meters." While AIS allows for ship-to-ship text messaging to communicate with others and make passing arrangements, these private communications do not meet the requirements of the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 *et seq.*) for open broadcasts on the designated bridge-to-bridge channel, nor does it relieve a vessel operator from the requirement to sound whistle signals.

Three commenters asked the Coast Guard to test AIS on vessels on the Lower Mississippi River, stating that previous tests were not adequate.

We do not believe that additional testing on the Lower Mississippi River

is necessary prior to implementation. The Coast Guard conducted exhaustive testing of precursor AIS in cooperation with stakeholders on the Lower Mississippi River. We detailed this testing in the "AIS Testing" section of the preamble to the AIS temporary interim rule (68 FR 39357). We also conducted tests with the AIS being required in this regulation (ITU-R M.1371-1) in other VTS areas, and monitored similar tests conducted in other countries. However, the Coast Guard will continue to conduct system acceptance testing of the newly installed AIS shoreside network in the Lower Mississippi River.

Five commenters stated that AIS should require only minimal information from vessel operators, so that the information flow to and from AIS does not distract vessel operators from their other duties.

We agree that AIS users should not be burdened unnecessarily. One goal of AIS is to unburden mariners from the important, although tedious, tasks of reporting information to a VTS. Through AIS these reports are automated and additional voyage data may be transmitted. Whether vessels are required to supply this additional data (people on board, destination, and estimated time of arrival) will be determined by the VTS, which will take into consideration the reporting exemptions listed in 33 CFR 161.23.

One commenter asked whether the operator of a vessel entering a VMRS area must call the VTS on a VHF voice channel and whether the VTS will notify users of required actions by message or on VHF voice channels.

This rule mandates AIS position reports in lieu of VTS voice reports; however, it does not abolish the requirements set forth in 33 CFR part 161 regarding deviation requests, monitoring requirements, sailing plans, and final reports. Additionally, VTS and VTS users should still rely upon VHF voice communications on the designated VTS frequencies as the primary mode of VTS communication. VTS areas will eventually supplement these broadcasts with pertinent AIS text or binary messages.

One commenter asked whether a vessel could use AIS as a tool even if the vessel is communicating with is not in sight, citing confusion with the COLREGS and Inland Navigation Rules Eleven to Eighteen.

Inland Navigation Rule Three clearly states that vessels are deemed to be in sight of one another only when one can be observed visually from the other, not when observed electronically (e.g., AIS or radar). However, AIS-like radar—is

still a useful tool to use when making navigational decisions prior to being in the sight of another vessel.

One commenter asked for clarification on the training requirements for an AIS operator.

At this time, we envision no additional training requirements other than reading the AIS owner's manual and being familiar with operation of the AIS. However, mariners seeking a greater understanding of AIS and its uses may wish to read a document developed by the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) titled "IALA Guidelines on the Universal Automatic Identification System (AIS), Volume 1, Part 1—Operational Issues, Edition 1.1, December 2002," that is available at <http://www.iala-aism.org>.

One commenter asked how many vessels are displayed on an AIS when a vessel is in a crowded harbor.

AIS is designed to provide information on a minimum of the 20 closest active AIS targets.

#### *Editorial*

The temporary interim rule contained a typographical error, which is corrected in this rule. In §§ 164.03 and 164.46, the IMO circular "Guidelines for Installation of Shipborne Automatic Identification System (AIS), dated January 6, 2003" should have been titled "SN/Circ.227" vice "SN/Circ.277."

We have also added a note to 33 CFR 164.46(a) to clarify which international tonnage convention is being identified.

#### *Procedural*

Five commenters requested a longer comment period specifically for the AIS temporary interim rule.

We did not extend the comment period on this rule due to the need to follow the MTSA's statutory deadline for issuance of regulations. We acknowledge that these regulations are being implemented in a short period of time. We have, however, reopened the comment period on our previously published notice titled "Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters" (USCG 2003-14878; July 1, 2003; 68 FR 39369).

#### **Incorporation by Reference**

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are

available from the sources listed in § 164.03.

#### **Regulatory Assessment**

This final rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES**. A summary of the assessment and changes from the draft assessment follows.

#### **Cost Assessment**

This final rule is requiring the carriage of AIS on all U.S. flag SOLAS vessels, certain domestic vessels in VTS areas, and foreign flag vessels less than 300 gross tonnage that call on ports in the U.S. We estimate that 438 U.S. flag SOLAS vessels, 2,963 non-SOLAS domestic vessels, and 70 non-SOLAS foreign vessels will be affected by this final rule.

