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Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 62, 66, 101, 110, 117, 118, 151, 160, 161, 164, and 165

46 CFR Parts 4 and 148

[Docket No. USCG–2005–21869]

RIN 1625–AA99

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: Consistent with statutory requirements and provisions, the Coast Guard is expanding the applicability of notice of arrival (NOA) and automatic identification system (AIS) requirements to include more commercial vessels. This final rule amends the applicability of notice of arrival requirements to include additional vessels, sets forth a mandatory method for electronic submission of NOAs, and modifies related reporting content, timeframes, and procedures. This final rule also extends the applicability of AIS requirements beyond Vessel Traffic Service (VTS) areas to all U.S. navigable waters, and requires that additional commercial vessels install and use AIS, consistent with statutory requirements, and in limited cases, the Secretary's discretionary authority. These changes will improve navigation safety, enhance our ability to identify and track vessels, and heighten our overall maritime domain awareness (MDA), thus helping us address threats to maritime transportation safety and security.

DATES: This final rule is effective March 2, 2015, except for amendments to 33 CFR part 160 which become effective April 30, 2015, with the further exception of § 160.204(a)(6), which is effective April 30, 2015 through December 31, 2015; and except for §§ 160.204(a)(5)(vii), 160.205, 160.208(a) and (c), and 164.46(b) and (c), which contain collection of information requirements that have not yet been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the effective date of these four collection-of-information related sections. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register on March 2, 2015.

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–2005–21869 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2005–21869 in the “Keyword” box, and then clicking “Search.”

FOR FURTHER INFORMATION CONTACT: If you have questions on the NOA portion of this final rule, call or email Lieutenant Commander Michael Lendvay, Office of Commercial Vessel Compliance (CG–CVC), Coast Guard; telephone 202–372–1218, email Michael.D.Lendvay@uscg.mil. If you have questions on the AIS portion of this final rule, call or email Mr. Jorge Arroyo, Office of Navigation Systems (CG–NAV–2), Coast Guard; telephone 202–372–1563, email Jorge.Arroyo@uscg.mil. Finally, if you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

- AC Alternating Current
- AIS Automatic Identification System
- AIS AtoN Automatic Identification System Aids to Navigation
- AMS Automated Manifest System
- ANF Advance Notice Form
- API American Petroleum Institute
- APIS Advance Passenger Information System
- ASM Application-specific messaging
- ASTM American Society for Testing and Materials
- AtoN Aids to Navigation
- CBP U.S. Customs and Border Protection
- CDC Certain Dangerous Cargo
- CFR Code of Federal Regulations
- CMTS Committee on the Maritime Transportation System

COP Common Operating Picture
 COTP Captain of the Port
 CSR Continuous Synopsis Record
 DGPS Differential Global Positioning System
 DHS U.S. Department of Homeland Security
 ECDIS Electronic Chart Display and Information System
 EGS Electronic Chart System
 eNOAD Electronic Notice of Arrival and Departure
 FCC Federal Communications Commission
 FILS Federal/Industry Logistics Standardization
 FRFA Final Regulatory Flexibility Analysis
 IMO International Maritime Organization
 INS Immigration and Naturalization Service
 IRFA Initial Regulatory Flexibility Analysis
 IRVMC Inland River Vessel Movement Center
 ISM International Safety Management
 ISPS International Ship and Port Facility Security
 ISSC International Ship Security Certificate
 ITU International Telecommunications Union
 LOOP Louisiana Offshore Oil Port
 LRIT Long Range Identification and Tracking
 MARPOL International Convention for the Prevention of Pollution from Ships
 MARSEC Maritime Security
 MDA Maritime Domain Awareness
 MEPC IMO Marine Environment Protection Committee
 MISLE Marine Information for Safety and Law Enforcement
 MKD Minimal Keyboard Display
 MMSI Maritime Mobile Service Identity
 MODU Mobile Offshore Drilling Unit
 MTSA Maritime Transportation Security Act of 2002
 NAICS North American Industry Classification System
 NAIS Nationwide Automatic Identification System
 NARA National Archives and Records Administration
 NAVSAC Navigation Safety Advisory Council
 NEMA National Electrical Manufacturers Association
 NMEA National Marine Electronics Association
 NOA Notice of Arrival
 NOA OCS Notice of Arrival on the Outer Continental Shelf
 NOAD Notice of Arrival and Departure
 NOD Notice of Departure
 NPRM Notice of Proposed Rulemaking
 N-RAT National Risk Assessment Tool
 NVMC National Vessel Movement Center
 OCS Outer Continental Shelf
 OMB Office of Management and Budget
 OSRV Oil Spill Response Vessel
 OSV Offshore Supply Vessel
 PWSA Ports and Waterways Safety Act
 RA Regulatory Analysis
 RFA Regulatory Flexibility Act
 RTCM Radio Technical Commission for Maritime Services
 § Section
 SAFE Port Act Security and Accountability for Every Port Act of 2006
 SBA Small Business Administration

SN/Circ. (IMO) Safety of Navigation Circular
 SNPRM Supplemental Notice of Proposed Rulemaking
 SOLAS International Convention for the Safety of Life at Sea
 TWIC Transportation Worker Identification Credential
 ULC Universal Location Code
 U.S.C. United States Code
 VMRS Vessel Movement Reporting System
 VSL Value of Statistical Life
 VTC Vessel Traffic Center
 VTS Vessel Traffic Service
 WDR Waste Delivery Receipt
 WMD Weapon of Mass Destruction
 WME Weapon of Mass Effect

II. Executive Summary and Regulatory History

A. Executive Summary

1. Purpose and Authority

The Coast Guard is expanding the applicability of notice of arrival (NOA) and automatic identification system (AIS) requirements to include more commercial vessels, consistent with statutory requirements and provisions. The Coast Guard is finalizing a narrow expansion of the applicability beyond the Congressionally-mandated requirements using the Secretary's discretionary authority. The purpose of these changes is to improve navigation safety, enhance the Coast Guard's ability to identify and track vessels, and heighten the Coast Guard's overall situational and maritime domain awareness (MDA), which will enhance mariner's navigation safety and the Coast Guard's ability to address threats to maritime transportation security.

The authority for the Coast Guard to issue AIS and NOA requirements stems from the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et seq.*), which allows the Secretary to require the installation of specified navigation and communications equipment on vessels that operate within a vessel traffic service (VTS) area, pre-arrival notices, and other measures to protect navigation and the marine environment. The authority for the Coast Guard to issue AIS-related requirements also comes from the Maritime Transportation Security Act of 2002 (MTSA), Public Law 107-295, which directs that AIS be required on certain commercial vessels operating on U.S. navigable waters. See specifically, 46 U.S.C. 70114.

2. Overview of the Final Rule

This final rule amends the applicability of notice of arrival (NOA) requirements to include additional vessels (commercial vessels 300 gross tons or less coming from a foreign port or place), sets forth a mandatory method for electronic NOAD submission, and

modifies related reporting content, timeframes, and procedures. This final rule also extends the applicability of AIS requirements beyond VTS areas—to all U.S. navigable waters—and to non-VTS users.

3. Costs and Benefits

The cost of this final rule will be borne by approximately 18,000 U.S.-flag and foreign-flag vessel owners or operators. We estimate the total discounted cost of the final rule to be \$46.1 million over the 10-year period of analysis at a 7-percent discount rate, and we estimate that 98 percent of this cost will be borne by U.S. vessels owners and operators. The NOA burden on industry from this rule was minimized to the maximum extent possible and includes three new information fields, consistent with the objectives of this rule. No new government resources are needed to process the NOA information or AIS-related requirements of this rule. The AIS-related requirements of this rule were not applied to low risk, smaller vessels. Based on current estimates of the risks and benefits, expanding AIS installation requirements is not justified for smaller vessels that are not moving certain dangerous cargo (CDC) or flammable or combustible liquid cargo in bulk.

We expect benefits of this final rule to include improved security, safety and environmental protection. The Coast Guard believes that this final rule will enhance maritime and navigational safety through a synergistic effect of NOA and AIS, and will strengthen maritime security. Specifically, when reliable NOA data is combined with other data from sources such as AIS and long-range identification and tracking (LRIT) reporting, a common operating picture is formed in which vessel-specific movements to, from, or in U.S. ports and waterways can be monitored in near-real time. This will enable the Coast Guard to filter data from collection mechanisms that do not require vessel compliance, such as radar, and thereby enhance our ability to rapidly detect, identify, and track suspicious vessels. This assists the Coast Guard and our other interagency partners in decision-making regarding homeland security, and affords decision-makers an opportunity to prioritize resources and meet mission requirements while maintaining MDA.

Improving MDA will also result in improvements to maritime and navigational safety. We assess additional improvements to safety and environmental protection quantitatively, given the existence of historic casualty

data from which to develop such estimates. From the casualty history we can assess the mitigation of fatalities, injuries, property damage, and environmental impacts as a result of oil spills from casualty incidents. We estimate the total discounted benefit (injuries and fatalities avoided) for the AIS portion of the final rule, derived from marine casualty cases for the period 1996 to 2010, to be between \$25.1 and \$31.2 million, using \$9.1 million for the value of statistical life (VSL) at 7- and 3-percent discount rates, respectively. We expect the AIS portion of this final rule to prevent on average 14 barrels of oil (undiscounted) from being spilled annually, or between 85 and 106 barrels at 7- and 3-percent discount rates, respectively, over the 10-year period of analysis.

B. Regulatory History

On December 16, 2008, we published a notice of proposed rulemaking (NPRM) titled "Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System" in the **Federal Register** (73 FR 76295). The preamble of that NPRM contains an extensive post-September 11, 2001, history of NOA and AIS regulatory actions. We provided a 4-month comment period for the proposed rule. We received 91 written submissions, and 27 persons made oral statements at our public meetings. There were approximately 475 comments in response to our NPRM.

Public meetings were requested and two were held. We held the first meeting in Washington, DC, on March 5, 2009, and the second in Seattle, WA, on March 25, 2009. *See* 74 FR 3534, January 21, 2009, and 74 FR 9071, March 2, 2009.

III. Basis and Purpose

This final rule makes revisions to NOAD regulations in 33 CFR part 160 that are necessary to require the submission of comprehensive and timely information on vessels entering U.S. ports and transiting U.S. waters. Also, the revision requiring electronic submissions will expedite processing of NOAD information. Prompt receipt of this information about a vessel and its voyage, cargo, and persons on board, and the operational condition of its navigation equipment will assist us in—

- Preventing damage to structures on, in, or adjacent to the navigable waters of the United States; and
- Protecting those navigable waters.

The Secretary of the Department of Homeland Security has delegated to the Coast Guard authority from the PWSA

(33 U.S.C. 1221 *et seq.*). Under this authority, the Coast Guard may promulgate regulations to—

- Require receipt of pre-arrival messages from vessels destined for a U.S. port or place in sufficient time to permit advance vessel traffic planning prior to port entry.
 - Protect the navigable waters of the United States, as well as bridges over those waters, and land structures and shore area immediately adjacent to such waters, including measures involving the movement of explosives or other dangerous articles and substances.
- See* specifically 33 U.S.C. 1223(a)(5), 1225, and 1231.

This final rule also amends AIS and AIS-related regulations in 33 CFR parts 62, 66, 161, 164, and 165 necessary to implement section 102 of MTSA, Public Law 107–295, 116 Stat. 2064, which directs that AIS be installed and operating on most commercial vessels on the navigable waters of the United States. *See* 46 U.S.C. 70114. In addition, this final rule implements certain mandatory provisions of the International Convention for the Safety of Life at Sea, 1974, (SOLAS), as amended. *See* specifically SOLAS, Chapter V, regulation 19.2.4, which requires all ships of 300 gross tonnage and upwards engaged on international voyages, cargo ships of 500 gross tonnage and upwards not engaged on international voyages, and passenger ships irrespective of size, to be fitted with AIS; and regulation 1.4, which gives the United States some discretion in implementing these AIS requirements for ships. As a Contracting Government to SOLAS, the United States has a responsibility to implement mandatory SOLAS provisions such as these AIS, SOLAS Chapter V provisions. *See* SOLAS Art. I, SOLAS, 32 U.S.T. 47, and the Protocol of 1978 relating to SOLAS, 32 U.S.T. 5577. As with NOAD data, AIS data also assist us in traffic management, safety, and security.

The combination of these NOA and AIS revisions will help provide a more comprehensive picture of the maritime domain. These NOA and AIS data go into a common operating picture (COP) that uses input from various sources to provide both a visual display of marine traffic and a display of each vessel's accompanying information. This system allows us to detect anomalies in these data elements. Specifically, NOA provides the stated intent of the vessel, which AIS complements by providing actual movement and a historical pattern of behavior. Combining the two, along with non-cooperative means of detection/tracking, provides a check on

both, and thus an early indication of abnormal behavior, hazardous situations and/or potential security incidents.

IV. Background

The NOA- and AIS-specific regulations appear in 33 CFR part 160 subpart C and § 164.46, respectively. AIS-related regulations appear in 33 CFR parts 62, 66, 161, and 165. As noted, the preamble of the NPRM published December 16, 2008, contains an extensive post-September 11, 2001, history of NOA and AIS regulatory actions. *See* 73 FR 76298–76300.

V. Summary of Changes From NPRM

We made changes from the proposed rule to reduce the burden of the final rule, to more closely align it with statutory requirements, to make it more effective, and to clarify it. We made many of these changes in response to public comments, which we discuss in Section VI, "Discussion of Comments and Changes." If the rationale for the change appears in Section VI, then we point to the specific location of that response in this Section V summary. Otherwise, we provide the rationale for the change by section number here in this summary of NPRM-to-final-rule changes.

- We added a section to 33 CFR part 62 and amended two sections in part 66 to address a comment requesting that we expand AIS carriage to offshore fixed structures. In our NPRM, we encouraged broader use of AIS, but this comment highlighted a particular shortcoming regarding offshore fixed structures. Our proposed rule addressed mobile shipboard devices such as AIS Class A or B, but not offshore structures or AIS Aids to Navigation (AIS AtoN) systems which are best suited for fixed position deployment, such as on offshore oil platforms. Existing AtoN regulations (see 33 CFR 66.01–1 Basic Provisions) bar the use of AIS as a Private Aid to Navigation, and thus preclude the use of an AIS AtoN on certain fixed structures. This prohibition in the current AtoN regulations is inconsistent with our stated objective of broadening the use of AIS. An AIS AtoN would provide position, name, and health status of the aid, such as "on station, watching properly." These amendments to parts 62 and 66, which allow for enhanced MDA and improved navigation safety, would not require anyone subject to our rule to establish an AIS AtoN, they would merely make that option available.

- We amended 33 CFR 118.120 for the same reasons we amended part 66, to allow the use of an AIS AtoN on certain fixed structures, here

specifically bridges. We added the following sentence to § 118.120: The District Commander may authorize the use of Automatic Identification System Aids to Navigation in lieu of or in addition to a racon.

- We removed a technical amendment to § 160.5(d) because that change was implemented in a separate rulemaking, “Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments,” in 2010. See 75 FR 36273, 36287, June 25, 2010.

- In the NOA *General* section, § 160.201, we inserted a note to inform readers that notice-of-arrival requirements for the U.S. Outer Continental Shelf appear in 33 CFR part 146.

- In the NOA *Definitions* section, § 160.202, we made five changes. First, we removed the definition for the word “disembark” because we no longer use that term in our NOAD regulations. Second, in part because Sec. 617 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) amended the 46 U.S.C. 2101(19) definition of “offshore supply vessel” after our NPRM was published, we deleted this proposed definition and five others we proposed (“commercial service,” “oil spill response vessel,” “passenger vessel,” “recreational vessel,” and “towing vessel”) that appear in 46 U.S.C. 2101. Inserting 46 U.S.C. 2101 definitions in the CFR may make it easier for CFR readers to find the definition of a term used in part 160, but as this recent legislation demonstrates, by inserting these statutory definitions, we create the potential for conflicting definitions. With the recent availability of an online official source of the U.S. Code (see <http://www.gpo.gov/fdsys/search/home.action>), access to 46 U.S.C. 2101 is not as limited as when we proposed our definition section. Our introductory text in § 160.202 pointing to 46 U.S.C. 2101, combined with a new online source for that authority, will make it easy to find the 46 U.S.C. 2101 definitions we have not separately included in § 160.202. Third, rather than use a jurisdictional term not found in 33 CFR part 2, we did not add a definition of “Continental United States” as proposed, but instead specified those jurisdictions in the sections in which we proposed to use that term: §§ 160.204(a)(5)(iii) and 160.212(a)(2) and (b)(2). Fourth, to address public comments, we added definitions for the following terms that we did not propose to add in the NPRM and that are not defined in 46 U.S.C. 2101: “ferry schedule” and “Operating exclusively within a single Captain of the Port zone.” For a discussion of these

two definitions, see the “Exemptions” discussion in VI.A.3. Fifth, we added a definition of the term “boundary waters” that we use in a new § 160.212 paragraph on when to submit an NOA.

- In the NOA *Applicability* section, § 160.203, we specified in paragraph (a) that the referenced ports and places were those within the navigable waters of the United States or any deepwater port as defined in 33 CFR 148.5 and otherwise clarified that paragraph. For our rationale, see the “Applicability” discussion in VI.A.1.

- We revised the NOA *Exemptions and exceptions* section, § 160.204, to address public comments by adding to the list of exempted or excepted vessels United States- or Canadian-flag vessels engaged in certain salvage operations and certain ferries on fixed routes. We also added the requirements each such vessel must meet to qualify for the exemption or exception. In response to a suspension of reporting requirements under regulated navigation area requirements in §§ 165.830 and 165.921 until December 31, 2015, we revised exemption (a)(3), which cited to those reporting requirements, and added a temporary exemption in paragraph (a)(6). For our rationale, see “Miscellaneous” discussion in VI.A.14. Also, we revised the heading of this section to better reflect that paragraphs (b) and (c) identify exceptions and for clarification, we replaced “need not” with “is not required to” in those two paragraphs. And in paragraph (a)(5)(vii), we excluded ferries on fixed routes provided the ferry operator submits an accurate schedule, along with information in paragraphs (a)(5)(vii)(A)–(J), to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule and updates if the schedule or other information submitted changes. For our rationale, see “Exemptions” discussion in VI.A.3.

- Based on comments, in the *Information required in an NOA* section, § 160.206, we did not include the proposed entrance-to-the-port field, Table 160.206(2)(xi); crewmember passport country of issuance and passport date of expiration fields, Table 160.206(4)(v) & (vi); or the person in addition to crew passport country of issuance and passport date of expiration fields, Table 160.206(5)(v) & (vi), in this final rule. For our rationale, see the “NOA Information” discussion in VI.A.4. In this section, we also made non-substantive edits for clarity. Effective October 30, 2013, a Nontank Vessel Response Plans and Other Response Plan Requirements final rule

(78 FR 60135, Sept. 30, 2013) added another field to § 160.206, in Table 160.206: USCG Vessel Response Plan Control Number, if applicable. We included that field in our revision of § 160.206.

- We delete the *Information required in an NOD* section, § 160.207, based on our decision not to require notices of departure. For our rationale, see the “When to Submit an NOD” discussion in VI.A.8. We made appropriate edits throughout the regulatory text to reflect our removal of the NOD requirement, including the removal of § 160.213.

- In the *Methods for submitting an NOA* section, § 160.210, in paragraph (a), we specify that the methods for submitting an NOA include both currently available options, and methods that may be made available on <http://www.nvmc.uscg.gov> in the future. This change ensures that current options described in this final rule will still satisfy submission method requirements even if new options are later made available on <http://www.nvmc.uscg.gov>. We clarified paragraph (b) of § 160.210 by eliminating the restricting eNOAD-application reference when identifying allowable methods for submitting NOAs. The eNOAD application provides an easy-to-use, efficient method for reporting the vessel arrival or departure information required by the Coast Guard or some other Federal agencies for vessels bound for or departing from U.S. ports. It was developed to enable an NOA or NOA update to be submitted directly to the NVMC via the Internet even while the vessel is underway, thereby avoiding the need for fax machines, scanners, and telephones. It provides a means for managing and storing recently submitted NOA data, and allows a previously submitted NOA to be updated and a partially completed NOA to be saved and submitted at a later time. These eNOAD application features make completing and submitting subsequent NOAs faster and easier, but this final rule makes clear that the Coast Guard will continue to accept other electronic methods of submission, such as emailing an XML spreadsheet to enoad@nvmc.uscg.gov. As discussed in VI.A.12, we amended § 160.210(a) to provide the option for a vessel operator who does not have shore-side support available to fax or phone in an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer.

- We revised the *When to submit an NOA* section, § 160.212, to adjust, in paragraph (a)(3), when NOA

submissions would be required for Canadian-flag vessels less than 300 gross tons arriving directly from Canada via boundary waters in response to provisions of the Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada (Boundary Waters Treaty), 36 Stat. 2448; Treaty Series 548. (For a discussion of comments related to this treaty's provisions, see "When to submit an NOA" discussion in VI.A.7; also see the "Exemptions" discussion of this treaty in VI.A.3). Also, we inserted "Times for submitting NOAs are as follows" as introductory text for paragraph (a)(4) to conform with the introductory text of paragraph (b)(4).

- In response to comments on the *When to submit an NOD* section, § 160.213, we decided to eliminate our proposed NOD requirement and to remove § 160.213. We determined that NOA submission requirements would provide sufficient information. For our rationale, see the "When to Submit an NOD" discussion in VI.A.8.

- In the *Vessel operating requirements* section, § 161.12, we corrected a section reference from "§ 160.203" to "§ 160.202." We also made similar conforming amendments to reflect the redesignation of our definitions section to § 160.202 in: 33 CFR 101.105, 110.158, 110.168, 110.214, 117.1007, 151.2025, 161.12, 161.19, 165.503, 165.510, 165.753, 165.811, 165.830, 165.921, 165.1181, 165.1183, and 46 CFR 4.05–1 and 148.11. Also as a conforming amendment in a note to table 161.12(c) in § 161.12, we removed a reference to § 164.46 requirements applying to certain VTS and Vessel Movement Reporting System (VMRS) areas because our amendment to § 164.46 in this final rule expands AIS applicability beyond VTS and VMRS areas.

- In the *Applicability exception for foreign vessels* section, § 164.02, we inserted the word "foreign" into paragraph (a) to clarify that, except where noted, the requirements of this part do not apply to foreign vessels that meet the criteria listed in paragraphs (a)(1) and (a)(2) of that section.

- In the *Incorporation by reference* section, § 164.03, for reasons stated in the description of § 164.46(a) changes immediately below, we added IMO Safety of Navigation Circular SN.1/Circ.289, regarding "Guidance on the Use of AIS Application-Specific Messages;" deleted SN/Circ.236, which SN.1/Circ.289 revoked; and added National Marine Electronics Association (NMEA) Installation Standard 0400–3.10. We also updated and

supplemented contact information for organizations listed in this section.

- In the *Automatic Identification System* section, § 164.46, we made the following revisions:

- In paragraph (a), *Definitions*, we revised the definition for "Properly installed, operational" by adding International Maritime Organization Safety of Navigation Circular 289, deleting Circular 236, and adding the National Marine Electronics Association (NMEA) Installation Standard 0400–3.10. The IMO Maritime Safety Committee approved SN.1/Circ.289 after publication of our NPRM. This new circular revises two application specific messages denoted in IMO SN/Circ.236, revokes five others, and, adds 14 new applications. As noted below in our "Broader Use of AIS" discussion in VI.B.2, the applications added by SN.1/Circ.289 will broadly expand the capability and use of AIS. SN.1/Circ.289 revoked SN/Circ.236 effective January 1, 2013. Based on a comment, we added NMEA Installation Standard 0400–3.10 as an option to comply with it in lieu of SN/Circ.227 and 245 because the IMO AIS requirements and guidelines were tailored to large deep-draft seagoing vessels and may be impractical for the majority of small and shallow-draft vessels subject to this rule. An example of an impracticality created by IMO AIS requirements would be a 27-foot vessel attempting to maintain a 30-foot separation between radio antennas on board. For our response to the comment, see the "Impracticability" discussion in VI.B.4.

- In response to comments, in paragraph (b), *AIS carriage*, we specified a Coast Guard type-approved AIS Class A device as the standard for meeting the carriage requirement (for our rationale, see "AIS Class B" discussion in VI.B.7); we redesignated paragraphs (b)(1)–(5) as (b)(1)(i)–(v) to facilitate our addition of paragraph (b)(2) that lists vessels we determined may use a Coast Guard type-approved AIS Class B device to satisfy the carriage requirement (for our rationale, see "AIS Class B" discussion in VI.B.7); we revised the applicability criteria for vessels carrying passengers by setting a higher general threshold than we had proposed—those carrying more than 150 passengers (instead of more than 50)—and by not adopting our proposed inclusion of vessels carrying more than 12 passengers for hire and capable of speeds in excess of 30 knots (for our rationale, see "Applicability" and "Broader Use of AIS" discussions in VI.B.1 and VI.B.2); and we supplemented the vessels-moving-certain-dangerous-cargo applicability paragraph to ensure that vessels

carrying or moving propane and gasoline as cargo are also required to use AIS (for our rationale, see "Definitions" discussion in VI.A.2 and "Applicability" and "Expanding AIS Carriage" discussions in VI.B.1 and VI.B.3). To be consistent in our terminology, we changed "engaged in commercial towing" in paragraph (b)(1)(ii) that expressly covers towing vessels to "engaged in commercial service," and in paragraph (b)(1)(v) we deleted the "es" from "cargoes" to match the term we point to as being defined in 33 CFR part 160 subpart C, "certain dangerous cargo." We also replaced the content of the informational note to paragraph (b), which discussed AIS Class B devices, with information regarding a Coast Guard Captain of the Port's (COTP's) authority under 33 U.S.C. 1223(b)(3) and 33 CFR 160.111 to restrict the operation of a vessel if he or she determines that, by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, the restriction is justified in the interest of safety.