The estimated total present value cost of this final rule is \$50.4 million (where the period of analysis is 2003-2012). An estimated present value \$5.2 million is for the U.S. flag SOLAS fleet, \$44.1 million is for the domestic, non-SOLAS fleet in VTS areas, and \$1.1 million is for the foreign, non-SOLAS fleet that call on ports in the U.S.

In the first year of implementation, the estimated cost is \$1.9 million for the U.S. flag SOLAS fleet, \$27.6 million for the domestic, non-SOLAS fleet in VTS areas, and less than \$1 million for the foreign, non-SOLAS fleet. Following initial implementation, the estimated annual cost is less than \$1 million for the entire affected population.

#### **Safety Benefits**

The Coast Guard expects both quantifiable and non-quantifiable benefits as a result of the final rule. Quantified benefits include avoided property damage, injuries, fatalities, and pollution events as a result of having an AIS. Other benefits include better situational awareness, information, and communications. The final rule will also enhance Coast Guard missions such as marine safety and security, aids to navigation, and maritime mobility.

In order to quantify the benefits of AIS implementation, the Coast Guard reviewed Marine Casualty Incident Reports (MCIRs) from 1993-1999 that involved the vessel populations affected by this final rule. These incidents were

used to develop a historical rate of marine casualties in VTS areas to determine the effectiveness of AIS as a mitigating factor.

The estimated total present value benefit of the final rule is \$24.4 million (2003–2012). An estimated present value \$13.3 million is for the U.S. flag SOLAS fleet, \$11.1 million is for the domestic, non-SOLAS fleet in VTS areas. We did not find any quantified safety benefits for the foreign, non-SOLAS fleet.

**Security Benefits**

This final rule is one of six final rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security (ports), vessels, facilities, Outer Continental Shelf (OCS) facilities, and AIS. The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from

increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to “Applicability of National Maritime Security Initiatives” in the temporary interim rule titled “Implementation of National Maritime Security Initiatives” (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a “family” of rules that will reinforce and support one another in their implementation. We have ensured,

however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to “Benefit Assessment” in the temporary interim rule titled “Implementation of National Maritime Security Initiatives” (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. The benefits are apportioned among the vessel, facility, OCS facility, area, and AIS rules. As shown in Table 1, the implementation of AIS for the affected population reduces 1,422 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately since this part is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels .....	778,633	3,385	3,385	3,385	1,317
Facilities .....	2,025	469,686	.....	2,025	.....
OCS Facilities .....	41	.....	9,903	.....	.....
Port Areas .....	587	587	.....	129,792	105
Total .....	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented cost effectiveness,

or dollars per risk point reduced, in two ways: First, we compared the first-year cost and first-year benefit because first-year cost is the highest in our assessment as companies develop security plans and purchase equipment.

Second, we compared the 10-year present value cost and the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS *
First-Year Cost (millions) .....	\$218	\$1,125	\$3	\$120	\$30
First-Year Benefit .....	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness (\$/Risk Point Reduced) .....	279	2,375	205	890	21,224
10-Year Present Value Cost (millions) .....	1,368	5,399	37	477	26
10-Year Present Value Benefit .....	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness (\$/Risk Point Reduced) .....	233	1,517	368	469	2,427

\* Cost less monetized safety benefit.

Although we have quantified these security benefits relative to AIS, the N–RAT is limited in its ability to measure benefits attributable to intelligence or information gathering. These limitations are discussed in the

“Assessment Limitations” section in the preamble of the temporary interim rule titled “Implementation of National Maritime Security Initiatives” (USCG–2003–14792).

Congress mandated an AIS carriage requirement on domestic (non-SOLAS) vessels in 46 U.S.C. 70114, and provided an explicit phase-in schedule for AIS in section 102(e) of the MTSA. Strictly upon consideration of



monetized safety benefits, as measured through decreased collisions and the resulting decrease in injuries, mortalities, and pollution incidents, the cost of AIS installation for the domestic fleet far outweighs the benefit over a 10-year period (0.25 benefit-cost ratio). This ratio results from the high costs of purchasing and installing the unit (an estimated \$9,330 per vessel), and the types of marine casualties that AIS is expected to mitigate, where damage is not usually severe nor is there significant loss of life. In view of the benefit-cost ratio presented above, the Coast Guard has shared with the Congress all significant information provided by the public that addresses the reasonableness of implementing the statute. A copy of this letter is available in the docket where indicated under **ADDRESSES**.

Because there is not yet a mass market for AIS, the cost per unit in the next few years, when the domestic fleet is required to purchase AIS, is likely to be higher than when it is replaced (around 2012). Because the AIS market is in its infancy, we cannot estimate how much the unit cost will decrease over the next decade. If many manufacturers enter the market, costs are likely to drop through competition. Because manufacturers have a potential world market and a significant U.S. market, many may attempt to capture a segment. Conversely, if only a few players emerge worldwide, AIS costs could remain high. Because manufacturers must engage in a rigorous approval process and cannot be assured that they will recoup research and development costs through unit sales, there is the potential that only a few dominant players will emerge in the AIS market. Because we cannot determine the trend of the AIS market and we did not want to understate the cost for AIS, we assumed that the cost for units in 2012 would again be approximately \$9,000 per unit. It is possible that an AIS unit will not be this expensive to replace.

In terms of security, we estimated that we will not experience a significant benefit from a decrease in risk, as measured in risk points reduced in the N-RAT, as a result of AIS installation. There are two primary reasons for this estimate. First, the N-RAT was an internal Coast Guard tool that was modified to estimate the national benefits attributable to the suite of security rules mandated by the MTSA. The tool was not designed to measure the security benefits of AIS specifically. The N-RAT does not, therefore, robustly capture the risk mitigation potential of AIS. Second, the Coast Guard strongly believes that AIS is critical to maritime

domain awareness. However, we are unable to quantify or monetize the benefits of this Coast Guard mission or the individual contribution of AIS to it.

While the monetized benefit of the rule does not exceed its cost, the Coast Guard believes that AIS has the potential to mitigate a transportation security incident. The Coast Guard recognizes that a single sensor, such as AIS, will not likely prevent a transportation security incident alone—but if AIS can have a mitigating effect on just a single incident, the security benefit could be significant. The Coast Guard must consider AIS in its suite of security rules and has developed a final rule that considers the mandates of the MTSA in light of the high initial costs of purchasing the unit by requiring AIS in VTS areas only for the domestic fleet. We are concentrating our efforts in VTS areas since this is where we can begin accruing the most benefit—for industry, the public, and the Coast Guard—in the shortest period of time. However in response to public comment, in § 164.46(a)(1) and (a)(2)(i), we have removed the carriage requirement of the temporary interim rule for commercial fishing vessels and some small passenger vessels. Through this final rule we are attempting to maximize the return on investment as quickly and as effectively as practical.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. We have reviewed this final rule for potential economic impacts on small entities. A Final Regulatory Flexibility Analysis discussing the impact of this rule on small entities is available in the docket where indicated under **ADDRESSES**.

**Number and Types of Small Entities Affected**

*U.S. Flag SOLAS Vessels*

Of the affected population, we estimated that of the 438 total U.S. flag SOLAS vessels, 205 are owned by 122 small businesses. The remaining 233 vessels are owned by approximately 40 large companies.

We estimated the cost of an AIS unit per vessel in the first year will be

\$9,330. Of this, \$7,000 is for the AIS unit, \$2,000 is for installation, and \$330 is for mariner training. We estimated that following installation, each AIS will require \$250 in annual maintenance to replace such items as the antenna, keyboard, and display screen. We estimated that the entire unit will be replaced after eight years.

We found that annual maintenance costs will have a less-than-1-percent impact on annual revenue for all small businesses with U.S. flag SOLAS vessels. First-year impacts to small businesses, therefore, are the focus of this analysis. To estimate the revenue impact on small businesses in the first year, the cost per vessel for AIS, \$9,330, was multiplied by the number of vessels owned by each company, then divided by the average annual revenue for each company, as reported in the online databases. Of the 122 small businesses that own U.S. flag SOLAS vessels, we found revenue for 59 of them (48 percent). Table 3 presents the revenue impact for the 59 entities with known average annual revenue.

**TABLE 3.—EFFECT OF FIRST-YEAR COST ON AVERAGE ANNUAL REVENUE FOR SMALL ENTITIES OWNING U.S. FLAG SOLAS VESSELS**

Percent of annual revenue that is first-year AIS cost	Number of entities with known annual revenues	Percent of entities with known annual revenues
0–3 .....	43	73
> 3–5 .....	5	8
> 5–10 .....	4	7
> 10–20 .....	6	10
> 20–30 .....	0	0
> 30 .....	1	2
<b>Total .....</b>	<b>59</b>	<b>100</b>

As shown, the final rule will have a less-than-3-percent impact on 73 percent of small businesses owning non-SOLAS vessels in the first year it is in effect. Approximately 88 percent have a less-than-10-percent impact.