- In paragraph (c), *SOLAS provisions*, we included the titles of Chapter V regulations 19.2.1.6, 19.2.3.5, and 19.2.5.1 ("Positioning System," "Transmitting Heading Device," and "Gyro Compass," respectively) to make it easier for the reader to identify the subject matter of the SOLAS regulation listed. We also removed paragraph (c)(1) because the vessels we intended to cover with it that do not engage on international voyages are covered by § 164.46(b)(1) and those that do are covered by both § 164.46(b)(1) and proposed § 164.46(c)(2), which we redesignated as (c)(1) in this final rule.

- Within paragraph (d), *Operations*—
 - In (d)(1), we replaced "33 U.S.C. 2001 through 2073" with "33 CFR part 83," because 33 U.S.C. 2001–2038 have been repealed, and the inland navigation rules are now contained in 33 CFR part 83. See Sec. 303 of Public Law 108–293, and 75 FR 19544, April 15, 2010;

- In (d)(2)(i), we removed the unnecessary phrase "should the need arise" and restructured this paragraph regarding the ability to reinitialize AIS so that it was easier to understand;

- In (d)(2)(iv), we added the word "fields" to identify AIS data that must be accurately inputted;

- In (d)(2)(v), we limited the applicability of the paragraph to vessels subject to § 164.46 (b) to distinguish SOLAS based-requirements applicable to vessels subject to paragraph (c); in response to comments (see

“Impracticability” discussion in VI.B.4), we added the words “and at least 15 minutes prior to getting underway if the vessel is” to limit the time AIS must be in continual operation on moored vessels; and, lastly, we condensed the discussion of AIS being turned off when continual operation would compromise safety or a security incident is imminent;

- In (d)(3), we made minor edits to more clearly distinguish safety-related AIS text messaging from AIS application-specific messaging;

- We added paragraph (d)(4) to address the emerging use of AIS ASM—and to further distinguish AIS ASM from AIS text messaging—by stating that AIS application-specific messages are permissible, but are limited to no more than one per minute and to messages consistent with international standards and registered for use in the United States or Canada; and

- In the note to paragraph (d), we inserted a reference to, and World Wide Web address for, the “U.S. AIS Encoding Guide” to help AIS users encode (input) consistent and accurate data; we deleted the sentence referring to external positioning systems and amended the word “integration” to the more proper term “interfacing”; current AIS does not require further integration for its operation. We also added the sentence “Most application-specific messages require interfacing to an external system that is capable of their portrayal, such as equipment certified to meet Radio Technical Commission for Maritime Services (RTCM) standard 10900 series” to provide useful information to those planning to use AIS ASM.

- In paragraphs (e), *Watchkeeping*, and (f), *Portable AIS*, we made minor edits for clarification.

- In response to comments, in paragraph (g), *Pilot Port*, we replaced the term “Pilot Port” with the more specific term “AIS Pilot Plug;” added “by other than the vessel Master and crew” to qualify the subject-to-pilotage-based applicability of this paragraph; added “and permanently affixed (not an extension cord) and adjacent” to clarify positioning of the AIS Pilot Plug; and inserted a reference to NEMA 5–15 as an example of a 120-volt 50/60 Hz AC power receptacle.

- In response to comments, in paragraph (h), *Exceptions*, we increased the possible maximum duration of a deviation from 1 year to 5 years (for our rationale, see the “Broader Use of AIS” discussion in VI.B.2); inserted examples to supplement our description of types of vessels that may seek a deviation from AIS requirements; added vessels

whose design or construction makes it impracticable to operate an AIS device (e.g., a submersible); and added those vessels using an AIS Class B device that lacks a display as a possible candidate for a deviation from AIS requirements in paragraphs (d)(2)(ii) and (e).

- We redesignated paragraph (i), *Implementation Date*, as paragraph (j), and inserted a new paragraph (i), *Prohibition*. In the new “Implementation Date” paragraph (j) we included those vessels identified in paragraphs (b) and (c) of § 164.46 in the group of vessels that must install AIS no later than 13 months after publication of this final rule—the NPRM had proposed 7 months after publication. For our rationale, see the “Installation Period” discussion in VI.B.9.

- We added new paragraph (i), *Prohibition*, to note there is a prohibition of shore-side broadcasts from AIS Class A or B devices unless such stations are specifically licensed (e.g., a marine support station) to do so by the Federal Communications Commission. Class A and B devices are mobile devices not intended for shore-side use; their reporting rate is set by speed and course changes and so they have a navigation status. Using them ashore could confuse mariners on the water, who may assume they are mobile devices on the water (e.g., coming around a bend vice in warehouse ashore) and take action accordingly.

VI. Discussion of Comments and Changes

As noted above, we received 91 written submissions to our docket, and statements from 27 persons who spoke at our public meetings. In total, there were approximately 475 comments in response to our NPRM. These written submissions and summaries of our two public meetings are available in the public docket for this rulemaking, where indicated under **ADDRESSES** or use direct link <http://www.regulations.gov/#!docketDetail;D=USCG-2005-21869>.

Below, we summarize these comments and any changes we made to the regulatory text in response. We discuss the NOAD comments first, then the AIS comments, and, finally, the Regulatory Assessment comments.

A. Notice of Arrival and Departure

In the NPRM, we used 11 categories to describe our proposed revisions to NOA regulations. See 73 FR 76302–03, December 16, 2008. We used nine of these same categories below to discuss comments we received on the NOAD portion of the NPRM. We did not receive comments on our proposed

§ 160.205 to clarify who must submit an NOAD or on our proposed removal of a suspended requirement related to Customs Form 1302, so we did not use those two categories below. We have inserted five additional comment discussion categories: Need for NOAD Data and Agency Collaboration in Obtaining It, Scope and Scale, Financial Impact, Outer Continental Shelf, and Miscellaneous. Some comments raised issues in more than one of these categories, so we occasionally return to a discussion of a comment.

1. Applicability

One commenter recommended that we clarify the phrase “port or place of the United States” as it pertains to U.S. Outer Continental Shelf (OCS) locations. The commenter noted that the Coast Guard used the term “port or place of the United States” in § 160.203, which sets out the applicability of this rule, without providing a specific definition. They said that the Coast Guard declined to define this term as requested by the commenter in its August 5, 2002 submission to the docket (USCG–2002–11865–0008) for the “Automatic Identification System; Vessel Carriage Requirement” rulemaking that produced a final rule in 2003. The commenter seeks to clarify this term as it pertains to a location on the OCS, which can become viewed as a “place in the United States” when a Mobile Offshore Drilling Unit (MODU) is operating on location. The commenter notes that the Coast Guard’s statement in the 2003 rule (68 FR 9537, 9538, Feb. 28, 2003) suggests that the Coast Guard may not consider a location on OCS to be a U.S. port or place.

The Coast Guard addressed Notice of Arrival issues concerning the OCS in a January 2011 final rule titled “Notice of Arrival on the Outer Continental Shelf” (76 FR 2254, January 13, 2011). Based on this and similar comments, however, and as discussed further below in the NOA “Definitions” and “Outer Continental Shelf” sections, VI.A.2 and VI.A.14, we have revised § 160.203 to limit the applicability of regulations in 33 CFR part 160, subpart C, to vessels bound for or departing from U.S. ports or places in the navigable waters of the United States or deepwater ports. This revision is intended to make clear that, with the exception of visits to deepwater ports, visits to ports or places in the OCS are covered by 33 CFR part 146 and are not covered by this rule.

We have placed NOA applicability and exemption provisions from both the final rule and the current CFR adjacent to each other in the following derivation and comparison table so that you may

quickly identify changes this final rule is introducing that may impact your vessel or company.

TABLE 1—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY OR EXEMPTION PARAGRAPHS IN 33 CFR PART 160

| Final rule section or paragraph in 33 CFR part 160 | Text | Corresponding section or paragraph currently in 33 CFR part 160 | Text |
|--|--|---|--|
| § 160.203(a) | This subpart applies to the following vessels that are bound for or departing from ports or places within the navigable waters of the United States, as defined in 33 CFR 2.36(a), which includes internal waters and the territorial seas of the United States, and any deepwater port as defined in 33 CFR 148.5: (1) U.S. vessels in commercial service, and (2) All foreign vessels. | § 160.202(a) & (b) | (a) This subpart applies to U.S. and foreign vessels bound for or departing from ports or places in the United States. (b) This subpart does not apply to U.S. recreational vessels under 46 U.S.C. 4301 et seq., but does apply to foreign recreational vessels. |
| § 160.204(a) | NO CHANGE IN TEXT FROM CURRENT CORRESPONDING CFR PARAGRAPH. | § 160.203(a) | Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart: |
| (1) | A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf. | (1) | Passenger and supply vessels when they are employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf. |
| (2) | An oil spill response vessel (OSRV) when engaged in actual spill response operations or during spill response exercises. | (2) | Oil Spill Recovery Vessels (OSRVs) when engaged in actual spill response operations or during spill response exercises. |
| (3) | After December 31, 2015, a vessel required by 33 CFR 165.830 or 165.921 to report its movements, its cargo, or the cargo in barges it is towing. | (3) | (3) Vessels operating upon the following waters: (i) Mississippi River between its sources and mile 235, Above Head of Passes; (ii) Tributaries emptying into the Mississippi River above mile 235; (iii) Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River; and (iv) The Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two points. |
| (4) | A United States or Canadian vessel engaged in the salvaging operations of any property wrecked, or rendering aid and assistance to any vessels wrecked, disabled, or in distress, in waters specified in Article II of the 1908 Treaty of Extradition, Wrecking and Salvage (35 Stat. 2035; Treaty Series 502). | ..... | NO CORRESPONDING PARAGRAPH. |
| (5) | The following vessels neither carrying certain dangerous cargo nor controlling another vessel carrying certain dangerous cargo. | (b) | If not carrying certain dangerous cargo or controlling another vessel carrying certain dangerous cargo, the following vessels are exempt from NOA requirements in this subpart: |
| (i) | A foreign vessel 300 gross tons or less not engaged in commercial service. | (1) | Vessels 300 gross tons or less, except for foreign vessels entering any port or place in the Seventh Coast Guard District as described in 33 CFR 3.35–1(b). |

TABLE 1—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY OR EXEMPTION PARAGRAPHS IN 33 CFR PART 160—Continued

| Final rule section or paragraph in 33 CFR part 160 | Text | Corresponding section or paragraph currently in 33 CFR part 160 | Text |
|--|---|---|---|
| (ii) | A vessel operating exclusively within a single Captain of the Port zone. Captain of the Port zones are defined in 33 CFR part 3. | (2) | Vessels operating exclusively within a Captain of the Port Zone. |
| (iii) | A U.S. towing vessel and a U.S. barge operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia. | (4) | Towing vessels and barges operating solely between ports or places in the continental United States. |
| (iv) | A public vessel | (5) | Public vessels. |
| (v) | Except for a tank vessel, a U.S. vessel operating solely between ports or places of the United States on the Great Lakes. | (6) | Except for tank vessels, U.S. vessels operating solely between ports or places in the United States on the Great Lakes. |
| (vi) | A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place. | (b)(1) | Vessels 300 gross tons or less, except for foreign vessels entering any port or place in the Seventh Coast Guard District as described in 33 CFR 3.35-1(b). |
| (vii) | <p>Each ferry on a fixed route that is described in an accurate schedule that is submitted by the ferry operator, along with information in paragraphs (a)(5)(vii)(A)–(J) of this section, to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule. At least 24 hours before the first date and time of arrival listed on the ferry schedule, each ferry operator who submits a schedule under paragraph (a)(5)(vii) of this section must also provide the following information to the Captain of the Port for each port or place of destination listed in the schedule for the ferry, and if the schedule or the following submitted information changes, the ferry operator must submit an updated schedule at least 24 hours in advance of the first date and time of arrival listed on the new schedule, and updates on the following items whenever the submitted information is no longer accurate:</p> <p>(A) Name of the vessel;</p> <p>(B) Country of registry of the vessel;</p> <p>(C) Call sign of the vessel;</p> <p>(D) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;</p> <p>(E) Name of the registered owner of the vessel;</p> <p>(F) Name of the operator of the vessel;</p> <p>(G) Name of the vessel's classification society or recognized organization, if applicable;</p> <p>(H) Each port or place of destination;</p> <p>(I) Estimated dates and times of arrivals at and departures from these ports or places; and</p> | ..... | NO CORRESPONDING PARAGRAPH. |

TABLE 1—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY OR EXEMPTION PARAGRAPHS IN 33 CFR PART 160—Continued

| Final rule section or paragraph in 33 CFR part 160 | Text | Corresponding section or paragraph currently in 33 CFR part 160 | Text |
|--|---|---|--|
| (6) | (J) Name and telephone number of a 24-hour point of contact. April 30, 2015 through December 31, 2015, vessels identified as being subject to 33 CFR 165.830 or 165.921. | ..... | NO CORRESPONDING PARAGRAPH. |
| § 160.215 | When a vessel is bound for a port or place of the United States under force majeure, it must comply with the requirements in this section, but not other sections of this subpart. The vessel must report the following information to the nearest Captain of the Port as soon as practicable: (a) The vessel Master's intentions; (b) Any hazardous conditions as defined in § 160.202; and (c) If the vessel is carrying certain dangerous cargo or controlling a vessel carrying certain dangerous cargo, the amount and name of each CDC carried, including cargo UN number if applicable. | (b)(3) | Vessels arriving at a port or place under force majeure. |

2. Definitions

One commenter recommended that the definition of “certain dangerous cargo” be expanded to include vessels carrying propane and gasoline so that these vessels would have to use AIS under AIS regulations redesignated as 33 CFR 164.46(b)(1)(v).

For purposes of NOA regulations, there is a definition of certain dangerous cargo (CDC) in redesignated § 160.202, which is referenced in AIS regulation 33 CFR 164.46(b)(1)(v). The definition of CDC was revised by a separate final rule entitled “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes” (75 FR 59617, September 28, 2010). We address the recommendation that vessels moving propane or gasoline as cargo be required to use AIS in the AIS portion of this final rule preamble because we amended redesignated 33 CFR 164.46(b)(1)(v) in the AIS regulations, instead of changing the NOA definition of CDC in 33 CFR part 160, which would have triggered other requirements not requested by the commenter.

One commenter who operates youth-program sailing vessels, recommended adding the following sentence to our proposed “commercial service” definition in § 160.202: “A vessel in which persons on board are sharing expenses, with no paid staff and which is engaged in youth development of character and citizenship shall not be considered a commercial vessel.”

We note that our definition for “commercial service” mirrors the

definition in 46 U.S.C. 2101 and is intended to cover a broad range of commercial activities. We did not change our definition of commercial service based on this comment because the suggested revision would unnecessarily narrow that definition.¹

A youth vessel inspected as a sailing school vessel under 46 CFR part 169 would not be considered to be operating in commercial service, and thus would not be subject to NOA requirements. But the commenter noted that his youth-program vessels are licensed as Small Passenger Vessels under 46 CFR chapter I, subchapter T, which would be considered vessels engaged in commercial service. If these vessels are operating exclusively within a single COTP zone (see 33 CFR part 3 for a description of zones), they likely qualify for the exemption in § 160.204(a)(5)(ii). Also, under 33 CFR 160.214, the vessel owner may request a waiver from NOAD requirements from the local COTP. This waiver provision allows the COTP to make assessments based on factors in his or her COTP zone that are difficult to account for in a general rule.

One commenter recommended that the current definition of “operator” should explicitly state that, for vessels subject to SOLAS Chapter IX, the operator is the “company” listed on the vessel’s Continuous Synopsis Record (CSR), International Safety Management

(ISM) Document of Compliance, and Safety Management Certificate.

We note that the operator will not always meet the SOLAS Chapter IX definition of “company.” We did not propose to change the definition of “operator” in our NPRM and we did not change the definition based on this comment because the SOLAS Chapter IX, Reg. 1 definition of “company” does not limit the owner, organization, or person who has assumed responsibility for operation of the ship to the “company” listed on the vessel’s Continuous Synopsis Record, ISM Document of Compliance, and Safety Management Certificate. The unchanged definition of “operator,” which appears in redesignated § 160.202, identifies the “person including, but not limited to, an owner, a charterer, or another contractor who conducts, or is responsible for, the operation of the vessel” as the operator.

One commenter noted that, given the availability of dynamic positioning systems, the definitions of “port or place of departure” and “port or place of destination” should be revised to capture locations where vessels transfer passengers or cargo offshore, even if the vessel is not anchored or moored.

With respect to this final rule, we do not agree that we should add the offshore transfer of passengers or cargo as a factor for either of these definitions. This final rule expands the AIS requirements to include more vessels; therefore, we are increasing our MDA of

¹ Our definition of “commercial service” is also very similar to CBP’s definition of “commercial vessel” in 19 CFR 4.7b(a).

when two or more vessels may be engaged in the activities the commenter describes. Also, to the extent these offshore activities take place in U.S. navigable waters, revising these two § 160.202 definitions as suggested would create a burden for vessels engaged in lightering offshore, and we decline to impose such a requirement without obtaining comments on the suggested revision. Additionally, a separate final rule titled “Notice of Arrival on the Outer Continental Shelf” (76 FR 2254) was published January 13, 2011, which addressed NOA requirements for certain offshore activities.

3. Exemptions

Commenters gave various reasons why ferries should be exempted from NOAD requirements: Current CBP practices of prescreening passengers in Canada and subjecting the vessel to a customs inspection when it arrives in the United States make Coast Guard NOAD requirements redundant and unjustifiable; ferries operate on a set arrival and departure schedule, so the Coast Guard already knows when a ferry will arrive; risks associated with pre-screened international ferry passengers are significantly less than risks associated with domestic ferries; under the Western Hemisphere Travel Initiative, at the United States-Canadian border, each person must have a passport, United States passport card, or certain other limited acceptable official documents; collecting and transmitting data 60 minutes before departure would eliminate a ferry operator’s ability to serve last-minute travelers; NOA requirements on ferries would impact profitability and increase labor costs to collect and enter data; ferries that operate between different COTP zones, even though the ports are nearby, would be required to submit excessive daily reports even though the government has failed to show any heightened risk for operating between two COTP zones, while another operator transiting as far or farther in a single COTP zone would not be burdened with high costs of submitting 20 NOADs per day; and NOA requirements would put ferries at a competitive disadvantage with alternate choices in travel, such as land routes.

Based on comments received, we have added an NOA reporting exemption for certain ferries. We recognize that ferries are on fixed routes and schedules that can result in multiple, predictable visits within a 24-hour period to the same U.S. port, and that, due to the nature of ferry operations, it would be impractical to subject ferries to the same NOA

reporting requirements as other vessels. Therefore, in this final rule we exempt ferries, as defined in 46 U.S.C. 2101(10b), that provide certain information to COTPs. As discussed above, we have not included our proposed notice of departure requirement in this final rule.

To qualify for this exemption, the ferry operator must submit the schedule for the ferry to the COTP for each port or place of destination listed in the schedule by April 30, 2015, or at least 24 hours in advance of the first date and time of arrival listed on the schedule, in addition to other information listed in new paragraph § 160.204(a)(5)(vii), including a 24-hour contact number. This exception more closely aligns with the CBP’s exception in 19 CFR 4.7b(c)(1), which does not require ferries to submit either an electronic passenger arrival manifest or an electronic crew member arrival manifest. Because we need to ensure that the Coast Guard’s 41 COTPs are aware of ferries entering their zones, a blanket exemption for ferries would not satisfy our need to maintain sufficient MDA.

One commenter requested an exemption for fixed-route ferry systems and tour operators remaining within specific geographic areas less than 1 nautical mile from land, whose vessels, routes, and schedules are established, and that this exemption apply to those operations (a) that are not on international voyages, (b) that do not provide overnight accommodations, and (c) whose voyages are less than 6 hours long. The commenter noted that this last provision would benefit those operations most impacted by the NOAD/AIS requirements: Small ferry operators, harbor excursion, and nature cruise operators. Also, a commenter stated that vessels such as large fish tenders make several short duration calls in separate COTP zones, triggering back-to-back reporting and an undue amount of paperwork.

The final rule contains many exemptions that apply in all U.S. waters, but there are limits to the use of general exemptions. A given set of factors, such as those described by the first commenter, may not pose a safety or security threat in one COTP zone, but may in another. For those situations, the Coast Guard may issue a waiver under § 160.214 that allows us to make assessments at the COTP level to grant relief from NOA reporting requirements based on factors specific to a given port or COTP zone.

As noted above, since publication of the NPRM, we have added an exemption for ferries that provide certain general information to COTPs.

First, if the vessels on a fixed route in a specific geographic area the commenter describes do not meet the definition of “ferry,” but operate exclusively within one COTP zone and do not carry CDC, the vessels would be exempt from NOA requirements under § 160.203(a)(5)(ii). Second, if such vessels are on a fixed route transiting two or more COTP zones, the COTP in each of those zones has the discretion to grant a waiver under 33 CFR 160.214. Similarly, the large fish tenders, mentioned in the second comment, that make short trips transiting more than one COTP zone may request a waiver from the COTPs responsible for those zones.

A commenter recommended that, rather than requiring an operator to submit for renewal annually, a waiver should remain in force until a material change occurs, such as a change in route or character of the navigable waterway. This remain-in-force-until-material-change approach would be similar to the EPA Vessel General Permit and the state-issued Department of Environmental Protection Stormwater Runoff Permit automated renewal precedent. This change from the proposed rule would relieve an operator of yet another administrative task, while appropriately assigning reporting responsibility.

We note that if a waiver is granted, the termination date of that waiver will be at the discretion of the COTP. Over time, factors that impact security or safety may change. Periodic review of waivers allows the COTP to determine whether continuing a waiver is consistent with current security and safety assessments and strategy. We did not make any changes from the proposed rule based on this comment.

One commenter supports NOA requirements for vessels carrying CDC, but noted that when conditions make such requirements unnecessary, the Coast Guard should provide a waiver provision.

We note that § 160.214 provides a waiver provision at the COTP’s discretion if NOA requirements appear to be unnecessary. In addition, force majeure provisions in § 160.215 of this final rule contain only limited reporting requirements under certain conditions beyond the control of the ship’s Master. As previously noted, a separate final rule titled “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes” was published September 28, 2010. That rule is intended to relieve an unnecessary burden on industry by including more lower-risk cargoes in the CDC residue category, thereby reducing the number of notice of arrival

submissions required based on the cargo a vessel is carrying. These new CDC and CDC-residue definitions currently appear in § 160.204, which will be redesignated by this final rule as § 160.202. This section redesignation is intended to move the definitions closer to the beginning of subpart C. We made no revisions in response to this waiver-provision comment.

One commenter stated that NOA regulations should not apply to tender vessel operations for cruise ships, whether performed by ship's tender or by a local vessel hired for this purpose. The commenter stated that non-U.S.-flag cruise ships arriving at or departing from any U.S. port currently must submit an NOA, irrespective of whether the previous port of departure or entry is a U.S. or foreign port, and that these notices cover passenger and crew manifests; that because the cruise ship is already in a U.S. port, the tender vessel is neither physically arriving at, nor departing from, a foreign port; that for CBP purposes, these persons are considered to have arrived or departed upon arrival or departure of the cruise ship itself; that no persons are permitted to come ashore unless and until the CBP officers have cleared the ship, and that further clearance is unnecessary when passengers depart the ship to the shore, whether departure is facilitated by a gangway or by a tendering vessel; that these vessels would also appear to be exempt from NOA requirements because their temporary operations within a port occur exclusively within a single COTP zone; and that some tendering vessels may be exempted or may receive a waiver under the limited local area of operation, but that exemption may be too narrowly defined, because some tendering vessels may travel as far as 2 or 3 miles.

We have not established a separate NOA exemption for tender vessels, but under § 160.204(a)(5)(ii), to the extent that the operations of tender vessels are exclusively within a single COTP zone, and the vessel is not carrying CDC, the tender vessel would not need to submit an NOA. If a tender vessel is carried onboard an arriving cruise ship, then a separate NOA need not be submitted for the tender vessel but if after this arrival the tender vessel begins traveling under its own power, it would be subject to NOAD requirements unless it fits into an NOAD exemption. In situations where a local tender vessel services one or more cruise ships, as long as it operates exclusively in a single COTP zone and is not carrying CDC, the tender vessel would be exempt from NOA requirements. In response to this and other comments, we have added a

definition for "Operating exclusively within a single Captain of the Port zone" in § 160.202 to clarify what we mean by that term.

One commenter noted that its youth program vessels would not be able to comply with NOAD requirements because these sailing vessels have no computers on board and there is no Wi-Fi (wireless Internet or network connections) available in the inlet from which the vessels sail. The commenter suggested that this problem could be settled if a waiver or exemption is granted or if its vessels were considered noncommercial.

As noted above in the "Definitions" discussion, VI.A.2, we did not change the definition of "commercial vessel" for these vessels for the reasons stated there, nor do we see a valid basis for creating an exemption for vessels in this program. However, the waiver section in subpart C, § 160.214, may be a means to deal with the situation this commenter described. The COTP may grant a waiver of some or all of the NOA requirements for a given situation if, based on the COTP's assessment, a waiver is warranted. Also, note that in response to a comment discussed below in VI.A.12, we amended § 160.210(a) to provide the option for a vessel operator who does not have shore-side support available to fax or phone in an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer.

One commenter expressed support for the proposal to maintain the exemption for U.S. commercial vessels 300 gross tons or less and not carrying CDC that transit between ports or places of the United States. This commenter stated that changing this exemption would adversely affect commerce, specifically intercoastal commerce, and, subsequently, interstate commerce.