*Number and Types of Small Entities Affected: Non-SOLAS Fleet in VTS Areas*

We estimated that there are 637 small businesses that will be affected by the final rule that own non-SOLAS vessels that transit VTS areas. These 637 companies own 1,349 vessels, representing 46 percent of the 2,963 non-SOLAS vessels affected by the rule. An estimated 1,456 vessels (49 percent) are owned by 150 large businesses, and 55 vessels (2 percent) are owned by State and local governments. There are

103 vessels that transit VTS areas (3 percent of the non-SOLAS fleet) that have no company associated with the vessel due to missing company information in our data. We could not be certain if these vessels belong to small, large, or government entities and did not apportion these 103 vessels to one type of entity or another.

We estimated the cost of AIS per vessel in the first year will be \$9,330. As with the U.S. flag SOLAS fleet, annual cost following installation of AIS will have little impact on annual revenues—a less-than-1 percent impact on annual revenue for most small businesses. The first-year cost of this final rule, therefore, will again have the greatest impact on average annual revenue. To estimate the revenue impact on small businesses in the first year, the cost per vessel for AIS, \$9,330, was multiplied by the number of vessels owned by each company, then divided by the average annual revenue for each company. Of the 637 small businesses that own non-SOLAS vessels in VTS areas, we found revenue for 392 of them (62 percent). The results of the analysis for the non-SOLAS fleet in VTS areas with known company information are presented in Table 4.

TABLE 4.—EFFECT OF FIRST-YEAR COST ON AVERAGE ANNUAL REVENUE FOR SMALL ENTITIES OWNING DOMESTIC, NON-SOLAS VESSELS IN VTS AREAS

Percent of annual revenue that is first-year AIS cost	Number of entities with known annual revenues	Percent of entities with known annual revenues
0–3 .....	303	77
> 3–5 .....	32	8
> 5–10 .....	28	7
> 10–20 .....	15	4
> 20–30 .....	10	3
> 30 .....	4	1
Total .....	392	100

As shown, the final rule will have a less-than-3-percent impact on 77 percent of small businesses owning non-SOLAS vessels in the first year it is in effect. Approximately 92 percent have a less-than-10-percent impact. We concluded, therefore, that this final rule may have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in

understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The reports required by this rule are considered to be operational communications, transitory in nature, and, do not constitute a collection of information under the Paperwork Reduction Act.

We did not receive comments regarding collection of information.

**Federalism**

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel’s

obligations, are within the field foreclosed from regulation by the States. In addition, under the authority of Title I of the Ports and Waterways Safety Act, 33 U.S.C. 1221–1232 (specifically 33 U.S.C. 1223) and the MTSA this regulation will preempt any State action on the subject of Automatic Identification System carriage requirements. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000).) Our AIS carriage requirement rule falls into the category of equipping of vessels. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

We did not receive comments regarding Federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any 1 year. We discuss the effects of this final rule elsewhere in this preamble. However, this final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)).

We did receive one comment regarding the Unfunded Mandates Reform Act; this comment is discussed within the “Discussion of Comments and Changes” section of this preamble.

**Taking of Private Property**

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We did receive one comment regarding the taking of private property; this comment is discussed within the “Discussion of Comments and Changes” section of this preamble.

**Civil Justice Reform**

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

## Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

## Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We did not receive comments regarding Indian Tribal Governments.

## Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order. Although it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for enhanced maritime security, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

We did not receive comments regarding energy effects.

## Environment

We have considered the environmental impact of this final rule and concluded that under figure 2-1, paragraphs (34)(d), (34)(e), and (34)(i) of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. This final rule concerns vessel equipment requirements that will contribute to a higher level of marine safety and maritime domain awareness

for U.S. port and waterways. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

This rulemaking will not significantly impact the coastal zone. Further, the rulemaking and the execution of this rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

We did not receive comments regarding the environment.

## List of Subjects

### 33 CFR Part 26

Communications equipment, Marine safety, Radiotelephone, Vessels.

### 33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

### 33 CFR Part 164

Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

### 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Accordingly, the interim rule amending 33 CFR parts 26, 161, 164, and 165 that was published at 68 FR 39353 on July 1, 2003, and amended at 68 FR 41913 on July 16, 2003, is adopted as a final rule with the following changes:

## PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70117; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

### § 161.12 [Amended]

2. In § 161.12, in note 1 following table 161.12(c), add the following sentence to the end of the note: "The requirements set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with a MMSI number."

## PART 164—NAVIGATION SAFETY REGULATIONS

3. The authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703, 70114, 70117; Pub. L. 107-295,

116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

4. In § 164.02, revise paragraph (a) introductory text to read as follows:

### § 164.02 Applicability exception for foreign vessels.

(a) Except as provided in § 164.46(a)(2) of this part, including §§ 164.38 and 164.39, this part does not apply to vessels that:

\* \* \* \* \*

### § 164.03 [Amended]

5. In § 164.03(b), under "International Maritime Organization", remove the word "SN/Circ.277" and add, in its place, the word "SN/Circ.227".

### § 164.43 [Amended]

6. In § 164.43, in paragraph (a) introductory text, remove the words "July 1" and add, in their place, the words "December 31".

7. Revise § 164.46 to read as follows:

### § 164.46 Automatic Identification System (AIS).

(a) The following vessels must have a properly installed, operational, type approved AIS as of the date specified:

(1) Self-propelled vessels of 65 feet or more in length, other than passenger and fishing vessels, in commercial service and on an international voyage, not later than December 31, 2004.

(2) Notwithstanding paragraph (a)(1) of this section, the following, self-propelled vessels, that are on an international voyage must also comply with SOLAS, as amended, Chapter V, regulation 19.2.1.6, 19.2.4, and 19.2.3.5 or 19.2.5.1 as appropriate (Incorporated by reference, see § 164.03):

(i) Passenger vessels, of 150 gross tonnage or more, not later than July 1, 2003;

(ii) Tankers, regardless of tonnage, not later than the first safety survey for safety equipment on or after July 1, 2003;

(iii) Vessels, other than passenger vessels or tankers, of 50,000 gross tonnage or more, not later than July 1, 2004; and

(iv) Vessels, other than passenger vessels or tankers, of 300 gross tonnage or more but less than 50,000 gross tonnage, not later than the first safety survey for safety equipment on or after July 1, 2004, but no later than December 31, 2004.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the following vessels, when navigating an area denoted in table 161.12(c) of § 161.12 of this chapter, not later than December 31, 2004:

(i) Self-propelled vessels of 65 feet or more in length, other than fishing vessels and passenger vessels certificated to carry less than 151 passengers-for-hire, in commercial service;

(ii) Towing vessels of 26 feet or more in length and more than 600 horsepower, in commercial service;

(iii) Passenger vessels certificated to carry more than 150 passengers-for-hire.

**Note to § 164.46(a):** “Properly installed” refers to an installation using the guidelines set forth in IMO SN/Circ.227 (incorporated by reference, see § 164.03). Not all AIS units are able to broadcast position, course, and speed without the input of an external positioning device (e.g. dGPS); the use of other external devices (e.g. transmitting heading device, gyro, rate of turn indicator) is highly recommended, however, not required except as stated in § 164.46(a)(2). “Type approved” refers to an approval by an IMO recognized Administration as to comply with IMO Resolution

MSC.74(69), ITU-R Recommendation M.1371-1, and IEC 61993-2 (Incorporated by reference, see § 164.03). “Length” refers to “registered length” as defined in 46 CFR part 69. “Gross tonnage” refers to tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969.

(b) The requirements for Vessel Bridge-to-Bridge radiotelephones in §§ 26.04(a) and (c), 26.05, 26.06 and 26.07 of this chapter also apply to AIS. The term “effective operating condition” used in § 26.06 of this chapter includes accurate input and upkeep of AIS data fields.

(c) The use of a portable AIS is permissible only to the extent that electromagnetic interference does not affect the proper function of existing navigation and communication equipment on board and such that only one AIS unit may be in operation at any one time.

(d) The AIS Pilot Plug, on each vessel over 1,600 gross tons on an international

voyage, must be available for pilot use, easily accessible from the primary conning position of the vessel, and near a 120 Volt, AC power, 3-prong receptacle.

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 8. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

#### **§ 165.1704 [Amended]**

■ 9. In § 165.1704(c)(6), remove the words “July 1” and add, in their place, the words “December 31”.

Dated: October 8, 2003.

**Thomas H. Collins,**  
*Admiral, Coast Guard, Commandant.*

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