This comment relates to § 160.204(a)(4)(vi) in the NPRM. As proposed, we narrowed the 300-gross-tons-or-less exemption in the current § 160.203(b)(1) that covers U.S. and foreign vessels. Under § 160.204(a)(5)(vi) in this final rule, a U.S. vessel 300 gross tons or less, engaged in commercial service but not carrying CDC, will be exempt from NOA requirements only if the vessel is not coming from a foreign port or place. There is no longer an NOA exception for foreign commercial vessels based on tonnage, but § 160.204(a)(5)(i) does contain an exemption for foreign vessels 300 gross tons or less not engaged in commercial service.

One commenter asked us to consider the 1908 Treaty of Extradition,

Wrecking and Salvage (Salvage Treaty) (35 Stat. 2035; Treaty Series 502). This treaty states, in part, that nothing in customs, coasting, or other laws or regulations shall restrict in any manner salving operations of vessels wrecked, disabled, or in distress, or wrecking appliances "in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste Marie, and the Canals at Sault Ste Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts." Art. II of the Salvage Treaty. Regarding reporting, it states that vessels from either the United States or Canada employed in salving in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salving takes place. The commenter also noted that Article II of the Salvage Treaty also permits vessels from either country to conduct emergency operations in the other's territorial waters when necessary to assist a disabled vessel in distress. The commenter concluded that requiring tugs or other vessels to comply with time clearances and notices prior to and after embarking on an Article II mission would restrict salving operations, putting vessels, crews, property, and the environment at risk.

Based on this comment about the Salvage Treaty which provides reciprocal rights for United States and Canada in matters of wrecking and salvage, we have added an exemption for United States- and Canadian-flag vessels engaged in operations identified by Article II of this treaty for the waters and shores it specifies. This exemption appears in revised § 160.204(a)(4).

One commenter noted that exemptions in proposed § 160.204(a)(4)(iii) for U.S. towing vessels and U.S. barges operating solely between ports or places of the continental United States should include passenger vessels operating solely on fixed routes between ports and places of the continental United States. The commenter states that exemptions already exist for U.S. towing vessels and barges, commercial U.S. vessels less than 300 gross tons, public vessels, and vessels other than tank vessels operating on the Great Lakes.

We note that certain passenger vessels may qualify for some of the four

exemptions cited by this commenter, but reasons for those exemptions do not support creating a general exemption for all passenger vessels. First, towing vessels and barges do not carry passengers and, like other vessels, are required to comply with NOA requirements when carrying CDC. Second, before September 11, 2001, both United States- and Canadian-flag vessels that operated solely on the Great Lakes and that were not tank vessels or carrying CDC were exempt under 33 CFR 160.201(c)(8)(2001) from NOA requirements. Our current Great Lakes exception, § 160.203(b)(6), reflected in redesignated § 160.204(a)(5)(v) of this final rule, is narrower but does not exclude passenger vessels, and is consistent with the more-than 100-year-old Boundary Waters Treaty, proclaimed May 13, 1910, with specific provisions to “continue free and open [navigation] for the purposes of commerce” on the Great Lakes and other United States-Canadian boundary waters. Third, some passenger vessels would qualify for the exemption under § 160.204(a)(5)(vi) for U.S. commercial vessels 300 gross tons or less that are not carrying CDC or coming from a foreign port or place, and those passenger vessels greater than 300 gross tons would share size features that warrant NOA requirements. Fourth, the Coast Guard established the exemption for public vessels not carrying CDC because such vessels would be owned or operated by a government. We have not made a change from the proposed rule based on this comment.

In addition to the exemptions cited, certain passenger vessels will qualify for an exemption we have added to the final rule for ferries that provide certain general information to COTPs. Other passenger vessels seeking exemptions for operating solely on fixed routes between ports or places in the continental United States may seek a waiver under 33 CFR 160.214 from each COTP for the zones the vessel plans to transit. The operating-within-a-single-COTP-zone exception relieves a reporting burden for non-CDC vessels once they enter a COTP zone but does not interfere with each COTP having access to NOA information for vessels subject to NOA requirements that arrive in the COTP’s zone.

One commenter noted that the proposed revision to NOAD regulations does not affect its vessels transporting passengers and vehicles to the island of Martha’s Vineyard and Nantucket, but that it would be unjustifiable to impose NOAD on operations within lakes, bays, or sounds.

We note that the exemption for vessels not carrying CDC that operate exclusively within the same COTP zone may cover most vessels otherwise subject to NOAD regulations that operate in lakes, bays, or sounds. If a vessel is transiting more than one COTP zone, however, then under 33 CFR 160.214, the vessel Master may request a waiver from NOA requirements. As noted above, based on comments received on the NPRM, we have included an exemption for ferries that provide certain general information to the COTPs.

One commenter noted that the existing § 160.204(b)(2) and proposed § 160.204(a)(4)(ii) operating-exclusively-in-a-single-COTP-zone exception is confusing and will decrease MDA. The commenter stated that this exemption should be removed, made applicable to U.S.-flag vessels only, or limited to vessels that remain inside the territorial sea baseline or boundary line. Finally, the commenter recommended that if the exemption stays, it should be reworded to remove “exclusively,” and should instead read “A vessel that transits from one port or place to another port or place within a single Captain of the Port zone. Captain of the Port zones are defined in 33 CFR part 3.” Another commenter cited Congressional mandates in the Security and Accountability for Every Port Act of 2006 (SAFE Port Act)(Pub. L. 109–347) to support his request to exclude foreign vessels from this exemption. Another commenter stated that, regarding the exemption for operating within a single COTP zone, typically, the NOA is understood to be required for arrival at a port. The commenter noted that if a COTP zone area is 200 miles all the way out to the exclusive economic zone, a vessel does not have to submit an NOA to that place, be it at the Louisiana Offshore Oil Port (LOOP) or a port. The commenter asked if this single-COTP-zone exemption includes “voyages to nowhere;” for example, a ship that leaves Miami, goes offshore for 24 or 48 hours, stays within the COTP Miami zone, and comes back to Miami. The commenter also asked whether the exemption is for navigable waters only or also includes the exclusive economic zone.

In response to the commenter who finds the term confusing, we have added a definition of “operating exclusively within a single Captain of the Port zone” to 33 CFR 160.204 that is intended to clarify the NOAD single-COTP-zone exemption.

While a vessel’s initial arrival in a COTP zone may require the submission of an NOA, when a vessel is operating

exclusively within a single COTP zone, it may qualify for an exemption under § 160.204(a)(5)(ii) and thus not have to file an NOA or update for each of its transits within that COTP zone. With regard to the recommendation that this operating-in-a-single-COTP-zone exemption only apply to U.S.-flag vessels, we note that foreign-flag vessels are screened upon arrival to their first U.S. port, as are U.S. commercial vessels arriving from a foreign port or place. Therefore, the potential threat posed by a foreign vessel can be assessed and appropriate measures taken on a case-by-case basis, rather than having this exception apply only to U.S. vessels. This approach allows for efficient use of Coast Guard assets and resources and prevents the imposition of an unnecessary burden on the maritime industry.

Under regulations in 33 CFR part 160, subpart C, the COTP zone exemption covers the entire COTP zone, which may extend 200 nautical miles from shore. If the “trip to nowhere” is within a single COTP zone, then it would not trigger NOA requirements in part 160. Current regulations in 33 CFR part 146, however, impose separate NOA requirements for vessels calling on an offshore location. See specifically §§ 146.401 and 146.405. Also, in reference to the LOOP, § 150.325 identifies NOAD requirements for the owner, Master, agent, or person in charge of a tanker bound for a manned deepwater port.

One commenter noted that the exemption for passenger vessels and offshore supply vessels (OSVs)(§ 160.204(a)(1)) when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf, and for oil spill response vessels (OSRVs) (§ 160.204(a)(2)) when engaged in actual spill response operations or during spill response exercises, should not extend to foreign-flag vessels. The commenter notes that, as written, the exemption for OSRVs and OSVs may be interpreted as allowing similar foreign vessels to enter or leave U.S. ports without reporting, and that such vessels currently work “under the radar” of government agencies and thus create security vulnerabilities. The commenter recommended that the Coast Guard add “U.S.” to § 160.204(a) to indicate that exempt vessels do not include foreign-flag vessels. The commenter cautioned that if the Coast Guard left the final rule written as the proposed rule, the final rule would allow foreign-flag offshore supply vessels to come and go at will in this country, and that this would

represent a security risk to America, in direct violation of the law.

We note that under § 160.204(a), OSRVs, whether foreign flag or U.S. flag, will continue to be exempt from requirements in 33 CFR part 160, subpart C, when they are engaged in actual spill response operations or during spill response exercises, as will U.S. and foreign passenger vessels and offshore supply vessels when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf. As we have noted, however, we recently published an NOA–OCS final rule (76 FR 2254, Jan. 13, 2011) that covers notice-of-arrival requirements on the OCS and satisfies SAFE Port Act implementation requirements intended to improve maritime security through enhanced layered defenses, and for other purposes. For NOA requirements on the Outer Continental Shelf, see 33 CFR part 146. We did not make any changes from the proposed rule based on this comment.

One commenter stated that the Coast Guard should consider that individual vessel waivers by COTP will not work given the number of vessels visiting various ports at various times and having to be considered individually.

We anticipate that COTPs will be able to meet the demand created by waiver requests. We recognize that factors presented by certain vessels that will be subject to NOAD requirement for the first time under this final rule may warrant a waiver for a specific vessel within a specific COTP zone, and that COTPs may receive more waiver requests in response to this final rule. We have taken into consideration the COTP's workload under the waiver provision of § 160.214 and have reviewed blanket exemption requests extensively to determine if relief may be granted at the national level in this final rule. We have determined that allowing COTPs to grant waivers should continue to be a means we leave open to provide relief from NOAD requirements when such relief is justified in a specific situation.

One commenter focused on the OCS and requested that the Coast Guard ensure that the exemptions from NOA only apply to U.S.-flag vessels, and that this exemption should be across the board—not just for offshore supply vessels, but for OSRVs and some of the other vessels that have exemptions.

We have concluded that limiting exemptions to U.S.-flag vessels is impracticable because it would place an unnecessary burden on foreign-flag vessels, which may interfere with commerce. The NOA requirements serve

a variety of purposes, including, but not limited to, maintaining MDA and scheduling inspections. Once a foreign-flag ship has been screened and appropriate activities (inspection, boarding, etc.) have been carried out, the Coast Guard has assessed, and in some cases reduced, the risk the ship may pose.

One commenter stated that, from the enforcement side, there is sometimes a difference between how arrivals and departures are reported. The commenter offered the following example: A vessel arrives in Miami and submits an NOA for Miami. While the vessel is in port, it shifts to Fort Lauderdale, which is still within the COTP Miami Zone. But for the NOD to be accurate, it would report Fort Lauderdale. The commenter asks whether this scenario creates enforcement confusion and if there is some means to address this.

We do not believe situations like this will create an issue as it pertains to enforcement. The COTP is aware of his or her geographical boundaries and the ports within those boundaries. And, as we discuss elsewhere, we have eliminated our proposed notice of departure. But if a vessel is operating in a single COTP zone and submits an NOA from a departure port within that zone that is different from their arrival port in that zone, it will not create confusion.

One commenter who reported making frequent near-port offshore transits offered his assessment that local Coast Guard concerns deal with the inability to monitor vessel traffic offshore. The commenter stated that one of the problems in the industry is the Coast Guard's inconsistent application of NOA exemptions or overriding regulations in response to security concerns.

We work to ensure consistent application of the NOA regulations throughout all U.S. ports by establishing an internal NOA enforcement policy that provides guidance to all field units. We also provide general guidance to clarify the intent or purpose of certain provisions of the NOA and to ensure it is being applied consistently throughout the Coast Guard. This information is located in the General Information portion of the “Port State Control” page on Homeport (<http://www.homeport.uscg.mil/>) and on the NVMC World Wide Web site (<http://www.nvmc.uscg.gov>). We have also published a notice of policy in the **Federal Register** that addresses how the definition of “port or place of destination” is interpreted by the Coast Guard. See 71 FR 62210, October 24, 2006. Please note that while we try to

ensure consistency, there are port specific factors that the COTP must take in consideration when evaluating the potential risk that may be associated with a vessel arrival to his or her zone.

4. NOA Information

One commenter supported the proposed rule's added NOA requirements to submit the Maritime Mobile Service Identity (MMSI) number and to report whether the vessel is 300 gross tons or less, but recommended that the Coast Guard require the submission of information on vessel type, last and next port of call, and hull type for tankers and barges.

We do not believe that collecting vessel and hull type of tankers and barges through NOAD reporting requirements is necessary because we are able to determine vessel and hull type through other means.

Section 160.206 and Table 160.206(2)(iii) and (ix) of this final rule require reporting of the port or place of the United States a vessel will visit, as well as its last port or place of departure. Based on this comment, however, we did make a nomenclature revision, adopting defined terms for use in Table 160.206(2)(ix) by changing the proposed “Last Port of Call” to “Last port or place of departure,” and making a corresponding change in Table 160.206(2)(x).

One commenter recommended that the Coast Guard specify the Universal Location Code (ULC), developed by the Federal Industry Logistics Standardization (FILS) Committee, as the means to report the data element in proposed Table 160.206(2)(iii) (“For the port or place of the United States to be visited, list the name of the receiving facility, the port or place, the city, and the state.”). The commenter noted that this revision would allow the Coast Guard to easily cross reference information on locations collected by other agencies to improve safety and enhance security. The commenter identified a government World Wide Web site where the list of location codes would be available.

As noted, § 160.206(a) and Table 160.206(2)(iii) of this final rule, as in the proposed rule, requires the name of the receiving facility, port or place, city and state. This information is available to vessel owners and provides the necessary detail required for this final rule to meet its PWSA objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways and to permit vessel traffic management. We are active participants of the Federal Initiative for Navigation Data Enhancement (FINDE)

and proponents of the FINDE ULC. Unfortunately, we are not currently able to use the ULC in our enterprise systems. Also, we would want to initiate a separate rulemaking to invite comments specifically on the use of ULCs for NOAs before imposing such a requirement. Therefore, we have not made any changes based on this comment.

One commenter stated that the new requirement for vessels to submit their estimated time of arrival to the entrance to the port (if applicable) would prove extremely helpful for vessels calling on the Lower Mississippi River.

We concur that it would be helpful for the Coast Guard to receive a vessel's estimated date and time of arrival to the entrance of the port, but because we can obtain this data through other existing means, we have decided not to include this new proposed item (2)(xi) in Table 160.206 in this final rule. This paragraph would have required the submission of the estimated date and time of arrival of when a vessel would reach, for example, the sea buoy, pilot station, or COLREGS demarcation line of a port, if applicable. The Coast Guard can use AIS data in combination with the essential, current NOA requirement in paragraph (a)(2)(iv), for a vessel to estimate the date and time of its arrival "[f]or the port or place of the United States to be visited," to provide MDA on when the vessel will reach the entrance to the port.

One commenter wanted the Coast Guard to take a more aggressive stance on Certificate of Adequacy compliance regarding maritime pollution, and recommended that we use this rule to require the submission, as part of NOADs, of two IMO forms, the Advance Notice Form (ANF) discussed in MEPC.1/Circ.644, and the Waste Delivery Receipt (WDR) discussed in MEPC.1/Circ.645, to provide necessary visibility to verify COAs and help implement the International Convention for the Prevention of Pollution from Ships (MARPOL). The commenter stated that the timing differential between NOA and ANF and WDR submissions would need to be rectified.

The submission of IMO forms to verify the Certification of Adequacy to implement MARPOL, and the implementation of a mandatory mechanism for ships to request shoreside reception services and a follow-up questionnaire are outside the scope of this rulemaking. We have not made any changes from the proposed rule based on this comment.

At the March 12, 2009, public meeting on MARPOL Reception Facilities (see 74 FR 8807, February 26, 2009), we raised

a number of challenges regarding the shoreside waste reception issue. We noted that a mandatory mechanism needs to be implemented for ships to request shoreside waste reception services and also to report whether services were provided as requested.

One commenter stated that MARPOL reception facility reporting should not be integrated into the electronic Notice of Arrival and Departure (eNOAD) program because the commenter supports the use of recently published IMO standardized Advance Notice Forms and Waste Delivery Receipt as the vehicle by which port states can collect information on the adequacy of MARPOL reception facilities in their nations. The commenter noted that integrating various information needs of these forms would be difficult to do in a clear and concise fashion, given the already complex eNOAD format. The commenter also stated that waste reception facility data, under a separate system, can be routed directly to the appropriate Coast Guard officials for review and action, and obviate the need for these officials to access the eNOAD database to retrieve reception facility information.

The Coast Guard has developed the eNOAD application, accessible via the National Vessel Movement Center's (NVMC's) World Wide Web site, to provide a vessel with the means of fulfilling the arrival and departure notification requirements of the Coast Guard and CBP online.

While we may agree with this MARPOL reception facility comment, as noted above in response to a commenter with a different view, revising the NOA rule to integrate MARPOL reception facilities into NOAD requirements, and thus eNOAD application, is beyond the scope of this rulemaking.

One commenter agreed with the Coast Guard in requiring only the last five foreign ports for domestic vessels, but the commenter stated that it is very important that foreign vessels supply the Coast Guard with the last five ports, whether domestic or foreign, because the Coast Guard needs to start looking at the total picture of the U.S. maritime domain.

We note that, as proposed in the NPRM, we have added item (2)(ix) to Table 160.206, which, under § 160.206(a), requires a vessel, domestic or foreign, to list its last port of departure. We have also converted two data fields for the last five ports or places visited to the last five foreign ports or places visited. See Table 160.206(2)(i) & (ii). Once the vessel has entered U.S. waters, the last-port-or-place-of-departure data generated by

Table 160.206(2)(ix) will provide us with sufficient data on a vessel's travel within U.S. waters to maintain MDA.

This information is necessary for Coast Guard compliance verification examination matrixes to determine the threat a vessel poses to a U.S. port. The last-five-foreign-ports information is also needed for the Condition of Entry (COE) Program which assesses effectiveness of anti-terrorism measures in foreign ports. If effective anti-terrorism measures are not in place, then conditions of entry are imposed on vessels bound for the United States—see *e.g.*, recent COE notice (79 FR 33771, June 12, 2014). This information has also been useful to screen to determine if a vessel has visited a country impacted by the Ebola virus outbreak within its last five ports of call.

One commenter stated that the COTP in Houston needs to know that a vessel came from New Orleans, and prior to that, that it came from Mobile. The commenter noted the Coast Guard needs to be able to track a vessel moving through the Gulf of Mexico.

As mentioned above, we have added item (2)(ix) in Table 160.206, which, under § 160.206(a), requires vessels to list their last port or place of departure. So whether a vessel is coming from a foreign port or place or another U.S. port or place, the COTP in Houston in the commenter's example will have access to that information. If a COTP is interested in identifying the track of a vessel once it is in U.S. waters, there are other means and methods (*e.g.*, AIS and VTS data) at the COTP's disposal which can be used to determine this without requiring vessels to list more than their last U.S. port or place of departure.

One commenter stated that while it may be outside the scope of this rulemaking, the Coast Guard should add the following recommendation to the scope of the rulemaking. The commenter recommends that adding more data elements that combine Coast Guard reporting with additional customs reporting could eliminate an entire set of paperwork that is processed for the CBP, namely, CBP Form I-418, Passenger List—Crew List. The commenter noted that this is not the first time the commenter has made this recommendation and that, if adopted, the change would save both the private sector and government agencies a great deal of time and money. Another commenter stated that many other improvements can be made to this reporting system and repeated a past suggestion for a working group of users sitting together with the Coast Guard and the CBP to identify opportunities

for improving and streamlining the report.

We are working with the CBP to address any eNOAD application issues related to Form I-418. Regarding the form itself, the CBP has noted that Form I-418, which is used by Masters, owners, or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act, is completed upon the vessel's arrival at its first port in the United States. See 75 FR 1069, January 8, 2010. The CBP is looking for ways to streamline and automate that process (see the CBP supporting statement for information collection 1651-0103). We have not made a change from the proposed rule based on this comment.

We remain open to suggestions for improving the eNOAD reporting system. We have forwarded the suggestion for a working group to the responsible Coast Guard office. Our focus here, however, is on specific comments on the revisions to the CFR that we proposed in our NPRM or specific comments on how we might best revise NOAD regulations. We have made no changes from the proposed rule based on these comments.

One commenter stated that the massive amount of reporting information and duplicate reports are indicative of a system that is "working harder and not smarter." The commenter presented as an example that the Coast Guard proposes NOAs that require four vessel identifiers. The commenter stated that this means that on every NOA, we are reporting the name, call sign, official number, and now the MMSI number, and that three of these are unique vessel identifiers.

In § 160.206(a) and item (1) in Table 160.206, we require submission of the vessel's name, call sign, IMO international number (or an official number if no IMO number), and, if applicable, MMSI number, because multiple vessels may carry the same name. These four NOA data elements allow us to more quickly either authenticate the vessel's reported identity or detect problems with those submitted data. In the latter case, we seek to determine if there is an error in one or more of the identifiers or if a vessel is attempting to submit false or improper identification data.

One commenter stated that Coast Guard field units are continuously telling them that they have to report all broken equipment on the NOA. The commenter asserted this is not required currently or in the revised regulations, but that there is a lack of clarity on this point. Finally, the commenter stated that whenever there is a requirement to submit a CG-2692 form (Report of

Marine Accident, Injury or Death) for a casualty report, they are constantly asked why they did not report it on the NOA.

Regarding broken equipment, we work to ensure that our field units know NOA requirements, including the one for reporting broken navigation equipment on the NOA. Existing regulations do require an NOA report on the operational condition of navigation equipment required by 33 CFR 164.35, and, as we proposed, Item (6) in Table 160.206 of this final rule expands that requirement to report on the operational condition of all navigation equipment (including AIS) required in 33 CFR part 164. Moreover, in a note to Table 160.206, we specify that submitting this report in the NOA, "indicating that navigation equipment is not operating properly[,] does not serve as notice to the District Commander, Captain of the Port, or Vessel Traffic Center, under 33 CFR 164.53," which has additional reporting requirements. Regarding casualties, if the marine casualty involves a hazardous condition as defined by redesignated § 160.202, the notice given to the nearest Coast Guard Sector Office or Group Office, as required by redesignated 33 CFR 160.216, will satisfy 46 CFR 4.05-1 casualty reporting requirements. Note, however, that there is a separate requirement under 46 CFR 4.05-10 that requires a written report on Form CG-2692. The NOA is not used to satisfy the redesignated § 160.216 requirements to report hazardous conditions, but in cases where the failure of a vessel's navigation equipment creates a hazardous condition, the question as to why that condition was not reported on the NOA is appropriate.

One commenter expressed problems discerning the requirements, particularly with immigration agencies and the CBP, regarding whether to use the spelling from a national passport or a U.S. Visa on our reports.

We cannot address issues that pertain to the CBP or other agency regulations that involve immigrants; for purposes of Coast Guard NOAD regulations, however, we have left it to the owner or operator to determine which document more accurately reflects the spelling of a person's name. For questions pertaining to CBP electronic passenger and crew manifest requirements, please visit the NVMC's World Wide Web site at <http://www.nvmc.uscg.gov> or call the CBP at 409-727-0285, extension 238.

One commenter who occasionally deals in lightering, particularly in other areas of the world, was not sure whether to list a lightering location as a last port, because it is not officially a terminal or

a dock. The commenter expressed problems with explaining to Masters of his company's vessels how to deal with transits of U.S. and international canals, such as the Panama Canal. The commenter offered an example of whether a vessel would need to report coming through the Chesapeake and Delaware Canal on a nearby coastwise voyage.

If a vessel is engaged in lightering, then the lightering position would not be considered a port or place under 33 CFR part 160, and this not would trigger part 160 applicability unless, while lightering, the vessel anchors or moors in the navigable waters of the United States or at a deepwater port. If a vessel anchors or moors in foreign waters while it is lightering, than that lightering position would be considered a foreign port or place and must be included on vessel's NOA under § 160.206 (a) and item (2)(i) in Table 160.206, if it was one of the last five foreign ports or places visited. Regarding canals, if a vessel is only transiting through a canal, and does not anchor or moor during that transit, then it would not be considered as arriving at or departing from a port or place.

We had proposed to add new fields for crewmember passport country of issuance and passport date of expiration in Table 160.206(4)(v) & (vi), and for persons in addition to crew, passport country of issuance and passport date of expiration fields in Table 160.206(5)(v) & (vi). We have not included these new fields in our final rule because we consider this information to be a matter of record based on CBP requirements.

5. NOD Information

One commenter discussing fishing industry vessels stated that the largest issue with the proposed rule is the time it takes to get an accurate NOD list of persons sailing and to input these data into electronic format for transmittal to the Coast Guard. As further discussed in the "When to Submit an NOD" section below, VI.A.8, based on comments on the NPRM, we have eliminated our proposal to require NODs. We have deleted § 160.213(a); this final rule does not require NODs.

6. Electronic Submission

One commenter recommended that the Coast Guard allow continued use of the Excel Workbook format for submission of NOADs via email, which the commenter believes is more process-effective. The commenter noted that some vessels are not set up to connect directly to the Internet to make real-time submissions, and that it is more process-effective for the ship's Master to submit

updates to the NVMC directly rather than by going through a vessel agency service. The commenter stated that the format and process for submitting NOADs and updates in the Excel format has been of minimum administrative burden for their Masters and is easily supportable without requiring direct real-time Internet connectivity from the ship.

Under this final rule, and as indirectly reflected in the proposed rule, we will accept the following electronic forms: Submission through the NVMC eNOAD World Wide Web site, XML, which includes Excel Workbook format. XML spreadsheets may be submitted via email to sans@nvmc.uscg.gov. Based on this comment, we are revising the final rule from the proposed § 160.210 to specify that these currently available options, or other methods made available on <http://www.nvmc.uscg.gov> in the future, may be used to satisfy this requirement.

One commenter stated that many commercial fishing vessels do not have the capability to submit NOAD information electronically, and therefore the rule creates an additional administrative workload that may require hiring additional administrative personnel because the information would have to be sent by a shore-based office.

We have sought to impose the least burden possible while still meeting our regulatory objectives of obtaining information necessary to help ensure that we reach our PWSA objective of enhancing the safety and security of U.S. ports and waterways and to permit vessel traffic management. Many commercial fishing vessels would not be required to submit NOADs because they would qualify for an exemption, such as operating exclusively within a single COTP zone (§ 160.204(a)(5)(ii)) or being a U.S. vessel 300 gross tons or less, engaged in commercial service and not coming from a foreign port or place (§ 160.204(a)(5)(vi)).

Regarding fishing vessels and other vessels, we do not believe our final rule will cause additional costs based on some vessels not having the capability for electronic submission other than vessels we have already estimated costs for in the regulatory analysis (RA). CBP requires electronic submission on most, if not all, of the vessels added by our final rule. Computer and internet access costs were captured by CBP in its 2005 Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft (aka Advance Passenger Information System or APIS) final rule (70 FR 17820, April 7, 2005) that required all commercial vessels (minus

ferries) “arriving in the United States from any place outside the United States,” to submit arrival manifests electronically; therefore, we did not include the cost of computers or internet service for vessels affected by our rule. The Coast Guard assumed that vessel owners and operators will submit arrival information from onboard the vessel and not leverage any efficiencies from centralized fleet reporting.

We did revise the current Mississippi-River-and-tributaries exemption, but we anticipate that most of those vessels will be able to take advantage of other exemptions afforded in the final rule such as the single-COTP-zone or U.S.-vessel-300-gross-tons-or-less exemptions. The Coast Guard does not collect information specifically on vessels that transit solely on the Mississippi and its tributaries; therefore, we are unable to quantify the number of vessels that take advantage of the current exemption.

Also, in our final rule we created an exemption for certain ferries. Those on a fixed route between two or more COTP zones qualify for an exemption if they make a one-time submission as specified in § 160.204(a)(5)(vii) to qualify for the exemption, and are required to make future submissions only if their schedules or other submitted information changes. This alternative submission would not require a computer, and submission of such information has been a common industry practice since 2003 to obtain waivers from COTPs, and therefore any ferry lacking the capability for electronic submission would not incur additional costs as a result of our final rule.

One commenter noted that limiting eNOAD submissions to this World Wide Web-based program may pose problems when severe weather events cause power outages; for example, companies did not have Internet service post-Hurricane Katrina until cell phone towers were rebuilt and cable re-laid. The commenter recommended that the Coast Guard provide an alternative method to report to the NVMC.

This final rule does not limit submissions to only NVMC World Wide Web-based applications. It also allows for other electronic forms of submission such as email. But in cases where communication infrastructure is damaged and telecommunication services are not available due to natural disasters such as Katrina, the COTP may waive any or all NOA requirements within her or his COTP zone; also, a vessel may request a waiver under 33 CFR 160.214 of any or all NOAD requirements.

One commenter noted that it operates between the eastern Caribbean and the Mid-Atlantic States, and would like to alert the Coast Guard to some obstacles that might arise by requiring only electronic submissions. The commenter stated that one of its bases is St. Thomas, USVI, and on most of its vessels, the computers—if they have them on board—do not support the downloading of the notices or responses to the notices. The commenter noted that if its employees go shoreside to comply, they need to use Internet cafes that have computers and technology dating back to the 1990s. The commenter further stated that if they go to the homes of fellow captains, they have dial-up systems instead of broadband, and it takes hours to comply, so that doing away with paper notification entirely presents an obstacle.

We understand that some vessel owners may submit shoreside NOAs but the Coast Guard does not collect information on the number of vessels that utilize this method of NOA submission. For the regulatory analysis, we assumed that all NOADs will be submitted from the vessel, and not take advantage of efficiencies from centralized fleet reporting. As use of the Internet continues to become more popular including wireless Internet access via cellular/satellite networks, we anticipate greater access to faster Internet transmissions in more locations. Also, the vessel Master, owner, or agent may take advantage of XML spreadsheets—readily available on the NVMC’s World Wide Web site—that can be downloaded and retained for future use to minimize the time needed to transmit NOAs.

As stated in the NPRM, mandating electronic submission of NOAs allows the Coast Guard to quickly and automatically process, validate, and screen arrival notices. See 73 FR 76303, December 16, 2008. As discussed in VI.A.12, however, we amended § 160.210(a) to permit phone or fax submission of an NOA or an update, in limited circumstances.

7. When To Submit an NOA

As noted in the *Exemptions* section above, one commenter reported a problem with being able to meet the requirement to submit a manifest either 96 hours or 1 hour before departure because his youth-program sailing vessels, which sometime sail to Canada from Tacoma, WA, do not have computers onboard, and there is no wireless Internet or network connections in the inlet from which these vessels sail.

Under existing Custom and Border Protection requirements in 19 CFR 4.7b and 4.64, commercial vessels² arriving from a foreign port or departing for a foreign port are required to submit arrival or departure manifests electronically. This Coast Guard final rule only requires NOAs, and those are to be submitted at the same times that CBP requires that arrival manifests be submitted. These youth-program sailing vessels may not meet CBP's definition of "commercial vessel" and thus may not trigger CBP requirement, but the Coast Guard may consider them vessels in commercial service and thus subject to 33 CFR part 160 NOAD requirements, unless they otherwise fit into an exemption.³

As we noted previously, under § 160.212, the time an NOA must be submitted varies based on the duration of the vessel's voyage. Under § 160.214, however, a vessel may request a waiver of NOAD requirements from the COTPs whose zones it plans to transit. This waiver provision allows the COTP to make assessments based on specific factors about the vessel or COTP zone that are difficult to reflect in a general rule without imposing unnecessary burdens.

One commenter wrote that lowering the applicability threshold for NOA reporting would not impact its fleet, which operates exclusively in the Great Lakes, but the commenter found some aspects of the current eNOAD reporting timelines to be punitive to vessels trading exclusively within the Great Lakes and St. Lawrence Seaway system. This commenter requests that the number of hours before arrival that an NOA is due, as stated in § 160.212, should be reduced to 6 hours for vessels engaged in non-ocean-going, short-haul (voyage of 24 hours or less) shipping. Also, for voyages of less than 24 hours, vessels may also have to contact local COTP.

² There are differences in the terms and definitions CBP and the Coast Guard use regarding commercial vessels. In 19 CFR 4.7b (a), CBP defines "commercial vessel" as "any civilian vessel being used to transport persons or property for compensation or hire." In 33 CFR 160.202, the Coast Guard uses the 46 U.S.C. 2101 definition of "commercial service" ("any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel") to identify vessels in § 160.203 that are subject to NOAD regulations.

³ For arrival submission times, compare 19 CFR 4.7b(b)(2) with 33 CFR 160.212(a)(4); for departure submission times, compare 19 CFR 4.64 (b)(2) with 33 CFR 160.213(a). Because these youth program sailing vessels occasionally sail to and from Canada, they would not be eligible for the exception of operating within a single COTP zone under § 160.204(a)(5)(ii) for such trips because they would be leaving the COTP zone and thus not operating exclusively within it.

We considered this request to relax the timelines in 33 CFR 160.212 for submitting NOAs and NOA updates for vessels in general engaged in non-ocean-going, short-haul shipping, but have determined that this information is needed from such vessels on the timelines we proposed so that the Coast Guard and other federal entities have sufficient time to screen these vessels. As proposed in the NPRM, however, we did add a provision that would allow an NOA submission 60 minutes or more before departure for U.S. vessels 300 gross tons or less, engaged in commercial service and not carrying CDC, that are coming from a foreign port or place on a voyage of less than 24 hours. See § 160.212(a)(3) and discussion in NPRM at 73 FR 76303, December 16, 2008. As discussed below in the *Financial Impact* section, VI.A.12, in response to another comment on the NPRM and provisions in the Boundary Waters Treaty (36 Stat. 2448; Treaty Series 548), we have revised § 160.212(a)(3) to extend its provisions to Canadian-flag vessels arriving directly from Canada, via boundary waters, to a U.S. port or place in the Great Lakes.

We note that for vessels subject to the 60-minutes-before-departure requirement, under § 160.214, a U.S. or foreign vessel may seek a waiver from the requirement for when NOA or NOA updates must be submitted. The COTP, who can evaluate the waiver request based on the circumstances of the COTP zone in which the vessel will arrive, may grant a waiver "for any vessel or class of vessels upon finding that the vessel, route, area of operations, conditions of the voyage, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of safety, environmental protection, or national security."

One commenter asked the Coast Guard to consider allowing vessels with a voyage of less than 24 hours to submit an NOA prior to departure. The commenter stated that this change would reduce the number of NOAs that need to be updated because data are not really known until departure. This commenter noted that current discussions of the "Seaborne Highway" suggest that the number of vessels with relatively short port calls and voyage times, and those operating on established schedules, is expected to increase. Finally, this commenter stated there is an inability to submit NOAs with consecutive ports (consolidated NOAs).

We acknowledge that for vessels making short voyages it would be more

advantageous to the owner or operator if NOAs could be submitted as close to departure as possible. The Coast Guard and other government agencies, however, need the time specified in the final rule to analyze and act on NOA data. We also need NOAs to reflect current data.

Section 160.212(a)(3) of this final rule permits U.S. commercial vessels of 300 gross tons or less, arriving from a foreign port or place on a voyage of less than 24 hours, to submit an NOA up to 60 minutes before departure. Whether the voyage is short or long, because of the nature of their cargo, we require towing vessels moving CDC solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia to submit an NOA before departure, but at least 12 hours before arrival at the port or place of destination. See § 160.212(a)(2).

As for the inability to submit NOAs with consecutive ports, we note that the submission of consolidated NOAs was introduced by a temporary rule issued soon after September 11, 2001 (66 FR 50565, October 4, 2001), and was included in a 2003 final rule (68 FR 9537, February 28, 2003). Under current regulations, a vessel may submit a consolidated NOA if, while on a single voyage, it plans to stop at more than one port or place in the United States.

In the NPRM, we proposed to eliminate § 160.206(d), which specifically addresses consolidated NOAs, and to change the NOA data required by § 160.206(a) and Table 160.206(2)(iv) & (v) from information regarding each U.S. port or place to be visited to information for "the port or place of the United States to be visited." We proposed this change, which is contained in this final rule, because we found that some vessels fail to submit updated crew information and cargo information after submitting the consolidated NOA. As previously noted, we have redesigned our eNOAD application to retain previously submitted information to help reduce the burden of preparing subsequent submissions.

One commenter requested that for U.S.-flag vessels operating on the Great Lakes on voyages of less than 24 hours, the Coast Guard reinstate a previous requirement that all vessels submit an NOA prior to departing the dock. The commenter notes this would avoid subsequent amendments caused by changes before departure but after an NOA is submitted. The commenter also stated that these vessels pose low security risk, and that they will be required to have a Transportation Worker Identification Credential (TWIC)

by April 15, 2009, and thus would not represent a security threat. In addition, this commenter recommended that vessels that fuel in Canada should be exempt from NOA requirements because there is no demonstrable need to file an NOA when simply fueling in Canada. This commenter noted that the 24-hour rule does not recognize that changes in vessel plans can require an unanticipated fueling in Canada, and that a refueling vessel would either have to check down or go to anchor to comply with the 24-hour rule if the local Coast Guard COTP does not allow it to enter sooner.

We note that under both the existing regulations (§ 160.212(a)(3)(ii)) and this final rule (§ 160.212(a)(4)(ii)), a vessel greater than 300 gross tons on a voyage of less than 96 hours could submit an NOA just before departure, provided the NOA is submitted at least 24 hours before arrival. In this final rule, we allow U.S.-flag vessels 300 gross tons or less that are coming from a foreign port or place to submit an NOA 60 minutes or more prior to departure if the voyage is less than 24 hours and the vessel is not carrying CDC (see 33 CFR 160.212(a)(3)). As noted immediately above, the 60-minute requirement is necessary to provide the Coast Guard and other federal agencies an opportunity to screen the vessel's passengers, crew, and cargo.

Regarding updates, for vessels greater than 300 gross tons, § 160.212(b)(4)(iii) is intended to accommodate unexpected incidents and allows vessels on voyages of less than 24 hours to submit an update at least 12 hours before arriving in the port or place of destination. For U.S. vessels 300 gross tons or less, under § 160.212(b)(3), an NOA update may be submitted as late as 6 hours before arrival.

8. When To Submit an NOD

One commenter recommended that the Coast Guard remove the proposed requirement that U.S.-flag vessels operating between U.S. ports submit NODs, because this requirement would impose an excessive administrative burden on vessel operators without producing significant offsetting security benefits. The commenter stated that the proposed rule would require U.S.-flag vessels traveling from one U.S. port to another U.S. port, after completing a voyage from a foreign port, to submit NODs—as U.S.-flag vessels carrying CDC are required to—even if they have never visited a foreign port.

In response to comments, we have removed the NOD requirement. This final rule does not require NODs. We have determined that requiring an NOD

for a vessel going to a U.S. port is unnecessarily redundant because the vessel would also have to submit an NOA for their next U.S. port of destination. For vessels departing for a foreign port or place, we have not retained our proposed new requirement for an NOD because we consider that information to be a matter of record based on CBP requirements for vessels departing for a foreign port or place to submit departure manifests.

One commenter noted that, in the discussion of NOAD requirements, there is no discussion of how those requirements might impact the CBP's reporting requirement for vessels operating under a cruising license, specifically, private vessels greater than 300 gross tons. The commenter also stated that, while an NOD is not required while transiting the same COTP zone, the CBP still requires reporting. The commenter further asked whether this reporting will take the place of the reporting required if the vessel changes COTP zones.

We work with the CBP to ensure consistency in reporting requirements whenever possible; there may be some differences in requirements, because our missions and those of the CBP differ. We do not believe our NOA requirements will impact CBP reporting requirements, and as we have noted, we have removed our proposed NOD requirement.

To note differences between the CBP electronic-passenger-and-crew-arrival-manifest requirements and our NOA requirements, compare 8 CFR 231.1 and 19 CFR 4.7b with 33 CFR part 160, subpart C. For the CBP electronic-passenger-and-crew-departure-manifest requirements, see 8 CFR 231.2 and 19 CFR 4.64; see also 8 CFR 231.3. For each regulation, you should ensure that you provide the information required.

9. Force Majeure

One commenter stated that with severe weather conditions, requirements for eNOA filing may negatively impact vessel safety because a vessel may be subject to financial penalty if it deviates to another port or harbor. The commenter also noted that in addition to weather conditions, vessel destinations can change frequently and on short notice because of port and dock congestion, ice conditions, and cargo availability.

We believe that our final rule properly addresses unanticipated or unforecasted severe weather conditions. Vessels that are forced to deviate to another port or harbor because of severe weather may claim Force Majeure, notify the local COTP of arrival, and provide the limited

information required under § 160.215. The NOA update requirements in § 160.208 are designed to accommodate changes in arrival caused by non-weather factors, such as port and dock congestion or cargo availability. Under 33 CFR 160.204(a)(5)(vi), U.S. vessels 300 gross tons or less, engaged in commercial service, not coming from a foreign port or place, and not carrying CDC, are exempted from meeting this NOA requirement.

10. Need for NOAD Data and Agency Collaboration in Obtaining It

Many of the comments in this category were focused on the interaction of Coast Guard and CBP requirements. We present these first.

One commenter stated that the CBP and the Coast Guard should collaborate to make current software more efficient and less confusing, and to eliminate repetitive entries. The commenter noted that the same data are captured currently by the CBP, so additional reporting is burdensome and unfair because it serves no justifiable security purpose. Also, the commenter stated that the CBP uses real-time data to screen passengers when they leave Canada and when they enter the United States. Another commenter noted that there is no point in collecting and submitting the same information gathered and recorded by the CBP.

Another commenter noted that the CBP and the Coast Guard have the same security goals, and that they should improve information sharing to lessen the demand placed on vessel operators by duplicative information requests. Another commenter stated that the CBP and the Coast Guard undertake impractical and financially irresponsible, duplicative efforts, noting that all of its international ferry passengers are pre-inspected by the CBP at the Victoria, BC terminal and are then inspected on arrival at Port Angeles terminal, and that every passenger must complete the International Crossing Form (IMO 24–2). Ferry operator employees provide vehicle license plate numbers to the CBP. The commenter also notes that under this system, there would be multiple layers of security for ferries, but still only one layer of security for the land border, which represents direct competition for ferries.

Another commenter recommended that the CBP and the Coast Guard compare Form I–418 data with eNOAD submissions and then add other data fields to eliminate the need for a paper Immigration and Naturalization Service (INS, now the CBP) Form I–418 (Passenger List—Crew List). Another commenter also sought the elimination

of paper Form I-418 through programming changes to the eNOAD system to capture all necessary crew data. The second commenter noted that vessels are still required to file a paper Form I-418 with the CBP, which contains virtually the same data elements that are collected in the eNOAD, with the exception of the following three data elements in I-418:

1. Will crewmember be performing longshore work while in the U.S.? (yes/no)
2. Date crewmember joined the ship.
3. Date crewmember separated from the ship.

One commenter saw the need for the addition of a field to declare a valid International Carrier Bond, because this information would assist the CBP in tracking fines related to APIS submissions and reduce the number of intent-to-fine notices being delivered to the wrong vessel agent.

Finally, a commenter stated that the Coast Guard and other parts of the Department of Homeland Security should coordinate their information needs, and noted that the proposed reporting system would require vessel operators to capture and forward information already captured by the CBP. Also, this commenter stated that creating duplicate information taken from several sources by different authorities or processes wastes time, resources, and effort and introduces the opportunity for error.

We agree that we should collaborate with the CBP. We have taken steps to eliminate duplicate reporting requirements and have established the NVMC World Wide Web site and eNOAD application to facilitate receipt of information required by both the Coast Guard and CBP. (For more details on the NVMC World Wide Web site, see VI.A.4, NOA Information, above.) In 2013, NVMC modified the eNOAD application to include fields which capture the Form I-418 information, allowing for electronic submission of this information. We will continue to work towards not only providing a single window for reporting, but also an application that is both more user-friendly and efficient.

As we stated in the NPRM preamble, we have worked with the CBP to avoid requiring a vessel to submit the same information to our agencies separately, but our agencies do have separate missions. The information we need to better enable us to fulfill our missions, for example under 33 U.S.C. 1225—to prevent damage to structures on, in, or adjacent to the navigable waters of the United States, safe vessel traffic management, as well as protecting those

navigable waters—may differ somewhat from information the CBP requires to implement the laws defining its missions. To the extent, however, that we both require the same information of vessels, we do not require separate submissions of that information to satisfy our respective regulations in 19 CFR and 33 CFR. The eNOAD application allows a vessel owner to fill out one NOA, which is disseminated to both the Coast Guard and CBP upon submittal.

This final rule requires submission of general cargo information as well as whether the vessel is carrying CDC, but the CBP requires more detailed information about the cargo. See 19 CFR 4.7. While the CBP has identified the eNOAD as an approved system for submitting vessel crew manifest data to the CBP (70 FR 17820, 17828, April 7, 2005, “vessel carriers must use the eNOAD or XML transmission methods to transmit required manifest information”), in 19 CFR 4.7(b)(2) it identifies a separate means for submission of electronic cargo declaration information to the CBP: The vessel Automated Manifest System (AMS) or any electronic data interchange system approved by CBP and announced in the **Federal Register** to replace the AMS system for this purpose.

We agree that we share security goals with the CBP. As we noted above and in our NPRM (73 FR 76303, Dec. 16, 2008), however, our agencies have different missions. We have worked with the CBP to avoid requiring a vessel to submit the same information to our agencies separately. The eNOAD application allows an arriving or departing ship to satisfy both agencies’ crew and passenger information requirements with a single submission to NVMC. See 33 CFR 160.206 and 19 CFR 4.7b.

Regarding international ferry passengers, as noted in the *Exemptions* section above, we have added an NOAD reporting exemption for certain ferries. To qualify for this exemption, the ferry operator must submit the schedule for the ferry to the COTP for each port or place of destination listed in the schedule by April 30, 2015 or at least 24 hours in advance of the first date and time of arrival listed on the schedule after § 160.204(a)(5)(vii) of this final rule becomes effective. Ferry operators seeking this exemption must also submit other information listed in new paragraph § 160.204(a)(5)(vii), including a 24-hour contact number. This exemption more closely aligns our regulations with the CBP’s advance electronic passenger or crew member

manifest exception for ferries in 19 CFR 4.7b(c)(1).

We are working with the CBP to address any eNOAD issues related to Form I-418, which calls for more information about passengers and crew than is required by the Coast Guard and CBP to be submitted electronically. As proposed in the NPRM, we have removed the option, formerly in § 160.206(c), of submitting Form I-418 to satisfy crew and passenger information reporting requirements. Regarding the form itself, which is used by Masters, owners, or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act, the CBP has noted that it is completed upon arrival of the vessel. See 75 FR 1069, January 8, 2010. The CBP is looking for ways to streamline and automate that process (see CBP supporting statement for information collection 1651-0103).

Currently, we permit multiple methods to submit an NOA. This final rule, which mandates electronic submission, will more closely align our procedures with those of the CBP, which currently receives advance electronic crew and passenger manifest information through the eNOAD application.

The request to add a field to declare a valid International Carrier Bond is beyond the scope of this Coast Guard rulemaking. We have forwarded this comment, however, to the CBP for their consideration.

One commenter noted that requirements for vessel operators to collect passenger, crew, and vessel movement information in the NOAD are duplicative and costly, and may produce misinformation.

We disagree. For reasons stated in the preamble of our NPRM, we do not view our NOA requirements as duplicative. We have removed our proposed requirement for vessels to submit an NOD.

One commenter stated that the Coast Guard’s proposed changes represent an unnecessary redundancy when transiting between U.S. ports, and that this undue burden increases the potential for errors. The commenter recommended that information submitted in the NOD should be shared with the recipients of the NOA to avoid having a separate notice with the same data being input by the owner or operator, and that only one notice should be required per voyage.

We acknowledge that there is unnecessary redundancy in the submittal of both an NOA and NOD for consecutive U.S. port visits. As previously mentioned, we have

eliminated our proposed NOD requirement.

One commenter stated there is no reason why a vessel would need to report in again (*i.e.*, after submitting an initial NOA) while the vessel is equipped with and monitored by AIS, especially if the vessel is participating in a cooperative VTS system. The commenter notes that the Coast Guard would already have information on the vessel's previous whereabouts at foreign ports.

We need the information collected on the NOA to fulfill our PWSA regulatory objective of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways. Neither AIS nor VTS requirements provide the data, such as changes in passengers or crew, called for by NOA requirements. The § 160.204(a)(5)(ii) exemption for a vessel operating in a single COTP zone reduces the number of NOAs that need to be submitted while still ensuring that NOAs can be used by a COTP to find out what vessels will be entering his or her COTP zone and who will be on board those vessels.

To the extent that a single transmission is the best way to meet agency requirements, we agree with one commenter who stated that the Coast Guard and sister agencies should coordinate information needs and submission timing so that a single NOAD submission will meet the information needs of all appropriate agencies. In addition to the CBP, we have worked with other agencies that need information from ships arriving at or departing from U.S. ports or places. For example, the Saint Lawrence Seaway Development Corporation also allows the eNOAD to be used as a means of satisfying SLSDC requirements. See Seaway Notice No. 6–2008 (<http://www.greatlakes-seaway.com/en/pdf/navigation/notice20080311.pdf>).

As noted above, based on NPRM comments, we have eliminated our proposed NOD requirement. We note that this change in no way alters CBP's current electronic passenger departure manifest and electronic crew member departure manifest requirements. See 19 CFR 4.64.

One commenter noted that expansion of NOAD and AIS requirements to additional vessel populations and transit events will enhance MDA. The commenter stated that while the current eNOAD system adequately tracks vessels entering U.S. waters bound for a U.S. port or departing a U.S. port, in many cases it does not adequately track vessel movements while a given vessel

transits among several U.S. ports. We agree; the expansion of NOA and AIS requirements implemented by this final rule will enhance MDA and greatly improve our ability to track vessel movements from one U.S. port or place to another.

One commenter stated that the proposed rule is not feasible, citing an example of a seafood company that has 10 vessels, 8 of which have over 100 persons sailing, most of whom are contracted on the day of sailing. Noting that these persons have already undergone background checks prior to being offered employment, the commenter questions the security benefit from the added workload this final rule will place on the fishing vessel industry and the Coast Guard.

As noted above, we have sought to impose the least burden possible while still meeting our regulatory objectives of obtaining information necessary to help ensure the safety and security of U.S. ports and waterways and to enhance vessel traffic management. A vessel large enough to have 100 persons on board may not qualify for the exemption for U.S. vessels 300 gross tons or less, engaged in commercial service not coming from a foreign port or place (§ 160.204(a)(5)(vi)), and may sail too widely to qualify for the exemption for a vessel operating exclusively in a single COTP zone (§ 160.204(a)(5)(ii)), but NOAs are intended to provide a layer of security that allows the Coast Guard and other federal agencies to act on current information about persons on vessels planning to enter U.S. waters, transiting U.S. waters, or about to arrive in a U.S. port or place. Background checks provide a layer of security, but they do not provide these real-time data that better enable us to prevent or respond to a maritime transportation security incident.

One commenter stated that DHS regulations in 8 CFR part 231 governing submission of arrival and departure manifests state that requirements for electronic submission of manifests do not apply to vessels arriving directly from Canada and that this should be formally acknowledged in this NOAD rule.

We disagree with this commenter's reading of 8 CFR part 231. Paragraph (b)(2) of 8 CFR 231.1 does contain an exception to the Form I–94 requirement for vessels "arriving directly from Canada on a trip originating in that country," and 8 CFR 231.2(b)(2) contains a Form I–94 exception for vessels "departing on a trip directly for and terminating in Canada." However, both of these sections point to requirements to submit manifests

electronically. Section 231.1(a) points to 19 CFR 4.7b requirements for the "electronic transmission of arrival manifests covering passengers and crew members," and § 231.2(a) points to 19 CFR 4.64 requirements for the "electronic transmission of departure manifests covering passengers and crew members."

One commenter requested that the Coast Guard reevaluate the final rule after the AIS requirements have taken effect and the Nationwide AIS (NAIS) monitoring infrastructure is in place, and then assess the continued need for NOAD requirements. The commenter notes that once AIS is fully implemented, it could obviate the need for NOAD reports and foreign crew data would continue to be provided through CBP reports.

As recommended, we will reevaluate our need for NOAD data after the AIS requirements in this final rule become effective and the development of AIS application-specific messaging that mirrors eNOAD (see "Broader Use of AIS" discussion in VI.B.2). Section 160.206 and paragraph 164.46(a) of this final rule reflect the different nature of information called for by the NOA and AIS requirements. To the extent that AIS can be relied on in the future to provide information that satisfies needs currently met only by NOAD data, we will consider revising NOAD regulations.

One commenter noted that some areas that CDC vessels transit have VTS or AIS coverage, or both, and stated that this coverage provides the Coast Guard with an excellent awareness of movements within the port area. The commenter writes that these systems should enable the Coast Guard to monitor the movements of these vessels within a port area without the need for frequent NOA updates and delays created by the current system. The commenter recommends that the Coast Guard use VTS and/or AIS coverage to track vessel movements in the port area instead of requiring frequent NOA submissions for vessels carrying CDC within a port.

We disagree with this recommendation. A combination of NOA, AIS, and VTS data provides a more complete picture that better enables us to meet our regulatory objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways. Not only would we be unaware of passenger and crew information for these vessels, but we would not have advance notice and other essential data obtained through

NOAs to put security measures in place for vessels carrying CDC.

One commenter stated that just one or two typing errors on a crew list can be repeated multiple times in extremely short order. The commenter noted that Houston is the petrochemical capital of the Americas, and is fed by surrounding industrial ports, the majority of which are in the same COTP zone. The commenter stated that its ships bounce between these ports on a daily basis and that the port chemical trading pattern occurs between these ports like a ball in a pinball machine. The commenter noted that transits can be as long as 16 hours sea-buoy-to-sea-buoy, and as short as 4 hours, and that combined with reports for small cargo parcels, the NOA for the next port, and the NOD for the existing port, there could be as many as five reports simultaneously, with the majority of the massive amount of information required by each being virtually the same.

Based on comments on the proposed rule, we eliminated our proposed NOD requirement. If a vessel is operating in the same COTP zone and is not carrying CDC, then the single-COTP-zone exemption in § 160.204(a)(5)(ii) would apply. We expanded our definition of “CDC residue” in our “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes” final rule (75 FR 59617, September 28, 2010). This revision, which reflects the reduced risks associated with CDC residue, allows more vessels to take advantage of the single-COTP-zone exception. For vessels carrying CDC cargo, however, the COTP must evaluate all factors associated with the cargo, vessel, crew, and the infrastructure in the port and determine if it is necessary to utilize Coast Guard resources to mitigate any potential threat that the vessel cargo may pose. Vessels carrying CDC also have the option to request a waiver from the local COTP under § 160.214.

In regards to reporting information, we are working towards eliminating the need to reenter data that are still applicable to the next NOA submitted via the eNOAD; through future software upgrades, we expect to decrease the amount of time spent on data entry with respect to both the NOA and NOD.

One commenter noted that, in the past, massive updates and reporting have resulted in industry delays and confusion at the National Vessel Movement Center and at the local Coast Guard field units because they are overwhelmed with too many reports and cannot decipher the new information. The commenter noted that these reports always result in delays to industry, and that the minimum delay

costs \$1,000 an hour. The commenter asks why the reports cannot be simplified, combined, and streamlined by consolidating all of the repeated information. The commenter stated that once the information has been input on the first report, there should be no reason to repeat it continuously because the vessels are screened coming into every port by Marine Information for Safety and Law Enforcement (MISLE) at the field unit and the information is already contained in the first submitted report. Finally, the commenter makes an apparent reference to the 60-minutes-before-departure NOA requirement in proposed § 160.212(a)(3) when noting that for short voyages, the Coast Guard has already considered an allowance within its regulations for vessels under 300 gross tons, but not for vessels with the aid of AIS and COP in place. The commenter noted that no vessel bounces around ports in the United States more than chemical tankers, and requested that the Coast Guard provide some type of allowance to facilitate this type of trade.

We are working proactively towards streamlining the eNOAD application and process. Many vessels that “bounce around” ports may qualify for an exemption because they are 300 gross tons or less or because they are operating exclusively in a single COTP-zone, but these exemptions are limited to vessels not carrying CDC. Vessels carrying CDC do not qualify for these exemptions because of the risk associated with their cargo. Also, chemical tankers departing to another COTP zone will need to submit an NOA. The infrastructure, assets, and other factors in each COTP zone may be different, creating a different level of risk for the zone. Each COTP will need to evaluate this risk and determine if there are any additional criteria or safeguards that will need to be put in place.

11. Scope and Scale

One commenter noted that the rule has direct implications for a transit ferry system for islands in Casco Bay, and would impose a significant economic and administrative burden for that industry. The commenter recommended that the Coast Guard consider the scope and scale of the rule, and not underestimate the significant economic impact or overestimate the necessity of the rule.

This final rule will not impact the Casco Bay ferry system because their vessels operate in a single COTP zone and therefore will be exempted. If Casco Bay ferry system chooses to operate in two or more COTP zones then it would

need to provide the COTPs in those zones a one-time submission of their schedule and the information requested in § 160.204(a)(5)(vii) to qualify for an exemption from standard NOA reporting.

We gave considerable consideration to the proposed rule and determined it is necessary to increase MDA by extending NOAD requirements for vessels that were not previously covered under part 160, but based on comments we received on the NPRM we have made revisions. We have revised our regulatory analysis to note existing CBP requirements and to reflect changes from requirements that the Coast Guard proposed in the NPRM and those we included in this final rule.

We expect this final rule to impose minimal regulatory costs on industry as a result of our elimination of the proposed NOD requirements, the addition of several exemptions and an exception, and the addition of only three NOA information fields that are new to industry. Also, as noted above in the “Exemptions” preamble discussion, based on comments on the NPRM, we have added an exemption for certain ferries in § 160.204(a)(5)(vii).

12. Financial Impact

We received various comments on the financial impact of the rule. Commenters noted that companies will incur computer software, programming, and hardware costs to process and protect data called for by this rule; that the cost of this added regulatory compliance is significant; that this rule presents an economic burden to marine operators already having financial difficulties; that there are substantial costs to capturing, coding, and transmitting data required by NOAD regulations; that requirements present a negative economic impact during a bad economy and a negative impact and threat to the viability of local economies; and that NOAD data collection will add a big administrative burden to passenger vessel operators.

The Coast Guard estimated the NOAD costs of the rule based on the rule’s requirements and current CBP regulations. The additional cost for U.S. vessel owners and operators is for the new NOA fields on the NOA form; only three of these fields are new to industry. See the regulatory analysis in the docket for further detail. Any vessel coming from or departing to a foreign port or place is required to submit an electronic NOAD under CBP regulations, which require the use of a computer and associated hardware and software; therefore, we did not include the cost of a computer and other associated costs

such as programming, hardware and software for the affected vessel population in this rule. Based on labor costs and the time to fill in the information for the three fields of data that are new to industry, we estimate it will cost a vessel owner or operator less than 1 dollar per trip to submit the additional arrival information. The Coast Guard attempted to reduce the financial impact of the NOA requirements on vessel owners and operators by adding exemptions and an exception based on comments from the NPRM. Additionally, the Coast Guard more closely aligned its requirements to CBP regulations in an effort to reduce the financial burden on industry and we also eliminated our proposed NOD requirement.

One commenter requested that the Coast Guard consider the cumulative financial and administrative burden for maritime operators from this final rule, which comes in addition to other costs associated with regulations for TWIC, stability, discharges, STCW, other licensing changes, security plans, etc.

We have considered the cumulative impacts associated with this final rule. Please see the AIS Cumulative Impact section of the regulatory analysis in the docket, including Table 22, Cumulative Impacts of AIS Final Rule. Executive Order 13563 underscored Executive Order 12866's directive for government agencies to tailor their regulations to impose the least burden on society by taking into account the cost of cumulative regulations. The Coast Guard and DHS are working to implement this Order.

In this final rule, we have sought to reduce the burden on industry by choosing the least-cost alternative with the use of Class B AIS devices for certain vessel classes given the statutory basis for AIS carriage, where "no action" is not an option. This allows us to meet our regulatory objectives of obtaining information necessary to help enhance the safety and security of United States ports and waterways and to enhance vessel traffic management. Moreover, regarding passenger vessels, in this final rule we are not adopting the threshold of 50 or more passengers we proposed in the NPRM. Instead, we are setting the threshold at vessels certificated to carry more than 150 passengers, which is similar to the current threshold of more than 150 passengers for hire. See 33 CFR 164.46(a)(3)(i) and (iii) (2013). Other than certain dredges, all of the vessels this final rule add to those currently required to install and use AIS (see Table 6 in the RA) are covered by 46 U.S.C. 70114(a)(1)(A) and (C) which

give no discretion to the Secretary. Based on our analysis, all vessels moving certain dangerous cargo and vessels certificated to carry more than 150 passengers are already covered by the 46 U.S.C. 70114(a)(1)(A) and (C), MTSA length threshold. In the regulatory analysis in the docket for review, we estimated the costs to industry for the NOA and AIS portions of this rule. From our analysis, the NOA portion of this rule adds a present value discounted cost of about \$201,619 over the 10-year period of analysis using a 7 percent discount rate for all vessel owners and operators that must comply with NOA requirements. Our final rule adds less than 1 dollar per vessel trip for owners and operators to comply with the NOA portion of this rule. For AIS, we present a cumulative impact of the 2003 MTSA AIS final rule and this final rule, in the regulatory analysis available in the docket for review.

For NOA, and in our effort to be as least burdensome as possible, the Coast Guard more closely aligned its NOA regulations with CBP regulations to make it easier to satisfy both requirements through a single submission.

One commenter disagreed with our proposal to expand the applicability of NOAD regulations and noted that this revision would be disproportionately costly to its towing vessels which operate on the Great Lakes, and to small businesses, because its tugs do not have onboard computers, Internet access, or facsimile capability, and because its offices that are capable of submitting NOAD notices electronically to the NVMC are not manned 24 hours a day, 7 days a week, 365 days per year. The commenter notes that the nature of Great Lakes shipping involves short transits between the United States and Canada, with frequent border crossings, and that any form of electronic submission disproportionately affects this population of vessels and small businesses. This commenter recommended that vessels 300 gross tons or less arriving from a foreign port should have a more cost-effective avenue of reporting, such as verbal [spoken] notification and electronic notification within 48 hours.

Based on this comment regarding vessels 300 gross tons or less, and provisions in the Boundary Waters Treaty (36 Stat. 2448; Treaty Series 548), we are extending provisions in § 160.212(a)(3) to Canadian-flag vessels arriving directly from Canada, via boundary waters, to a United States port or place on the Great Lakes. Such vessels 300 gross tons or less and on a voyage of less than 24 hours may submit

an NOA as late as 60 minutes before departure from the foreign port or place.

Under the waiver section in subpart C, § 160.214, a COTP may grant a waiver of some or all of the NOA requirements for a given vessel in his or her COTP zone, if, based on the COTP's assessment, a waiver is warranted. As we stated above in response to a comment regarding a different type of vessel without a computer on board, if the COTP determines that the situation warrants it, he or she may grant a waiver. Further, the COTP may require as a condition of the waiver that, instead of NOA data being submitted to the NVMC via methods specified in § 160.210, the NOA data be conveyed to the COTP via an alternative means. We do not believe that a blanket exemption for towing vessels coming from a foreign port or places on the Great Lakes is warranted. In § 160.212(a)(3) of the final rule, we permit NOAs from certain vessels to be submitted up to 60 minutes before departure. However, to maintain sufficient MDA, we do need NOA data on vessels, persons, and cargo coming to the United States from foreign ports or places, even if the foreign port or place is a short distance away.

One commenter stated that the rule understates the initial cost of compliance because it does not account for additional crew overtime incurred by requiring vessels to wait to depart from and arrive at the United States, the cost of Internet access, computer/Internet installation, and computer training for crews. The commenter noted that the rule places a disproportionate burden on vessels 300 gross tons or less and on small businesses.

We do not believe that we underestimated the initial cost of compliance. Since the CBP's Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft final rule (70 FR 17820, April 7, 2005) precedes our rule for NOA requirements for vessels coming from a foreign port or place, we removed the costs associated with the submittal of NOAs and the computer cost for vessels that make these transits because the CBP's final rule already requires electronic submission and subsequently estimated these costs in the cost analysis for its APIS final rule; therefore, we have revised our regulatory analysis accordingly and removed the costs associated with NOAs for vessels coming from a foreign port or place. Based on NVMC data, the Coast Guard estimates that about 2,500 foreign flag vessels 300 gross tons or less come to the United States from a foreign port; we estimate about 500 of these vessels

transit two or more COTP zones; the associated cost for these vessels is presented in the regulatory analysis. A discussion of the population appears on page 24 in the NOA cost analysis section of the regulatory analysis available in the docket for review. The Coast Guard does not collect information on whether vessel owners submit arrival information from shoreside facilities; for the purpose of our analysis and for tractability, we assume vessel owners would submit arrival information from onboard the vessel. Even with this conservative assumption, as noted previously, we expect this rule to impose minimal regulatory costs on industry as a result of our elimination of the proposed NOD requirements, the addition of several exemptions and exceptions and the addition of only three NOA information fields that are new to industry. We note that under § 160.204(a)(5)(vi) of this final rule, U.S. vessels 300 gross tons or less, engaged in commercial service not coming from a foreign port or place and not carrying CDC are exempted.

The Coast Guard views U.S. vessels operating strictly on a domestic route as posing a reduced safety and security threat and we have incorporated several exemptions to exclude vessels operating solely in the United States. See 33 CFR 160.204. Certain vessels are still required to submit a NOA, however, so that COTPs can be made aware of vessels planning to enter his or her zone, and for the Coast Guard to schedule inspections, and possibly establish safety or security zones.

One commenter asked the Coast Guard to consider the cumulative economic impact of the NOAD rule on ferry companies serving international routes. The commenter noted that, viewed in isolation, each regulatory proposal (e.g., TWIC, TWIC readers, DOT passenger vessel accessibility requirements, EPA vessel discharge permits for vessel incidental discharges, EPA vessel air emission restrictions, passenger weight limitations and vessel stability revisions, and vessel speed limits for the right whale) may have some justification and its cost to vessel operators may appear to be manageable, but taken as a whole, the proposals are costly and burdensome to the international ferry operators, who are also suffering because of the downturn in international traffic across the United States-Canadian border in recent years.

For the final rule, we completed a Final Regulatory Flexibility Analysis (FRFA). The specific statutory requirements of a FRFA can be found at 5 U.S.C. 604(a). Under these statutory requirements, we did not consider the

cumulative impact of our other regulations on small businesses or affected ferry operations. This final rule will impose no additional costs on ferry owners and operators. Ferries that operate on a fixed route between two or more COTPs zones and on a regular schedule will be exempt from NOAD requirements if they submit the information required under § 160.204(a)(5)(vii). This submission has been a common industry practice since 2003 to obtain waivers from COTPs; therefore, there is no additional cost associated with this provision. All vessels that transit within the same COTP that do not carry a CDC will be exempt from submitting NOADs. We acknowledge that some of our other regulations have imposed additional costs on vessel owners and operators subject to this rule, which contains revised applicability provisions. We have taken the cost associated with this rule into consideration; please see the regulatory analysis in the docket for a discussion of the impacts of this rule on industry. In this final rule, we have sought to impose the least burden possible while still meeting statutory and international mandates, as well as our regulatory objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways and to enhance vessel traffic management. Therefore, in our effort to reduce costs on industry and small entities, we abandoned our proposal to reduce the threshold of more than 150 passengers for AIS carriage to a threshold of 50 or more passengers. As previously noted, other than certain dredges, all of the vessels this rule adds to those currently required to install and use AIS (see Table 6 in the RA) are covered by 46 U.S.C. 70114(a)(1)(A) & (C) which give no discretion to the Secretary. We also present a cumulative impact analysis for the 2003 AIS final rule and this final rule in Table 22 of the regulatory analysis available on the docket for review.

One commenter noted that, with 50 ships worldwide and shipping offices around the world, his or her organization does not change the operating system on its computers often and that it has to upgrade its ships and offices almost simultaneously. The commenter noted its organization does not take computer operating system upgrades lightly.

We do not anticipate that an upgrade to the computer operating system is necessary for the submission of an NOAD. In light of the CBP's APIS final rule published in 2005, in which vessels coming from a foreign port or place must submit an arrival manifest (with

the exception of ferries), this rule would not require an upgrade or replacement of existing means of submitting NOAs. If a vessel operator is required to submit an NOA or an update, but the vessel is in an area without internet access, he or she would be free to radio or use other non-internet means to convey NOA information to others in his or her organization that would be able to make a submission via the internet. In situations where a vessel operator must submit an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer, and he or she has no shore-side support available, the vessel operator may fax or phone the NOA or update, to the NVMC. However, based on Coast Guard information and for the purpose of the supporting regulatory analysis, our estimates assume NOAD information received by the NVMC is through the Internet.

13. Outer Continental Shelf

We received various requests to make changes from the proposed rule with respect to vessels on, or sailing to or from, the U.S. OCS.

Because of the unique operations of vessels arriving in the OCS, we initiated a separate rulemaking, "Notice of Arrival on the Outer Continental Shelf" (NOA OCS) (RIN 1625-AB28), to address the statutory directive from section 109 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109-347, 120 Stat. 1884). The final rule in that NOA OCS rulemaking was published January 13, 2011 (76 FR 2254). That separate rule addresses applicability, OCS NOA reporting times, as well as information submission requirements under that rule. See 33 CFR part 146, as amended by 79 FR 36401, June 27, 2014.

As noted above in the "Applicability" section, VI.A.1, we have revised § 160.203 to make it clear that visits to ports or places on the OCS other than deepwater ports will not directly trigger 33 CFR part 160, subpart C, NOAD requirements; see NOA OCS regulations in 33 CFR part 146 that point to regulations in 33 CFR part 160. For example, § 146.405 refers to information specified in 33 CFR Table 160.206. To increase awareness of 33 CFR part 146 NOA OCS requirements, we have added a note to § 160.201 referring to these requirements.

14. Miscellaneous

On January 21, 2009, we published a notice (74 FR 3534) announcing a March 5, 2010, public meeting to be held in

Washington, DC. Several commenters requested that we schedule an additional public meeting in the Pacific Northwest because west coast international transportation companies, including international ferry operators, are located there and it was impractical for small companies or Washington State Ferry officials to attend the public meeting in Washington, DC. We received an additional request to hold meetings in the Southwest, Mid-Continental/Mid-West, and the Atlantic Northeast.

As noted above, we held one public meeting in Washington, DC, and another public meeting in Seattle, WA. We believe those two opportunities for the public to submit oral comments were sufficient, particularly given the 4-month period we provided the public in which to submit written comments. Also, we made audio recordings of these two public meetings, and made the recordings available online to the public via a link in the docket to audio-digital (MP3) files. These recordings allowed those who could not attend either meeting to listen to what was said at each meeting before the end of the comment period.

One commenter recommended amending NOAD rules to allow inland vessels to submit NOAs to a single common authority—specifically to allow any barge or towing vessel that operates on the inland and intracoastal waterways above or below Mississippi River mile 235 to be classified as inland and to report to the IRVMC, rather than the NVMC. The commenter stated that NOA requirements call for information from inland vessel operators that is inapplicable to their operations and of no material value for national security. Further, the commenter stated that this information is impractical and useless as applied to inland vessels, particularly if the reporting vessel operates below mile 235 on the Lower Mississippi River or the Gulf Intracoastal Waterway and needs to report to both NVMC and IRVMC.

In our NPRM, we proposed to revise the current NOA exemption in § 160.203(a)(3) that applies to all vessels operating upon the Mississippi River between its sources and mile 235, Above Head of Passes, and certain tributaries, so that this exemption would apply only to vessels required by 33 CFR 165.830 or 165.921 to report to IRVMC. The comment period on the NPRM closed April 15, 2009, but on January 10 and 18, 2011, the Commanders of the Eighth and Ninth Coast Guard Districts, respectively, published rules that stayed IRVMC reporting requirements for barges loaded

with CDC on inland rivers in the Eighth Coast Guard District and a portion of the Illinois Waterway System located in the Ninth Coast Guard District. These stays were extended and now last until December 31, 2015. *See* 76 FR 1360, January 10, 2011, 76 FR 2827, January 18, 2011, 78 FR 25, January 2, 2013, 78 FR 4788, January 23, 2013, 78 FR 60216, October 1, 2013, and 78 FR 61183, October 3, 2013.

In this final rule, where the revised exemption is redesignated as § 160.204(a)(3), after December 31, 2015, a vessel required to report under §§ 165.830 or 165.921 would not also be required under part 160 to submit NOAs to NVMC. Until December 31, 2015, temporary exemption § 160.204(a)(6) will apply to all vessels subject to §§ 165.830 or 165.921. During these stays in reporting requirements under §§ 165.830 or 165.921, Commanders of the Eighth and Ninth Coast Guard Districts will analyze future reporting needs and evaluate possible changes in CDC reporting requirements. *See* 78 FR 25, January 2, 2013, and 78 FR 4788, January 23, 2013, 78 FR 60216, October 1, 2013, and 78 FR 61183, October 3, 2013.

The IRVMC actively tracked the movement of CDC barges on inland rivers in the §§ 165.830 or 165.921 regulated navigation areas in Coast Guard Districts Eight and Nine, respectively, and analyzed data from Fleeting Area Managers. The NOA information and timing of submission of NOAs under 33 CFR part 160, which is a primary source of data for ships arriving from foreign ports or places, presents different burdens than the now-stayed IRVMC reporting requirements under §§ 165.830 or 165.921. Compare, for example, §§ 160.206 and 160.212 of this final rule with stayed reporting requirements in § 165.830(d), (e), and (f), or § 165.921(d), (e), and (f). This final rule has been written so that Commanders of Eighth and Ninth Coast Guard Districts may continue to analyze reporting needs from vessels moving CDC barges on inland rivers in their districts, without subjecting those vessels subject to § 165.830 or § 165.921 to NOAD requirements under 33 CFR part 160.

As for reporting to a single common authority, this final rule does not control where District Eight and Nine RNA regulations may require vessels subject to those regulations to report. But as for vessels operating below mile 235 on the Lower Mississippi River, on the Gulf Intracoastal Waterway, or on other waters where they are subject to 33 CFR part 160 NOAD requirements, the information we require is needed to

meet our PWSA regulatory objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways and to enhance vessel traffic management.

One commenter suggested that the Coast Guard issue a secure, World Wide Web-based report showing vessels cleared for arrival and that it use a uniform NOAD verification process with each Coast Guard COTP's Homeland Security group's screening of NOADs submitted and cleared by the NVMC. The commenter noted that it is beneficial to know whether additional information or a vessel boarding is required by the port's Homeland Security Office well in advance of the vessel's arrival so that time management impacts to the vessel's Master and crew can be minimized and the vessel can proactively communicate any prospective delays to the terminal or refinery waiting for its arrival.

Once the NVMC receives an NOA, an email is sent to the submitter if the NOAD is not accepted. However, vessels are not "cleared" by the NVMC. Regarding advance notice of boarding, it is at the COTP's discretion to determine notification times if a boarding is to occur. Under authority of 33 U.S.C. 1223 and 33 CFR 160.111, a District Commander or COTP may place operational controls on a vessel when he or she—

- Has reasonable cause to believe the vessel is not in compliance with any regulation, law, or treaty;
- Determines that the vessel does not satisfy the conditions for vessel operation and cargo transfers specified in § 160.113; or
- Determines that the vessel warrants such controls in the interest of safety due to weather, visibility, sea conditions, temporary port congestion, other temporary hazardous circumstances, or the vessel's condition.

Also, under 46 U.S.C. 70110, the Secretary may establish conditions of entry for ships coming from a foreign port that she or he has found does not maintain effective antiterrorism measures, and may deny entry to vessels that do not meet these conditions. However, we do not clear vessels for arrival.

The CBP's regulation 19 CFR 4.7 references a "Vessel Entrance or Clearance Statement," Customs Form 1300. Under 19 CFR 4.3, certain vessels are required to make formal entry on their arrival at a U.S. port or place. The CBP may grant clearance for a vessel to depart a U.S. port or place. *See* 19 CFR 4.60, 4.61 and 4.95; re CBP clearance related to departures, see 19 CFR 4.63 and 4.75.

One commenter noted that his company operates more than 50 chemical tankers and has a similar amount on time charter, that it operates worldwide, that its tankers can carry up to 52 separate bulk liquid cargoes on board, that its vessels go to various U.S. terminals and take on specific cargoes, and that with two crews for each vessel, the company has 100 Masters and at least 100 chief mates that it has to educate on NOAD procedures. According to the commenter, the company experiences inconsistent and confusing procedures on a regular basis, particularly with regard to the way regulations are applied by Coast Guard field units. The commenter noted at a public meeting in Washington, DC that there had been comments made there to the effect that the rules are pretty clear, but that when you get down to the field unit, particularly with security concerns, the regulations in the code are not applied universally throughout the country, particularly in the Gulf of Mexico.

We are working to ensure consistent application of the NOAD regulations throughout all U.S. ports. Different responses by COTPs to NOAD data submitted for a given vessel may reflect different priorities based on different factors in COTP zones. Questions pertaining to NOAD regulations and the application of those regulations should be directed to the Office of Vessel Activities NOA Program Manager. Contact information is available on the eNOAD World Wide Web site.

One commenter stated that, despite regular NVMC upgrades, some in the industry have been forced to use third-party contractors to comply with NOA requirements. The commenter noted that this means every report is handled twice—once aboard the vessel and once by a contractor—and thus there is twice the opportunity for errors.

We note that an NOA can be submitted directly to the NVMC via the eNOAD World Wide Web application or by email. If a vessel chooses to use a third-party contractor, that is at the vessel owner's discretion, but the vessel owner retains responsibility for the accuracy of the information.

One commenter stated that when small changes are made to forms or notices, errors may go undetected because of the massive amount of information that is asked for time and time again, and be repeated on every required form. The commenter noted these errors can result in cumulative penalties. The commenter stated that his company has experienced penalties from the CBP—specifically immigration—for crew-caused typing

errors, and that if the company is doing multiple crew reporting and makes one error, then submits that copied form five times, it has now subjected itself to five times the penalties because the error appears on five copies.

We cannot speak to CBP or other agency practices as they pertain to penalties resulting from typing errors. We note, however, that a requirement in § 160.208 as proposed stated that whenever events cause submitted NOA information to become inaccurate, vessels must submit an update within the times required in § 160.212. Based on this comment, however, we are revising that regulatory text to make clear that the owner, agent, Master, operator, or person in charge of the vessel must submit an update within the times required any time events cause the submitted data to become inaccurate or the submitter realizes that the data initially submitted were inaccurate. As noted previously, however, if the estimated time of arrival is the only data element that becomes inaccurate and the new estimate is less than 6 hours off from the original estimate, then the owner, agent, Master, operator, or person in charge need not submit an update. Also under § 160.208(b), such persons need not file updates to correct the vessel location or position of the vessel at the time of reporting, or to report changes to crewmembers' positions or duties on the vessel.

One commenter stated that there is currently a 6-hour window during which, if a vessel's anticipated arrival time is within plus or minus 6 hours, no update is required. However, the commenter noted, there are some new provisions in the NPRM that would require the vessel to submit an update within 12 hours, which would not be practical.

We note that the requirement for submitting an update is the same as the current requirement for a vessel whose remaining voyage is less than 24 hours, with the exception of U.S. vessels 300 gross tons or less. *See* §§ 160.208 and 160.212(b)(3). We have made no changes from the proposed rule based on this comment.

One commenter stated that there was a need for greater specificity in the regulatory language to avoid confusion when all of the provisions of the rule are put into practice, and to ensure that the Coast Guard is truly meeting the congressional intent with regards to security.

As reflected in many of the changes we made from the proposed regulatory text, including adding definitions and specifying vessels that may use AIS Class B to satisfy AIS requirements, we

have taken steps to ensure that this final rule is clear and specific. Also, in the preamble, we repeatedly link NOA requirements in this final rule with PWSA statutory objectives of helping to enhance the safety and security of U.S. ports and waterways.

One commenter stated that the Coast Guard correctly exempted OSVs from NOAD requirements. The commenter noted that this reflects both the past coverage of these vessels under NOA and the many years of an exemption and practices that have shown that these vessels do not represent a significant security concern. The commenter also noted that the existing exemption reflects our recognition that these vessels make so many transits that tracking all of their arrivals and departures would create a burden on both the Coast Guard and the industry. The commenter further stated, however, that there are discussions both in Congress and internally in the Coast Guard over raising tonnage limits on OSVs, and expressed hope that the Coast Guard's definition would not lock this into a separate standard for OSVs than might eventually come out of that process.

In the NPRM we proposed adding a definition of "offshore supply vessel," a term we use in exemption § 160.204(a)(1), based on the 46 U.S.C. 2101(19) definition. In 2010, that statutory definition was amended by section 617 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281). For reasons stated in the "Summary of Changes from NPRM" discussion, Section V, we did not create a part 160 definition of "offshore supply vessel," but instead simply relied on the introductory language in the definition section, § 160.202, which adopts 46 U.S.C. 2101(19) definitions for otherwise undefined terms. This revision does not lock OSVs into a separate NOAD standard. Revisions to OSV-specific regulations based on a statutory change in OSV tonnage limits are outside the scope of this rulemaking.

Finally, while not in response to a comment, we delayed making any amendments to 33 CFR part 160 effective until April 30, 2015. We selected this date 90 days after publication to ensure that we have changes to the eNOAD application thoroughly tested and in place before the effective date.

B. Automatic Identification System

In the NPRM, we used 12 categories to describe our proposed revisions to AIS regulations. *See* 73 FR 76304–05, December 16, 2008. For this final rule, we used a different set of categories to

group and discuss comments we received on the AIS portion of the NPRM. These 11 categories are: Applicability, Broader Use of AIS, Expanding AIS Carriage, Impracticability, AIS and Nationwide AIS, Fishing Industry Concerns, AIS Class B, AIS Displays and Integration, Installation Period, AIS Pilot Plug, and Supplemental Notice of Proposed Rulemaking.

1. Applicability

Some comments received in opposition to the proposed AIS rule questioned the need for it, its benefits, and whether it should be applicable to the commenter’s type of vessel (e.g., sailing vessels and tenders), operation (e.g., marine assistance), or operating area (e.g., rivers). The Marine Transportation Security Act (MTSA) of 2002 is our enabling statute that directs which vessels will be required to install and use AIS. This statute specifies self-propelled commercial vessels of at least 65 feet overall in length and towing vessels of more than 26 feet overall in length and 600 horsepower. See 46 U.S.C. 70114(a)(1)(A) and (C). In addition, MTSA directs the Secretary to require AIS on vessels “carrying more

than a number of passengers for hire as determined by the Secretary” and vessels for which the Secretary finds AIS “is necessary for the safe navigation of the vessel.” See 46 U.S.C. 70114(a)(1)(B) and (D). In this final rule we have included the following self-propelled vessels under MTSA provisions in 46 U.S.C. 70114(a)(1)(B) and (D) that do provide some discretion to the Secretary:

- Vessels (less than 65 feet in registered length) that are certificated to carry more than 150 passengers—whether or not the passengers are for hire.
- Vessels engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect the navigation of other vessels; and
- Vessels engaged in the movement of CDC or flammable or combustible liquid cargo in bulk.

Given the nature of their operation, these vessels pose a unique challenge to navigation, and we have determined that AIS is necessary for the safe navigation of these vessels.

Since 1972, a similar group of vessels has been required by the Vessel Bridge-to-Bridge Radiotelephone Act (Pub. L.

92–63) and implementing regulations to have radiotelephones while navigating. See 33 U.S.C. 1201–1208 and 33 CFR part 26. The primary purpose of the Radiotelephone Act is navigation safety, an objective that it shares with MTSA. Together, the Radiotelephone Act and MTSA AIS implementing regulations provide a synergy that enhances situational awareness and could mitigate the risk of collisions and other mishaps, such as a collision with a vessel carrying passengers, a vessel engaged in dredging near a commercial channel, or one moving hazardous cargo. Data from AIS provide the telephone equivalent of “caller ID,” which can greatly facilitate radiotelephone communication, reducing the time required to establish a joint plan for avoiding collisions.

We have placed AIS applicability provisions from both the final rule and the current CFR adjacent to each other in the following derivation and comparison table so that you may quickly identify changes this final rule is introducing that may impact your vessel or company. Further details, including costs and impacts, are provided in the regulatory analysis.

TABLE 2—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY PARAGRAPHS IN 33 CFR 164.46

| Final rule paragraph in 33 CFR 164.46 | Text | Corresponding paragraph currently in 33 CFR 164.46 | Text |
|---------------------------------------|---|--|--|
| (b)(1) | AIS Class A device. The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device:. | (a) | The following vessels must have a properly installed, operational, type approved AIS as of the date specified. |
| (i) | A self-propelled vessel of 65 feet or more in length, engaged in commercial service. | (1) & (3)(i) | (a)(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. (a)(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) | A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial service; | (3)(ii) | Towing vessels of 26 feet or more in length and more than 600 horsepower, in commercial service. |
| (iii) | A vessel that is certificated to carry more than 150 passengers. | (3)(iii) | Passenger vessels certificated to carry more than 150 passengers-for-hire. |

TABLE 2—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY PARAGRAPHS IN 33 CFR 164.46—Continued

| Final rule paragraph in 33 CFR 164.46 | Text | Corresponding paragraph currently in 33 CFR 164.46 | Text |
|---------------------------------------|---|--|---|
| (iv) | A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels. | ..... | NO CORRESPONDING PARAGRAPH. |
| (v) | A self-propelled vessel engaged in the movement of—(A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or (B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1. | ..... | NO CORRESPONDING PARAGRAPH. |
| (b)(2) | AIS Class B device. Use of a U.S. Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew: | ..... | NO CORRESPONDING PARAGRAPH. |
| (i) | Fishing industry vessels ..... | ..... | NO CORRESPONDING PARAGRAPH. |
| (ii) | Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers, and that—(A) Do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and (B) Do not operate at speeds in excess of 14 knots; and | ..... | NO CORRESPONDING PARAGRAPH. |
| (iii) | Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations | ..... | NO CORRESPONDING PARAGRAPH. |
| (c) | SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03): | (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): |
| (1) | A vessel of 300 gross tonnage or more, on an international voyage | (2)(ii)–(iv) | (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. |
| (2) | A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage | (2)(i) | Passenger vessels, of 150 gross tonnage or more, not later than July 1, 2003. |

2. Broader Use of AIS

We recognize that AIS will not overcome all challenges to maritime transportation safety or prevent all transportation security incidents. It is, however, the most effective tool currently available to enhance a mariner's situational awareness and our own MDA. When using AIS, pertinent real-time, digital navigation information can be autonomously and continuously exchanged between AIS-equipped vessels. AIS not only provides a position (in a manner similar to radar), but it also provides vessel data (*e.g.*, dimensions, type, call-sign, destination, ETA, navigation status) that are difficult, if not impossible, to ascertain visually and that would be burdensome, cumbersome, and distracting to exchange via voice communications. Additionally, AIS is currently the only effective means of providing real-time electronic navigation chart information from shore to ship via the broader use of AIS Application Specific Messaging (ASM), the "smart phone" applications for AIS. These applications use a common message type which can be processed by most AIS stations. However, embedded within the message are specific navigation- and safety-related data that are not available via other AIS messages or other existing marine safety information systems (Notice to Mariners, NAVTEX for delivery of navigational and meteorological warnings and forecasts, etc.). These messages can provide a more dynamic detail to information that is traditionally conveyed by slower means: chart updates, (*e.g.*, new navigation hazards), printed notices to mariners, navigation publications and directives, meteorological and hydrographic Web sites, and more. Because this information, like all AIS data, is digital, it can easily be decoded and portrayed on multiple navigation devices, such as electronic charts, radar, and multi-function displays. In the near future, we expect to design and develop ASM to augment or replace some other types of reporting, including potentially eNOAD, IRVMC, and right whale sightings.

In 2010, in Safety of Navigation Circular 289, the IMO adopted a compendium of ASM that promises to greatly enhance AIS utility and navigation safety. These ASM applications will provide: exchange, reporting, and broadcast of environmental, meteorological, and hydrological data, as is currently being done on the St. Lawrence Seaway, Tampa Bay, and VTS Sault Ste. Marie, and is envisioned for more waterways;

data on dangerous cargo and/or persons on board; port clearance and berthing information; data on mandatory and recommended routes; extended vessel static and voyage related data; VTS broadcast of targets representing vessels with or without AIS but beyond the range (*e.g.*, around a bend) of other AIS vessels; and pertinent time-critical dynamic navigation information concerning a specified geographic area, polygon or position.

We are working closely and diligently with the Committee on the Maritime Transportation System (CMTS) (see e-Navigation Integrated Action Team at <http://www.cmts.gov/Activities/ActionTeams.aspx>) and other Federal agencies, such as the National Oceanic and Atmospheric Administration and U.S. Army Corps of Engineers, to expand the development and ensure the consistency of ASM throughout the United States. Accordingly, we have added to this final rule a new provision in § 164.46(d)(4) to ensure that in the United States, only the use of "applications adopted by the International Maritime Organization (such as, IMO SN.1/Circ.289) or those denoted in the International Association of Marine Aids to Navigation and Lighthouse Authorities' (IALA) ASM Collection for use in the United States or Canada" is permissible. Moreover, § 164.46(d)(4) notes that an individual application transmission is limited to no more than one every minute.

Some commenters lauded these benefits and the benefits of AIS in general, and requested we extend AIS applicability to other vessels (*e.g.*, all vessels that interact with seagoing vessel traffic). While we strongly encourage the use of AIS, we recognize that not all vessels can achieve the full benefit of AIS because of their unique nature (*e.g.*, submarines) or mode of operations (*e.g.*, fleeting area). To accommodate these situations, we provide a means for individual operators to request a deviation from AIS carriage requirements in 33 CFR 164.46(h). In response to comments, we have extended this provision to include vessels whose design (*e.g.*, submarines or vessels with an open or exposed cabin), construction, or outfitting (*e.g.*, a vessel without electrical power) makes it impracticable to operate an AIS. See 33 CFR 164.46(h)(4). Further, to alleviate the administrative burden on industry and the Coast Guard, and at the same time recognize that situations may change in the future, we have extended the allowable deviation period from 1 to 5 years. See § 164.46(h).

Numerous commenters questioned adopting the threshold of 50-or-more

passengers for requiring AIS. One commenter stated that the Coast Guard has not justified the requirement for passenger vessels with the capacities of between 50 and 150 passengers to carry AIS and that such a requirement would not diminish the potential threats to the U.S. marine transportation system that the Coast Guard described. We believe requiring AIS on vessels certificated to carry more than 50 passengers would help diminish threats to the U.S. maritime transportation system, but based on our analysis of the cost and the lack of benefits of such a requirement, we have abandoned the lower threshold we proposed.

We did describe a number of maritime-related terrorist events in the NPRM (see 73 FR 76296, December 16, 2008), but we did not claim that AIS alone would prevent those or future incidents. We stated that these incidents called attention to the vulnerability of the United States to potential terrorist attacks, and that U.S. waterways and ports present both vulnerable and attractive targets. See 73 FR 76297. All vessels that carry passengers are potential terrorist targets and may also provide a means of transportation for terrorists; particularly because passengers may board the vessel without having to go through thorough background checks required of some crewmembers.

AIS is the only digital source of data the Coast Guard and other federal agencies have to gain a comprehensive real-time understanding of activities in our maritime domain, with the tools currently available on most vessels (*i.e.*, radar or ECS), which thus improves our ability to prevent and respond to transportation security and safety incidents. For example, if we learn that passenger vessels have been targeted or that one is involved in a distress situation, we are more readily able to locate the specific position and course of these vessels and mitigate the consequences of an incident, and, are also more readily able to share that information with others.

The commenter specifically noted that when promulgating current AIS regulations in 2003, the Coast Guard determined that passenger vessels carrying 150 or fewer passengers do not pose a significant risk of a transportation security incident and therefore did not require such vessels to develop Coast Guard-approved vessel security plans, and that nothing in the NOAD AIS NPRM has changed the conclusion of very low security risk in the National Risk Assessment Tool (N-RAT) published in the 2003 Implementation of National Maritime

Security Initiatives temporary interim rule. See 68 FR 39246, July 1, 2003. Based on that N-RAT analysis, however, we did not conclude that vessels carrying less than 150 passengers were risk free. As we previously stated; however, based on public comments and to reduce costs on industry and small entities, we have set the passenger threshold for AIS carriage in this final rule to those vessels certificated to carry more than 150 passengers.

The commenter also noted that in a Transportation Worker Identification Credential (TWIC)—Reader Requirements advance NPRM (74 FR 13360, March 27, 2009) the Coast Guard identified vessels that carry less than 500 passengers as being in the lowest risk category. In that ANPRM, which focused on identification for mariners, we did note, however, the potential for such vessels to be involved in a transportation security incident. See 74 FR 13366. A transportation security incident means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The commenter also questions the need for AIS for navigation safety for vessels between 50 and 150 passengers and notes that of the injuries, deaths, and barrels of oil spilled the Coast Guard noted that might have been prevented by the use of AIS, that there is no apportionments as to vessel service and that the preponderance of waterways associated with these casualties are not typically used by passenger vessels generally and those carrying 50 to 150 passengers specifically. Given this, and the commenter's own experience, the commenter concluded that the contribution by passenger vessels to those accident and casualty totals is negligible or non-existent. Finally, the commenter quotes from a Coast Guard report on passenger safety on vessels under 1000 gross tons based on 1992–2003 data and notes the report states that 81.2 percent of casualties were not related to the operation of a vessel, and that fatalities were rare and when grouped by type of accident, there were no trends or patterns.

As previously noted, in this final rule we are not adopting the threshold of 50 or more passengers we proposed in the NPRM. We have adopted a threshold of more than 150 passengers in § 164.46(b)(1)(iii) of this final rule that is similar to our current passenger-for-hire threshold, but we did not retain the “for-hire” qualifier. We found no passenger vessels outside of VTS areas

affected by the AIS portion of this final rule that are less than 65 feet in length and carry more than 150 passengers. All passenger vessels we found to be affected by this final rule are included in the 65-feet-or-more category. This approach, which is based on authority in 46 U.S.C. 70114(a)(1)(B) & (D) and covers vessels certificated to carry more than 150 passenger—whether for for-hire or not, is similar to that taken in SOLAS which does not use “for-hire” when establishing a passenger vessel threshold.

SOLAS Regulation V.19.2.4 requires AIS on all passenger ships regardless of size or type of voyage. Under SOLAS any vessel carrying more than 12 passengers is a “passenger ship.” See SOLAS Regulation I.1(f). This AIS SOLAS provision reflects the objective of SOLAS which is to promote the safety of life at sea. We have exercised tonnage-threshold discretion under SOLAS to enable us to set our MTSA-based passenger threshold at more than 150.

As proposed, we eliminated the distinction of “for hire” from the types of vessels that are required to have AIS because we believe the safety benefits of AIS should extend beyond vessels carrying passengers for hire that are, nonetheless, under the MTSA threshold of 65 feet in length. In doing so, we ensure that this provision of the final rule will cover all small passenger vessels and ferries in commercial service that are certificated to carry more than 150 passengers.

Some commenters requested that we exempt certain waterways, as we are authorized to do under MTSA. See 46 U.S.C. 70114(a)(2)(B). While we agree that there might be waterways where the full benefit of AIS may not be realized—e.g., only one vessel using AIS on that waterway, we do not favor a patchwork-of-waterways approach because situations for a given waterway may change. Because AIS is designed to provide an effective means for multiple users to exchange vessel navigation information, independent of the waterway where it is used, its benefit is proportional to the number of users and not necessarily the area of use. Therefore, rather than exempt specific waterways where there might be a small number of users, we have specified an exception in § 164.46(h)(3) for vessels that are not likely to encounter other AIS-equipped vessels. AIS can also provide valuable information in certain waterways even where there is a likelihood of encountering only one other vessel with AIS—for example, rounding a bend and other situations

where other sensors, such as radar, may not detect the other vessel as soon.

One commenter stated that we failed to provide support for our assertion in our NPRM that passenger vessels added by the 50-passenger threshold would not be uniquely impacted. The commenter stated that nearly all passenger vessels of less than 65 feet that carry 50 to 150 passengers are operated by small businesses and that this segment of the U.S. maritime industry is in fact uniquely impacted. As previously noted, we have abandoned our proposal to reduce the threshold of more than 150 passengers for AIS carriage to 50 or more passengers. In 2003, as part of our initial effort to obtain information before issuing an NPRM to expand AIS applicability beyond what was included in our temporary interim rule, we solicited responses to questions. See 68 FR 39369, July 1, 2003. In the preamble of the final rule we published that year, we specifically mentioned reopening the comment period on questions we presented in that initial effort as well as an additional question regarding expanding AIS carriage to small passenger vessels. See 68 FR 60562, October 22, 2003. In an October 2003 notice, we then asked for reasons why passenger vessels 65 feet or more in length that carry less than 151 passengers (and fishing vessels 65 feet or more in length) should be treated differently than other commercial vessels. See 68 FR 61819, October 30, 2003. After reviewing comments received in response to the questions we published in 2003 and the NPRM, we have found that many of these vessels may be owned by small entities that do not operate year around or in areas that are likely to encounter other AIS users (e.g., excursion vessels in Lake Tahoe). The vessels certificated to carry less than 150 passenger impacted by § 164.46(b)(1)(i) of this final rule, are impacted in a manner that is different than the other 5,560 U.S.-flag vessels that we estimate will be affected by the AIS portion of this final rule. Because these passenger vessels are greater than 65 feet in length, 46 U.S.C. 70114(a)(1)(A) dictates that they be equipped with and operate AIS. To reduce the cost of this requirement, however, in § 164.46(b)(2)(ii) we permit the use of AIS Class B devices on vessels certificated to carry less than 150 passengers if they do not operate in a VTS or VMRS area and do not operate at speeds in excess of 14 knots. Regarding our separate requirement in § 164.46(b)(1)(iii) for vessels certificated to carry more than 150 passengers, we decided to maintain the existing

threshold of more than 150 passengers, rather than decrease it to the threshold of more than 50 passengers we proposed, but we did expand the threshold to include any passenger, not solely passengers for hire, and, as with our other AIS requirements, we expanded the threshold to all navigable waters. While the Coast Guard believes that AIS can be of great benefit to all vessels, particularly those carrying passengers, we recognize that the majority of these vessels that carry less than 150 passengers (whether for hire or not) would probably request a deviation of this final rule because they would meet one of more of the exception criteria denoted in 33 CFR 164.46(h), because they either operate solely within a confined area, are on short fixed-schedule voyages, or are not likely to encounter other AIS-equipped vessels. Thus, to mitigate both the burden to industry of requesting deviations and to the Coast Guard of adjudicating a large number of requests, we have adopted a threshold of more than 150 passengers for all passenger vessels, including high-speed passenger vessels. As noted above, we did not include our separate 12-passenger threshold for vessels capable of speeds in excess of 30 knots—see § 164.46(b)(4) in the NPRM—in this final rule.

3. Expanding AIS Carriage

As noted above, we received comments asking us to expand AIS carriage beyond the population in our proposal. Below, we address the requests to expand AIS requirements to offshore platforms.

The primary benefit of AIS is to provide near real-time dynamic information (*i.e.*, position, course, and speed); therefore, we do not see the need for all fixed charted structures such as offshore platforms to have AIS for the safe navigation of the vessel. We do believe, however, that certain fixed structures, based on their position and proximity to shipping lanes or safety fairways, are sometimes relied upon as if they were aids to navigation, and thus could benefit from AIS Aids to Navigation (AIS AtoN) and could enhance MDA and navigation safety. An AIS AtoN provides position, name, and health status of the aid, such as whether or not the aid is on station and watching properly.

Given the advent of AIS AtoN and the benefit that these stations may provide to the shipboard users required to have AIS under this final rule, we have amended 33 CFR 62.52, 66.01–1, and 66.01–5(i) to recognize and allow the use of AIS AtoN stations or other electronic private aids to navigation.

Those seeking to deploy an electronic private AtoN are required to go through the application and approval process set forth in 33 CFR part 66 for private aids to navigation.

As for requiring AIS on other vessels beyond what we proposed in the NPRM, we extended applicability to self-propelled vessels engaged in the movement of flammable or combustible liquid cargo in bulk, so we would be sure to include vessels moving gasoline or propane as cargo. As we previously stated, we encourage all commercial vessels to equip themselves with AIS. However, this final rule requires AIS only on those vessels for which we have authority to require carriage of AIS; that is, for those vessels specifically identified in MTSA, and other vessels including passenger vessels, that we have determined require AIS for the safe navigation of the vessel.

4. Impracticability

We received various comments on the impracticability and safety risk of certain AIS provisions in our proposed rule. One such example was our requirement to maintain AIS in operation at all times while a vessel is moored, which would require having the vessel's power plant running to operate AIS when nobody is on board—a practice that we did not intend to promote by this rule. In response to this comment, we amended § 164.46(d)(2)(v) to require AIS to be in operation only at least 15 minutes prior to getting underway. Similarly, others commented on the impracticability of having AIS because their vessels lacked an adequate power supply (*e.g.*, floating plants) or because the vessel's design made AIS use impracticable (*e.g.*, submarines or open cabin vessels).

The focus of MTSA and our rule is to require the use of AIS devices on self-propelled vessels, most of which should be capable of properly operating an AIS. We recognize, however, that it may be impracticable for some vessels to install or operate AIS properly or effectively. Therefore, we have added paragraph (h)(4) to § 164.46 that specifically accommodates vessels whose design or construction makes it impracticable to operate an AIS device (*e.g.*, those that lack electrical power, have an exposed or open cabin, or are submersible) by allowing these vessels to seek up to a 5-year deviation. Further, we amended § 164.46(b)(1)(iv) to apply only to a “self-propelled vessel engaged in dredging operations,” instead of a “dredge or floating plant.” This change makes it clear that non-self propelled dredges or floating plants are not required to be outfitted with AIS

shipboard devices. In so doing, however, we note that via the dredging permitting process, state authorities and the Army Corps of Engineers may seek—consistent with amended regulations in 33 CFR chapter I, subchapter C—to have AIS AtoNs installed on certain fixed structures near dredging areas when necessary to provide greater safety to those conducting dredging or transiting the area.

Another impracticability raised by a commenter at one of our public meetings was a conflict with some of the requirements (such as radio antenna separation in excess of 30 feet for a 27-foot towing vessel) set forth in the IMO installation guidelines that our NPRM incorporated by reference. The IMO AIS requirement and guidelines were tailored to large deep-draft seagoing vessels and we agree with the commenter that some of the IMO AIS guidance is impractical for the majority of small and shallow-draft vessels subject to this final rule.

The proper installation of modern electronics is very important and should be done diligently to ensure that all equipment operates according to its design and purpose and does not degrade the use of other equipment (*e.g.*, create electromagnetic interference). The commenter above who noted the conflict created by IMO AIS guidelines also brought to our attention the standard published by the NMEA.

The NMEA has for years published marine electronic installation standards that are widely used and relied upon by the industry. The NMEA, which serves a broad constituency of deep- and shallow-draft vessels, is well aware that sometimes different techniques, for example, use of thicker or better shielded cabling, may be required because of the size of the vessel or other issues. We have reviewed the AIS-related NMEA Installation Standard and find that it provides sound guidance where the IMO guidelines may be impractical for some installations on non-seagoing vessels. Therefore, to provide users an alternative and options that best serve their vessels, we have incorporated the NMEA standard by reference and have amended § 164.46(a) to include NMEA Installation Standard 0400–3.10, in the definition of “properly installed, operational.”

Although it is not an impracticability, certain commenters expressed concerns with the requirement to continuously upkeep and ensure the accuracy of all AIS data fields. Because AIS was purposely designed to require minimal user interaction, entry for most data (*e.g.*, MMSI, vessel name, call-sign, IMO

number, type, dimensions, and antenna location) is required only once, at the time of installation. All AIS dynamic data (e.g., position, speed over ground, course over ground) are either fed into AIS via an external source or derived from the device's internal Global Navigation Satellite System, all without user interaction. There are, however, four AIS "voyage related" data fields (i.e., navigation status, destination location, estimated time of arrival, and static draft) that do require manual updating as conditions change.

To ease the burden and ensure consistent and accurate data encoding among all AIS users, we have developed an *AIS Encoding Guide* that is available at our "AIS Frequently Asked Questions" (FAQ #2) page at <http://www.navcen.uscg.gov/?pageName=AISFAQ>. In this guide, users are advised to use their maximum draft instead of static draft, thus eliminating the need to update this field. The guide also provides formatting conventions that allow ferry operators who continuously operate between two set locations, or operators of vessels that perform "voyages to nowhere" (such as workboats, dinner or excursion vessels, and certain other vessels that operate to and from their home berths), to encode their "Destination" and "ETA" fields only once.

For vessels that operate between multiple ports and berths, we have, as requested by the U.S. Army Corp of Engineers and in support of the Federal Industry Logistics Standardization (FILS), adopted the FILS code as the unique identifier for their destinations. Through our association with the Radio Technical Commission for Maritime Services (RTCM), we anticipate that this uniform coding scheme will be embraced by software and charting manufacturers and that they will develop simpler ways to encode this information into AIS and other systems. Thus, the only AIS parameter that most domestic AIS users must maintain is the vessel's "navigation status," which usually requires only a selection from a drop-down menu on the vessel's AIS, and can be easily remembered because it will usually require updating only to reflect a change in the vessel's navigation lights or day shapes. We anticipate that this process will be automated in the future when AIS is also integrated with the vessel's navigation light controller. See IMO Resolution MSC.253(83), "Performance Standard for Navigation Light Controllers."

5. AIS and Nationwide AIS

Some commenters questioned whether we should require AIS in areas where we do not have infrastructure in place to receive AIS data. First, as noted in our NPRM, the use of AIS from vessel to vessel may prevent collisions wherever it is used and does not require the existence of shore-side AIS infrastructure to do so. Second, since 2007, our Nationwide AIS (NAIS) project has provided us with AIS receive capability throughout the Great Lakes, U.S. coastal waters and approaches, and in the most congested portions of the Western Rivers. In those few areas where we do not currently have coverage, we anticipate that most potential users will avail themselves of the waiver process because of the low number of users that operate in these areas, such as the Colorado and Snake Rivers. For further information on NAIS and its coverage, visit <http://www.uscg.mil/hq/g-a/Ais/>.

6. Fishing Industry Concerns

Various commenters questioned the need for AIS on fishing vessels, noting that these vessels are already being tracked by Vessel Monitoring Systems (VMS). As we have stated previously (68 FR 39353, "Existing AIS-Like Systems"), AIS and the National Marine Fisheries Service (NMFS) VMS devices are two distinct systems that are not interoperable or interchangeable. The NMFS VMS is primarily a one-way system required by NMFS as a means of monitoring and enforcing compliance with NMFS requirements. Conversely, AIS is a two-way system designed as a means for AIS users to exchange navigation information for collision avoidance, something the NMFS VMS is not designed to do. This two-way system permits AIS to be both a safety and a security tool.

Some commenters also expressed concern about the impact AIS would have on disclosing their fishing "hot spots" (i.e., preferred fishing locations). Various commenters expressed concerns that the use of AIS would cause congestion by revealing the locations of a fishing vessel's hot spots. Even if analysis of AIS data would somehow attract vessels to the same spot, this situation would not supersede the importance of AIS in providing fishing vessels and other operators with situational awareness to help safely navigate while in close proximity to other vessels. For similar reasons, existing Navigation Rules specifically require any vessel engaged in fishing to display distinctive lights or day shapes, which indicate to other vessels that the

fishing vessel may be unable to maneuver to avoid collision; AIS simply extends the range of this warning.

7. AIS Class B

We received numerous replies to our solicitation on whether the option to use AIS Class B devices to satisfy AIS requirements should be discretionary or whether we should clearly specify in this final rule which vessels may use it and on which waterways. Class B devices are compatible and less expensive than AIS Class A devices, but, are not as functional (lack safety related text messaging capability), powerful (transmit at 2 Watts vice 12.5 Watts) or versatile (lack interfacing options for external sensors or displays). For other differences see "AIS Comparison by Class Sheet" at http://www.navcen.uscg.gov/pdf/AIS_Comparison_By_Class.pdf. A list of all Coast Guard type-approved equipment can be found at <https://cgmix.uscg.mil/Equipment/EquipmentSearch.aspx>. Some commenters favored our decision to permit the use of Class B, but felt that we should prescribe or clarify who could use such devices and where. In response to these comments, and to decide which vessels should be allowed to use Class B devices and where, we solicited the assistance of the Navigation Safety Advisory Council (NAVSAC), a Coast Guard-sponsored Federal Advisory Committee chartered to provide the Secretary of DHS with guidance on navigation safety matters through the Commandant of the Coast Guard. Members of NAVSAC discussed and resolved the matter at their meeting in May 2008 (see USCG-2005-21869-0106). We agreed, in part, with their resolution and have amended § 164.46(b)(2) to clearly prescribe the use of U.S. Coast Guard type-approved AIS Class B devices in lieu of Class A devices on the following vessels if they are not subject to pilotage: fishing industry vessels (i.e., any vessel engaged in the fishing trade), vessels engaged in dredging operations, and those vessels certificated to carry less than 150 passengers that do not operate in a Coast Guard VTS or VMRS, and that are not capable of speeds in excess of 14 knots. Class B users operating in excess of 14 knots travel a much farther distance between required position reports than Class A users would at any speed. Because of this time delay between reports, and as brought to our attention by some commenters, when viewed on a navigation display, fast-moving vessels using Class B devices would appear to jump from position to position, in contrast to a more fluid display of vessels using Class A devices.

While there may be ways to mitigate these phenomena, such as dead reckoning Class B vessels between their 30-second position reports, we believe that doing so would reduce confidence in AIS data. Therefore, we adopted a 14-knot threshold that NAVSAC included as a threshold for one of its recommendations. But we did not, as NAVSAC had recommended, extend this option to all vessels that travel only under 14 knots because we anticipate that some of these vessels (*e.g.*, vessels towing cargo) will need to use application specific messaging for the safe navigation of the vessel and such messaging is not permitted via AIS Class B (*e.g.*, cargo or voyage specific reporting to Coast Guard Sectors or Army Corp of Engineers lockmasters).

We did receive a comment questioning the use of Class B devices in a river environment where channels are close to moored vessels and another commenter questioned the use of AIS on rivers as a navigation tool because they asserted it does not take into account the change in the speed of the current. We note that AIS provides the identification and position of a vessel, as well as its course over ground and speed over ground. When making collision avoidance determinations on a river or elsewhere, speed over ground data is more desirable and reliable than speed over water data, which does not reflect the impact of a current on the vessel's speed. In § 164.46(b)(2), where we specify when AIS Class B may be used to satisfy an AIS carriage requirement, we have not excluded the use of AIS Class B on rivers.

8. AIS Displays and Integration

We received various comments regarding the installation and integration of AIS with other navigation equipment and display systems. Some stated, correctly, that we did not include these costs in our regulatory analysis. Our regulatory analysis did not include these costs because our NPRM did not propose, nor does this final rule require, that such displays be used.

AIS devices consist of a main unit and two external antennas for GPS and VHF communications. They do not require integration with other systems on board. However, the main unit of each AIS, by design, allows for various interfacing options, primarily as outputs that can be used with other shipboard systems, such as radar, electronic charting system, and multi-function displays. This interfacing option was not included in the installation or unit costs because such interfacing is not required by AIS, and because we have no means of ascertaining how many users would

avail themselves of this functionality or would purchase ancillary equipment. Although the prices of AIS have dropped since our NPRM, we use the same average cost we used then as well as the installation costs since we expect them to be about the same as our estimate in the NPRM. We did not receive comments specifically on our training estimates and therefore we continue to use the estimates as presented in the NPRM. Based on our estimates and assumptions in the NPRM, we use the values below as estimates per unit, which includes the AIS device, graphical display, presentation software, and other equipment.

We have not required this integration or specified displays because standards have not yet been fully developed to ensure the safety and efficacy of such integration or presentation options, such as addressing screen clutter and target filtering. We are working with the various standards bodies to see that such standards are developed.

Further, unlike AIS Class A devices, AIS Class B devices are not required to have a Minimal Keyboard Display (MKD) and many are designed with their own display systems. Consequently, we have amended § 164.46(h)(5) in this final rule so that such users are not required to meet the provision of § 164.46(d)(2)(ii) to have the "ability to access AIS information from the primary conning position."

9. Installation Period

Various commenters requested that we extend the proposed 7-month installation period for vessels not currently required to have AIS. We recognize that it has been several years since we published our NPRM and that many vessel owners or operators may not have planned or budgeted for this requirement. We also recognize that the purchase and installation of AIS requires proper budgeting and planning; therefore, we are amending § 164.46(j) to extend the installation period to 12 months after the effective date of this rule (13 months after publication) to allow the industry adequate time to purchase and install the equipment required by this final rule.

One commenter stated that our proposed rule was drafted during a time when the assumption was that vessels would have installed AIS during 2008 and AIS would be operational in 2009. This commenter requested that we delay the effective date until the national economy rebounds. Since our NPRM was published in 2008, the cost of AIS has continued to drop. We have used current cost estimates and other

updated data in our regulatory analysis for this final rule. And, as we noted, this final rule extends the AIS installation date to 12 months after the effective date of this rule.

10. AIS Pilot Plug

We received various comments regarding the requirements for an AIS Pilot Plug. The commenters asked whether these requirements applied to all piloted vessels and to vessels using AIS Class B, and whether an extension cord was an acceptable receptacle. In response to these comments, we amended § 164.46(g) in this final rule to clarify that the pilot plug must be within 3 feet of a permanently affixed electrical receptacle, and that these AIS pilot plug requirements apply only to vessels that embark a pilot. We also amended § 164.46(b)(2) in this final rule to preclude the use of AIS Class B to satisfy § 164.46 requirements if the vessel is subject to pilotage by other than the vessel Master or crew.

11. Supplemental Notice of Proposed Rulemaking

We received a request from a trade association and many of its members to publish a supplemental notice of proposed rulemaking (SNPRM) in lieu of this final rule because they felt that we needed more time to properly address the cumulative impact of the rule and its associated costs, and to have it reflect a more current regulatory analysis. We have taken the cost associated with this rule into consideration; please see the regulatory analysis on the docket for a discussion of the impacts of the rule on the industry. We are aware that recently issued Coast Guard regulations may impose costs on vessels subject to this rule. See discussion of our cumulative impact assessment of this rule in Section VI.A.12 above. In this rule, we have sought to impose the least burden possible while still meeting our regulatory objectives of obtaining information necessary to help enhance the safety and security of United States ports and waterways and to enhance vessel traffic management. The industry has been provided with ample notice of forthcoming requirements and the associated cost and impact regarding this rule. Although the cost is not insignificant, we see no legitimate reason to further delay implementation of the AIS MTSA directive by issuing an SNPRM.

C. Regulatory Analysis and Final Regulatory Flexibility Analysis

1. Notice of Arrival and Departure

We received public comments on the duplicative nature of the requirements and the inherent redundancy of NOAD. As a result, we eliminated our proposed NOD requirement. We also received public comments from ferry owners and operators regarding the burdensome nature of the requirements. We agreed and we will continue to exempt ferries that operate exclusively within the same COTP zone that do not carry CDC from the NOA requirements of this rule, as defined in § 160.204. Ferries that operate on a fixed route between two or more COTP zones and on a regular schedule may submit their schedule and other information required under § 160.204(a)(5)(vii) to qualify for an NOAD exemption for ferries, which reduces the burden on vessel owners and operators. We expect the number of ferries affected after these exemptions to be about 150.

We received several public comments on the Initial Regulatory Flexibility Analysis (IRFA) stating that the rule will have a disproportionate adverse economic effect on owners of vessels of 300 gross tons or less. In an attempt to alleviate some of the burden of the NOAD requirements on small entities, we have more closely aligned our NOA requirement with the CBP electronic passenger and crew arrival manifest requirements, and we have eliminated our proposed NOD requirement. In addition, U.S. vessels of 300 gross tons or less not carrying CDC and transiting two or more COTP zones are exempt under 33 CFR 160.204(a)(5)(vi). These provisions combined should help to reduce the burden on some smaller vessel owners and operators. Waivers may be granted at a COTP's discretion under 33 CFR 160.214. We also received public comments from ferry owners and operators stating that ferries should be exempted from reporting requirements if transiting two or more COTP zones. As noted, we agree and established an exemption for certain ferries in § 160.204(a)(5)(vii). Public comments also suggested maintaining the waiver provisions. We agree and have not changed the waiver provisions in § 160.214.

Please note that NOAD cost-and-impact related comments also appear above in Sections VI.A.6 (Electronic Submission), 10 (Need for NOAD Data and Agency Collaboration in Obtaining It), and 11 (Scope and Scale).

2. Automatic Identification System

We received public comments stating that AIS implementation is too costly and should not be required for smaller vessel owner and operators. Based on these comments that AIS would adversely affect small vessels owners and operators, and our assessment of the speed and maneuverability of vessels, we made a change from the proposed rule that will allow the following vessels to meet our AIS carriage requirement by installing Class B AIS devices, a less costly alternative to Class A AIS devices: (1) Fishing industry vessels, (2) Vessels that are certificated to carry more than 150 passengers, that are less than 65 feet in length, that do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and that are not capable of speeds in excess of 14 knots, and (3) self-propelled vessels engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.

The Class B AIS device is significantly less expensive (average unit cost of about \$700) than the Class A AIS device (average unit cost of about \$3,230) (see the Regulatory Impact Analysis in the docket for more detail on cost). This change in the requirement will impact about 55 percent of the affected population of vessels and should alleviate some of the economic burden on smaller vessel owners and operators. In addition, this final rule does not require passenger vessels less than 65 feet in length to carry an AIS device if they are not certificated to carry more than 150 passengers.

We also received comments on the unaddressed associated installation cost of an AIS device. An AIS device is a standalone device that can function without the requirement of integration or a retrofit; therefore, we do not expect additional installation costs over and above the estimates presented in the NPRM. We used publicly available information to obtain the cost for each device.

VII. Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.46 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 164.03.

VIII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the final rule has been reviewed by the Office of Management and Budget (OMB). A combined final Regulatory Analysis and Final Regulatory Flexibility Analysis is available in the docket as indicated under **ADDRESSES**. A summary of the Analysis follows.

The total cost of this rule over the 10-year period of analysis at a 7-percent discount rate is \$46.5 million, with annualized costs of \$6.6 million. Over 98 percent of the estimated costs of this rule are a direct result of express statutory mandates.

For the NOA portion of the final rule, we estimate the total 10-year discounted cost to be about \$935,597 using a 7-percent discount rate. We estimate the annualized cost to be about \$133,208 using a 7-percent discount rate. Of the total overall cost for the NOA portion of this final rule, 100 percent of the costs are discretionary.

For the AIS portion of this final rule, we estimate the total 10-year discounted cost to be \$46.0 million using a 7-percent discount rate, of which 0.15 percent of the costs are discretionary and 99.85 percent of the costs are from provisions expressly required by statute. We estimate the annualized cost to be \$6.5 million using a 7-percent discount rate. See Table 3.

We expect benefits of this final rule to include improved security, safety and environmental protection. The Coast Guard believes that this final rule will enhance maritime and navigation safety through a synergistic effect of NOA and AIS, and will strengthen maritime security.

We believe this final rule, through a combination of NOA and AIS, will strengthen and enhance maritime security. Combining the NOA requirement with other sources such as

AIS, we expect the final rule to help us form a COP in which vessel-specific movements in our ports and waterways can be monitored in real time, enabling us to filter data from non-compliant collection mechanisms such as radar, thereby enhancing our ability to rapidly detect, identify, and track suspicious vessels.

We assess improvements to maritime security qualitatively, resulting from the

improved quantity and quality of information, and enhanced communications and MDA. We expect quantitative benefits in the form of pollution prevented and casualties avoided. From our analysis of casualty cases over a 15-year period from 1996–2010, we estimate that the final rule will prevent between 85 and 106 barrels of oil from being spilled, at 7- and 3-percent discount rates, respectively,

over the 10-year period of analysis. We estimate the value of casualties (deaths, injuries) avoided to be between \$25.1 and \$31.2 million over the same period of analysis, at 7- and 3-percent discount rates, respectively. The following table provides a comparison of regulatory impacts resulting from changes between the NPRM and the final rule.

TABLE 3—COMPARISON OF REGULATORY IMPACT CHANGES BETWEEN NPRM AND FINAL RULE

| Category | NPRM | Final Rule | Reason for change |
|---|--|---|---|
| Compliance Start Date | <i>NOAD</i> : Beginning 2009 | <i>NOA</i> : April 30, 2015 | Extension of compliance start date. |
| Number of vessels affected | <i>AIS</i> : Mid 2009 | <i>AIS</i> : March 1, 2016 | Change in applicability, as well as improved data analysis, which explains why final rule estimates are lower than in NPRM. |
| | <i>NOAD</i> : 30,850 U.S. and foreign .. <i>AIS</i> : 17,442 U.S. and foreign | <i>NOA</i> : 18,377 U.S. and foreign vessels. <i>AIS</i> : 5,922 U.S. and foreign vessels. | |
| Costs (\$ millions, 7-percent discount rate) (U.S. and Foreign vessels combined). | <i>NOAD</i> : | <i>NOA</i> : | Decline in <i>NOA</i> costs due to elimination of proposed <i>NOD</i> requirement, the addition of several exemptions and an exception; also existing <i>CBP</i> requirements for electronic submissions allowed us attribute the cost of computers to <i>CBP</i> regulations. Change in <i>AIS</i> applicability; additional flexibility for compliance to include the less costly Class B <i>AIS</i> devices on certain classes of vessels. |
| | 10-year: \$51.3–\$69.5 (millions) ... | Foreign Costs: Mean trips, \$0.73–\$0.89 million (7 and 3 percent). | |
| | Annualized: \$7.3–\$9.7 (millions) .. | U.S. Costs: Mean trips, \$0.20–\$0.24 million (7 and 3 percent). | |
|  | ..... | 10-year: \$935,597 | |
| | <i>AIS</i> : | Annualized: \$133,208 (above <i>NOA</i> costs not in millions). | |
| | 10-year: \$130.1 million ..... | ..... |  |
| | Annualized: \$18.0 million. | ..... |  |
|  | ..... | <i>AIS</i> : | |
| | <i>Total</i> : | Foreign Costs: \$0.58–\$0.69 million (7 and 3 percent). | |
| | 10-year: \$181.4–\$199.6 (millions) | U.S. Costs: \$45.0–\$53.4 million (7 and 3 percent). | |
| Annualized: \$25.3–\$27.7 (millions). | 10-year: \$46.0 million | | |
| ..... | Annualized: \$6.5 million. | | |
| ..... | <i>Total NOA & AIS</i> : | | |
| ..... | 10-year: \$46.5 million | | |
| ..... | Annualized: \$6.6 million. | | |
| Benefits (\$ millions, 7-percent discount rate). | <i>NOAD & AIS</i> : Enhanced MDA, synergy between both portions of rule; improved communication. | <i>NOA & AIS</i> : Enhanced MDA, synergy between both portions of rule; improved communication. | Extension of compliance start date; change in applicability. |
| | <i>AIS</i> : | <i>AIS</i> : | |
| | 10-year: \$24.7 million (avoided injuries, fatalities). | 10-year: \$25.1 million (avoided injuries, fatalities). | |
| | Annualized: \$3.5 million (avoided injuries, fatalities). | Annualized: \$3.6 million (avoided injuries, fatalities). | |
| | 136 barrels of oil not spilled (10-year). | 85 barrels of oil not spilled (10-year). | |

The Coast Guard is revising the applicability of *NOA* and *AIS* to include more commercial vessels. The *NOA*

requirements include: establishing a mandatory requirement for electronic submission of *NOA*, and modifying

reporting content, timeframes, and procedures. This final rule will also require foreign-flag commercial vessels

300 gross tons and less to submit NOAs when transiting two or more COTP zones, will add five additional fields to the NOA information requirements (but information for two of these fields is already required by two Coast Guard fields that are being modified), and eliminate consolidated NOAs.

This final rule also updates our implementation of SOLAS AIS requirements and permits use of AIS Class B devices for certain vessels not subject to SOLAS to meet § 164.46 AIS

requirements. It also extends MTSA-based AIS carriage requirements beyond the current VTS areas to all U.S. navigable waters. The MTSA-based, AIS portion of this final rule covers all commercial self-propelled vessels 65 feet or more in length (including fishing and passenger vessels), and towing vessels at least 26 feet in length and 600 horsepower. It also includes—

- Self-propelled vessels engaged in dredging operations in or near a commercial channel or shipping fairway

in a manner likely to restrict or affect navigation of other vessels, and

- Vessels moving CDC as defined in subpart C of part 160 of this chapter, or flammable or combustible liquid cargo in bulk.
- Vessels certificated to carry more than 150 passengers. The following table describes AIS carriage costs and benefits and identifies the source of each requirement:

TABLE 4—AIS CARRIAGE COSTS INCLUDING INITIALIZATION AND UPDATES, AND BENEFITS ⁴

| Vessels required by Final Rule to have AIS | Annualized cost (7%)/vessel population | Specific MTSA or SOLAS source provision | Coast Guard's effort to minimize cost | Benefits (quantified benefits include all affected vessels) |
|--|--|--|--|--|
| Commercial vessels ≥ 65 feet in length. | \$4.4 million/4,402 vessels, including 2,906 fishing vessels. ⁵ | Title 46 U.S.C. 70114(a)(1)(A) (section 102 of MTSA). Mandatory; Under this MTSA provision, no decision by the Secretary is required to establish which vessels must have AIS. | For all vessels included based on MTSA, a deviation of up to 5 years may be granted for— <ul style="list-style-type: none"> • Vessels that operate solely within a very confined area (e.g., less than a 1 nautical-mile radius, shipyard, or barge fleeting facility); • Vessels that conduct only short voyages (less than 1 nautical mile) on a fixed schedule (e.g., a bank-to-bank river ferry service or a tender vessel); • Vessels that are not likely to encounter other AIS-equipped vessels; • Vessels whose design or construction makes it impracticable to operate an AIS device (e.g., those that lack electrical power, have an exposed or open cabin, or are submersible); or • Vessels denoted in paragraph (b)(2) that seek a deviation from requirements in paragraphs (d)(2)(ii) and (e) of this section because their AIS Class B device lacks a display. • Fishing vessels may use an AIS Class B unit. | By requiring AIS on the vessels listed in this table, this final rule provides AIS data that— <ul style="list-style-type: none"> • Enhances situational and maritime domains awareness which assists users in traffic management, safety, and security (i.e., MDA) decision-making; • Enables transportation efficiency by reducing the more dramatic ship movements required to avoid collisions when <i>in extremis</i>: lower fuel consumption, more reliable scheduling, faster transits; and • Improves, as intended by SOLAS, collision avoidance, vessel traffic services, and, a means for authorities to obtain info on vessels and their cargoes. Quantitative Benefits (all vessels classes): 85–106 barrels of oil not spilled, 7- and 3-percent discount rates, 10-year period of analysis. \$25.1–\$31.2 million in injuries and deaths at 7- and 3-percent discount rates over 10-year period of analysis, or \$3.6 million annualized at both discount rates. |

⁴ We estimated the cost per vessel to carry AIS (Class A) in the 2003 MTSA final rule to be \$9,500 (undiscounted). Due to decreasing costs of AIS

units over the past 5–7 years, we estimate the cost per vessel to carry AIS (Class A) for this final rule to be about \$4,500 (undiscounted) per vessel.

⁵ These figures do not include towing vessels and dredges which are accounted for separately below.

TABLE 4—AIS CARRIAGE COSTS INCLUDING INITIALIZATION AND UPDATES, AND BENEFITS⁴—Continued

| Vessels required by Final Rule to have AIS | Annualized cost (7%)/vessel population | Specific MTSA or SOLAS source provision | Coast Guard's effort to minimize cost | Benefits (quantified benefits include all affected vessels) |
|--|---|--|--|---|
| Passenger vessels certificated to carry more than 150 passengers and <65 feet in length. | 0 vessels ⁶ | 46 U.S.C. 70114(a)(1)(B) & (D). Discretionary; Under these MTSA provisions, a decision by the Secretary is required to establish which vessels must have AIS. | Exercised discretion under SOLAS not to include all vessels carrying more than 12 passengers. MTSA mandate based on DHS Secretary passenger-for-hire threshold determination. SOLAS mandate extends to all vessels carrying more than 12 passengers. DHS determination to adopt a threshold of more than 150 passengers takes into account the consequences of a transportation safety or security incident and the impact on small entities. • Exercised discretion under SOLAS not to include all vessels carrying more than 12 passengers. • Limited to self-propelled vessels. • Limited to vessels certificated to carry more than 150 passengers. May use an AIS Class B unit, if not in a VTS or VMRS area, and not capable of operating above 14 knots. | No quantified benefits, since no vessels in this category exist in our population of vessels. |
| Towing vessels ≥ 26 ft in length and 600 hp. | \$2.0 million/1,429 vessels. | 46 U.S.C. 70114(a)(1)(C) Mandatory; Under this MTSA provision, no decision by the Secretary is required to establish which vessels must have AIS. | ..... | Although expressly required by MTSA, owners and operators of these towing vessels accrue the same benefits as owners and operators all other vessels equipped with AIS. Quantified benefits included in first category of this table. |
| Dredges | \$0.010 million/17 vessels. | 46 U.S.C. 70114(a)(1)(D) Discretionary; Under this MTSA provision, a decision by the Secretary is required to establish which vessels must have AIS. | • Limited to self-propelled vessels. • Limited to vessels that are engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels. • May use an AIS Class B unit .. | Provides greater awareness to vessels engaged in dredging near a commercial channel of approaching vessels, and provides approaching vessels with greater awareness of dredging activity, and thus addresses the risk of collisions and other mishaps involving such vessels. Quantified benefits included in first category of this table. |
| Vessels engaged in the movement of certain dangerous cargo or flammable or combustible liquid cargo in bulk. | nil ⁷ /0 vessels (Vessels included in first category of this table). | 46 U.S.C. 70114(a)(1)(D) Discretionary; Under this MTSA provision, a decision by the Secretary is required to establish which vessels must have AIS. | Limited to self-propelled vessels of 26 feet or under. | Provides greater awareness to vessels carrying CDC of approaching vessels, and provides all other AIS users with greater awareness, and thus addresses the risk of collisions and other mishaps involving such vessels. Quantified benefits included in first category of this table. |

TABLE 4—AIS CARRIAGE COSTS INCLUDING INITIALIZATION AND UPDATES, AND BENEFITS⁴—Continued

| Vessels required by Final Rule to have AIS | Annualized cost (7%)/vessel population | Specific MTSA or SOLAS source provision | Coast Guard's effort to minimize cost | Benefits (quantified benefits include all affected vessels) |
|---|--|--|--|---|
| Vessels ≥300 gross tonnage, on an international voyage. | nil ⁸ /0 vessels | SOLAS Art. I, SOLAS, 32 U.S.T. 47, and the Protocol of 1978 relating to SOLAS, 32 U.S.T. 5577. SOLAS, Chapter V, regulation 1.4 and 19.2.4. Mandatory; Under this SOLAS provision, no decision by the Secretary is required to establish which vessels must have AIS. | Use of an AIS Class B Device is not permitted under SOLAS. | As a Contracting Government to SOLAS, the United States has a responsibility to implement mandatory SOLAS provisions such as these AIS, SOLAS Chapter V provisions. |
| A vessel of ≥150 gross tonnage, when carrying more than 12 passengers on an international voyage. | nil ⁹ /0 vessels | Same as above | Same as above | Same as above. |

We have placed NOAD applicability and exemption provisions from both the final rule and the NPRM adjacent to each other in the following derivation and comparison table so that you may quickly identify differences in vessels covered by this final rule compared with those the NPRM proposed to cover.

TABLE 5—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY AND EXEMPTION PARAGRAPHS IN 33 CFR PART 160

| Final rule paragraph in 33 CFR part 160 | Final rule text | NPRM paragraph in 33 CFR part 160 | Proposed rule text |
|---|--|-----------------------------------|---|
| § 160.203(a) | This subpart applies to the following vessels that are bound for or departing from ports or places within the navigable waters of the United States, as defined in 33 CFR 2.36(a), which includes internal waters and the territorial seas of the United States, and any deepwater port as defined in 33 CFR 148.5: (1) U.S. vessels in commercial service, and (2) All foreign vessels. | § 160.203(a) | This subpart applies to U.S. vessels in commercial service and all foreign vessels that are bound for or departing from ports or places of the United States. |
| § 160.204(a) | NO CHANGE FROM NPRM | § 160.204(a) | Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart: |
| (1) | NO CHANGE FROM NPRM | (1) | A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf. |
| (2) | NO CHANGE FROM NPRM | (2) | An oil spill response vessel (OSRV) when engaged in actual spill response operations or during spill response exercises. |
| (3) | After December 31, 2015, a vessel required by 33 CFR 165.830 or 165.921 to report its movements, its cargo, or the cargo in barges it is towing. | (3) | A vessel required by 33 CFR 165.830 or 165.921 to report to the Inland River Vessel Movement Center (IRVMC). |
| (4) | A United States or Canadian vessel engaged in the salvaging operations of any property wrecked, or rendering aid and assistance to any vessels wrecked, disabled, or in distress, in waters specified in Article II of the 1908 Treaty of Extradition, Wrecking and Salvage (35 Stat. 2035; Treaty Series 502). | ..... | NO CORRESPONDING PARAGRAPH. |

⁶ All passenger vessels certificated to carry more than 150 passengers are > 65 feet in length and are included in the > 65 feet category above.

⁷ The analysis assumes that any vessel transporting or moving a barge containing CDC falls into one of the above categories (e.g., commercial

vessel ≥ 65 ft; towing vessel ≥ 26 ft & 600 hp). This category of vessels is specified in the regulations to ensure that in the future, any vessel regardless of size/category moving CDC has an AIS unit.

⁸ This requirement covers the same vessels captured by our previous corresponding SOLAS

requirements, or by MTSA's requirement for commercial vessels ≥ 65 ft in length.

⁹ This requirement covers the same vessels as our existing corresponding SOLAS requirement.

TABLE 5—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY AND EXEMPTION PARAGRAPHS IN 33 CFR PART 160—Continued

| Final rule paragraph in 33 CFR part 160 | Final rule text | NPRM paragraph in 33 CFR part 160 | Proposed rule text |
|---|---|-----------------------------------|--|
| (5) | NO CHANGE IN TEXT FROM NPRM | (4) | The following vessels neither carrying certain dangerous cargo nor controlling another vessel carrying certain dangerous cargo: |
| (i) | NO CHANGE FROM NPRM | (i) | A foreign vessel 300 gross tons or less not engaged in commercial service. |
| (ii) | NO CHANGE FROM NPRM | (ii) | A vessel operating exclusively within a single Captain of the Port Zone. Captain of the Port zones are defined in 33 CFR part 3. |
| (iii) | A U.S. towing vessel and a U.S. barge operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia. | (iii) | A U.S. towing vessel and a U.S. barge operating solely between ports or places of the continental United States. |
| (iv) | NO CHANGE FROM NPRM | (iv) | A public vessel. |
| (v) | NO CHANGE FROM NPRM | (v) | Except for a tank vessel, a U.S. vessel operating solely between ports or places of the United States on the Great Lakes. |
| (vi) | A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place. | (vi) | A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place. |
| (vii) | Each ferry on a fixed route that is described in a schedule that is submitted by the ferry operator, along with information in paragraphs (a)(5)(vii)(A)–(J) of this section, to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule. At least 24 hours before the first date and time of arrival listed on the ferry schedule, each ferry operator who submits a schedule under paragraph (a)(5)(vii) of this section must also provide the following information to the Captain of the Port for each port or place of destination listed in the schedule for the ferry, and if the schedule or the following submitted information changes, the ferry operator must submit an updated schedule at least 24 hours in advance of the first date and time of arrival listed on the new schedule and updates on the following items whenever the submitted information is no longer accurate: (A) Name of the vessel; (B) Country of registry of the vessel; (C) Call sign of the vessel; (D) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel; (E) Name of the registered owner of the vessel; (F) Name of the operator of the vessel; (G) Name of the vessel’s classification society or recognized organization, if applicable; (H) Each port or place of destination; (I) Estimated dates and times of arrivals at and departures from these ports or places; and (J) Name and telephone number of a 24-hour point of contact. | ..... | NO CORRESPONDING PARAGRAPH. |
| (6) | April 30, 2015 through December 31, 2015, vessels identified as being subject to 33 CFR 165.830 or 165.921. | ..... | NO CORRESPONDING PARAGRAPH. |
| § 160.215 | NO CHANGE FROM NPRM | § 160.215 | When a vessel is bound for a port or place of the United States under force majeure, it must comply with the requirements in this section, but not other sections of this subpart. |

We have placed AIS applicability provisions from both the final rule and the NPRM adjacent to each other in the following derivation and comparison table so that you may readily identify differences in vessels covered by this final rule compared with those the NPRM proposed to cover.

TABLE 6—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY PARAGRAPHS IN 33 CFR 164.46

| Final rule paragraph in 33 CFR 164.46 | Final rule text | Corresponding NPRM paragraph in 33 CFR 164.46 | Proposed rule text |
|---------------------------------------|--|---|--|
| (b)(1) | AIS Class A device. The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device: | (b) | The following vessels must have onboard a properly installed, operational, Coast Guard type-approved Automatic Identification System (AIS): |
| (i) | NO CHANGE IN TEXT FROM NPRM. | (1) | A self-propelled vessel of 65 feet or more in length, engaged in commercial service; |
| (ii) | A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial service. | (2) | A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial towing; |
| (iii) | A vessel that is certificated to carry more than 150 passengers. | (3) | A self-propelled vessel carrying 50 or more passengers, engaged in commercial service; |
| | NO CORRESPONDING TEXT IN FINAL RULE. | (4) | A vessel carrying more than 12 passengers for hire and capable of speeds in excess of 30 knots; |
| (iv) | A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels. | (5) | A dredge or floating plant engaged in or near a commercial channel or shipping fairway in operations likely to restrict or affect navigation of other vessels except for an unmanned or intermittently manned floating plant under the control of a dredge; and |
| (v) | A self-propelled vessel engaged in the movement of— (A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or (B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1. | (6) | A self-propelled vessel carrying or engaged in the movement of certain dangerous cargoes as defined in § 160.202 of this subchapter. |
| (b)(2) | AIS Class B device. Use of a U.S. Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew: | See Note to paragraph (b). | NO CORRESPONDING PARAGRAPH, but see explanatory “Note to paragraph (b): Except for those vessels denoted in paragraph (c) of this section, use of Coast Guard type-approved AIS Class B is permissible, however, not well-suited, on vessels that are highly maneuverable, navigate at high speed, or routinely operate on or near very congested waterways or in close-quarter situations with other AIS equipped vessels.” |
| (i) | Fishing industry vessels ..... | ..... | NO CORRESPONDING PARAGRAPH. |
| (ii) | Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers, and that— (A) Do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and (B) Do not operate at speeds in excess of 14 knots; and engaged in dredging operations; and | ..... | NO CORRESPONDING PARAGRAPH. |
| (iii) | Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations. | ..... | NO CORRESPONDING PARAGRAPH. |
| (c) | SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03): NO CORRESPONDING PARAGRAPH. | (c) | SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6, 19.2.4 (AIS Class A), and 19.2.3.5 or 19.2.5.1 as applicable (Incorporated by reference, see § 164.03): |
| (1) | A vessel of 300 gross tonnage or more, on an international voyage. | (1) | A vessel of 500 gross tonnage or more; |
| | | (2) | A vessel of 300 gross tonnage or more, on an international voyage; and |

TABLE 6—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY PARAGRAPHS IN 33 CFR 164.46—Continued

| Final rule paragraph in 33 CFR 164.46 | Final rule text | Corresponding NPRM paragraph in 33 CFR 164.46 | Proposed rule text |
|---------------------------------------|------------------------------|---|--|
| (2) | NO CHANGE IN TEXT FROM NPRM. | (3) | A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage. |

To eliminate confusion and redundancy within the industry, we have generally aligned our NOA regulations with CBP regulations under its APIS final rule (70 FR 17820, as amended at 72 FR 48320), which requires that vessels arriving from a foreign port or place to submit arrival manifests and those departing for a foreign port or place to submit departure manifests. The submission of an NOA itself for this population of vessels is not a new requirement. However, we have added five fields (vessel's MMSI number, whether vessel 300-gross-ton-or-less, whether voyage less than 24 hours, last port of departure, and arrival and departure date for last port of departure) to the NOA, two of which are already required by two Coast Guard requirements that we are modifying. A NOD will not be required in this final rule.

This rule will also require foreign commercial vessels 300 gross tons or less that transit two or more COTP zones to submit an NOA, which is not currently a CBP requirement. In addition, these vessel owners would be eligible to seek waivers under § 160.214 at the discretion of the COTP, a current Coast Guard practice.

This final rule will require the electronic submission of an NOA, and will modify related reporting content, timeframes, and procedures. This rule will also create an efficient and timesaving method of notification thereby reducing the hour burden on industry and Coast Guard resources.

Our 60-minute notice time provides flexibility for owners of smaller U.S.-flag vessels and certain Canadian-flag vessels, because these businesses would continue to be able to operate efficiently

as charter businesses due to the spontaneous nature of their business. This requirement also better aligns with the CBP's current requirement, which will alleviate confusion within the industry and provide consistency for the public.

We estimate the NOA portion of this rule will affect approximately 3,430 U.S. vessels and 14,947 foreign-flag vessels. The following estimates use a 7-percent discount rate over a 10-year period of analysis. We estimate the annual cost to U.S. vessel owners and operators to be about \$28,706. We estimate the annual cost to foreign-flag vessel owners and operators to be about \$104,502. We estimate the 10-year NOA cost to U.S. vessel owners and operators to be about \$201,619. We estimate the 10-year NOA cost to foreign-flag vessel owners and operators to be about \$733,978. We estimate the total annualized costs of the NOA requirements for both U.S. and foreign owners and operators to be about \$133,208. We estimate the total present value 10-year costs of the NOA requirements for both U.S. and foreign-flag vessel owners and operators to be about \$935,597. We estimate this rule will add less than 1 dollar per vessel trip on average for an owner or operator to submit an NOA.

The AIS costs associated with this rule as presented are a result of the AIS carriage requirement, which includes the AIS device cost, installation, maintenance, training, replacement costs, unit initialization, and voyage specific updates. We estimate the AIS provisions will affect about 5,848 U.S. vessels and about 74 foreign-flag vessels.

The following estimates use a 7-percent discount rate over a 10-year

period of analysis. We estimate, for owners and operators of U.S. vessels that will be required to carry AIS onboard, the 10-year present value cost to be \$45.0 million, with annualized costs of about \$6.4 million at a 7-percent discount rate. We estimate for owners and operators of foreign-flag vessels the present value 10-year cost of this final rule to be \$585,000, with annualized costs of about \$83,000. We estimate for all owners and operators of U.S.- and foreign-flag vessels the total present value 10-year cost of the AIS provisions to be \$45.5 million, with annualized costs of about \$6.5 million.

We estimate the total present value 10-year cost of the final rule, including both NOA and AIS provisions, to be \$46.5 million, with annualized costs of about \$6.6 million. In our sample of 77 small entities, we found these entities owned 244 total vessels, or about 3 vessels per entity. Again, for the purpose of our analysis, we assumed all owners would install a Class A AIS device since we were not able to determine which small entities would choose to install the less costly Class B AIS device. Each small entity will purchase one AIS device for each vessel it owns. If a small entity owns one vessel, it will purchase one AIS device to meet the requirements of this final rule. We estimate this final rule will cost a small entity on average between about \$2,000 and \$14,300 to install, maintain, and carry AIS onboard depending upon the vessel class and whether the vessel will carry a Class A unit or Class B unit and to submit the three additional NOA fields. See Table 7.

TABLE 7—COST PER SMALL ENTITY TO CARRY THREE AIS UNITS AND SUBMIT THREE ADDITIONAL NOA FIELDS

| Type of AIS unit | Types of vessels to install | Average cost per owner/operator to purchase on average three AIS units and complete three additional NOA fields |
|------------------------------------|--|--|
| Class B plus NOA submissions | Commercial Fishing and vessels engaged in dredging operations. | \$6,051 (initial year: \$6,027 for three AIS units and \$24 for three additional NOA fields). \$774 (annually: \$250 for AIS maintenance and \$24 for three additional NOA fields). |

TABLE 7—COST PER SMALL ENTITY TO CARRY THREE AIS UNITS AND SUBMIT THREE ADDITIONAL NOA FIELDS—
Continued

| Type of AIS unit | Types of vessels to install | Average cost per owner/operator to purchase on average three AIS units and complete three additional NOA fields |
|------------------------------------|---------------------------------|--|
| Class A plus NOA submissions | All other vessels classes | \$14,340 (initial year: \$14,316 for three AIS units and \$24 for three additional NOA fields). \$1,473 (annually: \$1,449 for AIS including updates and \$24 for three additional NOA fields). |

We expect this final rule to improve the quantity and quality of information, and enhance communications and MDA. We believe this final rule, through a combination of NOA and AIS, will strengthen maritime and national security. This rule will include a large number of vessels not currently covered under the current NOA and AIS regulations. We expect this final rule will provide us with a better understanding of vessels coming to the United States and help us determine which vessels may pose a threat as a target, weapon, or transport of suspicious persons and/or materials. NOA provides us advance warning of those intending to enter our waters, and electronic submission allows us greater time to evaluate this information, and to take action if warranted based on information about a potential threat by the vessel or persons on board the vessel. Specifically, the NOA requirement is combined with other sources such as AIS to form a COP in which vessel-specific movements in our ports and waterways can be monitored in real time enabling us to filter data from non-compliant collection mechanisms such as radar, thereby enhancing our ability to rapidly detect, identify, and track suspicious vessels. This information is used as a decision making aid by the Coast Guard field commanders and is also referenced in support of interagency and Department of Defense homeland security efforts. Creating this COP helps the Coast Guard prioritize its limited resources and meet mission requirements while maintaining MDA. Moreover, along with passenger, crew and cargo information required by CBP, we can determine if a suspicious person is onboard a vessel and by adding AIS, we can determine the position of the suspicious vessel. We believe NOA and AIS combined will serve as a deterrent and will enhance Coast Guard interdiction capabilities, but will not completely eliminate the risk of maritime transportation incidents.

As previously mentioned, we have added three NOA data fields that are new to industry. The addition of the MMSI number provides Coast Guard a

unique identifier for the vessel which correlates NOA and AIS data and provides an accurate picture of location, and verification of identity of the vessel. The addition of the field “less than 300 gross tons” allows the Coast Guard an opportunity to prioritize the screening of vessels, schedule inspections, and possibly establish security or safety zones. The addition of the field, “voyage less than 24 hours” will allow certain vessels that meet an exemption, such as U.S. flag vessels, to clarify that their voyage is less than 24 hours and eliminate the possibility of any delays or penalties that they may incur as a result of not submitting an NOA in a timely manner. The change to a 60-minute notice of arrival time for U.S. vessels under 300 gross tons provides flexibility and relief to small entities that typically own and operate vessels of this size.

AIS provides further benefits by allowing for rapid filtering of data from mechanisms that do not rely on vessel cooperation (e.g., radar) and thus enhances security-related missions. AIS enables us to quickly locate, track, and intercept these vessels. This is a similar approach as taken for air transportation: Flight plan, passenger manifests and traffic control tracking.

From a security perspective, vessels pose a risk in three ways: They can be used as a weapon for terrorists (e.g., ramming another vessel or infrastructure component), they can be used to transport personnel/materials for an attack, or they can be used as the target of an attack. This rule helps focus Coast Guard and other resources to mitigate security risk across all three scenarios. Specifically, to determine if a vessel can be used as a weapon, a target, or as a transport vehicle, the Coast Guard has several tools at its disposal that assign risk based on valuable information contained in an NOA, such as crew and passenger information that CBP and the FBI use to identify persons or vessels that may pose a security risk to the United States. After receiving the NOA information, the data are placed into a database or matrix (dependent on the tool being used). Points are assigned to each vessel and a vessel is then given

a priority ranking based on its type and stated cargo. Above a certain threshold, the Coast Guard determines whether a vessel requires an escort to reduce the possibility of the vessel being used as a weapon, a target, or as a transport of suspicious persons or materials, such as weapons of mass destruction (WMD) or weapons of mass effect (WME). If necessary, the vessel may be boarded or inspected to ensure it meets international safety and security standards.

We expect this rule to provide quantifiable benefits in the form of barrels of oil not spilled in addition to benefits from avoided injuries and fatalities. For the NPRM, we based quantifiable benefits on a review of 64 marine accident cases from our MISLE database for the period 1996–2003 in order to obtain casualty reports involving commercial vessels that may have benefitted from an onboard AIS unit. For the final rule, we also examined casualty cases for the period 2004–2010 and found an additional 21 cases where AIS may have been beneficial in preventing an accident. For the period 1996–2009, we estimate the final rule will prevent 85 to 106 barrels of oil from being spilled during a 10-year period of analysis. We also analyzed more than 800 casualty incidents for 2010 and found only three cases where AIS may have been beneficial; however, the three cases did not involve any injuries, fatalities, death, or pollution and therefore did not provide additional benefits.

Using a VSL of \$9.1 million, we also estimated additional benefits (from avoided injuries and fatalities) of \$25.1 million at a 7-percent discount rate, during the 10-year period of analysis or an annualized amount of about \$3.6 million. The VSL estimate is based on the 2013 memorandum from DOT titled “Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses.” This memorandum is available in the docket as detailed under **ADDRESSES**. The VSL is not an estimate of the value of a person’s life, but is instead a technical valuation of the amount one would be willing to pay to

reduce the probability of fatality. For example, a \$9.1 million VSL means the public is willing to pay \$9.10 to reduce the risk of a fatality by 1 in a million.

Our evaluation of the 85 accident cases, including 2010, also resulted in about \$5.1 million in property damage or about \$350,000 per year.

AIS helps reduce the risk of attack in two ways: (1) Reducing the likelihood of a successful attack, and (2) reducing the consequences should a successful attack occur. AIS reduces the likelihood of a successful attack which arises from the enhanced ability to defeat an attack. We identify the steps require to defeat an attack and how AIS helps to detect an attack in Table 20 of the regulatory analysis available on the docket for review. In Table 22 of the regulatory analysis, we also present illustrative scenarios where NOA in conjunction with AIS may be helpful in attacks ranging from any attack versus any size passenger vessel to an attack versus a cruise ship from a large VBIED. AIS also

assists in identifying vessels in position to assist with emergency response/ search and rescue by showing location of vessels in response operations and their proximity to vessels in need of response resources. This works for all attack types by reducing the time to get assisting vessels on the scene of the incident.

We performed a breakeven analysis based on common passenger vessel capacity amounts of 12 (threshold in Regulation 2 of the SOLAS International Convention), 150 (threshold used in the 2003 AIS Final Rule), and 2,000 (for large cruise ships that may be potential targets of smaller vessels that carry a vessel borne improvised explosive device (VBIED)). Table 8 that follows presents the annual risk reduction required for passenger vessels with certain passenger capacities for the final rule to breakeven. We estimated the annualized cost for the 288 passenger vessels, affected by this rule, at a 7-

percent discount rate to be \$0.33 million. Using the scenario of 150 lives saved for passenger vessels as our example, we can determine the number of years the final rule will have to prevent one incident involving 150 casualties in order for benefits to outweigh costs. From Table 8, the benefit from casualties avoided is \$1.4 billion using \$9.1 million as the value of a statistical life. Using the annualized cost of \$0.33 million for this population of passenger vessels affected by the final rule (288), we can determine the number of years the final rule would have to prevent one casualty in order for benefits to outweigh costs. Multiplying \$0.33 million by the variable "time" and equating it to the benefit value of \$1.4 billion, we solve for time to obtain 4,136 years, meaning the final rule would have to prevent one casualty incident involving 150 passengers in this time period for the final rule to be beneficial.

TABLE 8—ANNUAL RISK REDUCTION REQUIRED FOR COSTS TO EQUAL BENEFITS FOR PASSENGER VESSELS WITH CERTAIN PASSENGER CAPACITIES

[Annual costs at 7-percent discount rate]

| Potential casualties avoided | Benefit from casualties avoided (\$millions) | Annualized cost for passenger vessels (\$millions) | Risk reduction required (%) | Risk reduction required (years between averted attacks) |
|------------------------------|--|--|-----------------------------|---|
| 12 | \$109.2 | \$0.33 | 0.30 | 331 |
| 150 | 1,365 | 0.33 | 0.02 | 4,136 |
| 2,000 | 18,200 | 0.33 | 0.0018 | 55,152 |

These estimates do not reflect the full socioeconomic benefits of oil spill mitigation and risk reduction associated with vessels, which include avoided damages to the ecosystem and regional and national economic impacts. The scenarios above show the loss of human capital only for passenger vessels with certain passenger capacities specified above, and with no regard for physical assets, it likely underestimates the monetary effects of a terrorist incident. The human capital scenario shown as benefits from casualties avoided provide a useful account of the risk reduction in years required for the final rule to breakeven.

In the regulatory analysis, for the entire casualty period 1996–2010, about 14 barrels of oil were spilled annually. We estimate the total benefit or barrels of oil not spilled for all 85 casualty cases between 1996 and 2010 to be between 85 and 106 barrels over the 10-year period of analysis at 7- and 3-percent discount rates, respectively. We expect annualized unmonetized benefits

to be about 12 barrels of oil not spilled. The Regulatory Analysis for the final rule contains additional discussion of benefits, including qualitative benefits.

The NOA provisions provide the ability to perform advanced screening of cargo, passengers and crew, thus enabling interdiction of illicit activities including smuggling of weapons of mass destruction and/or terrorists. These provisions also enable the planning and prioritization of other protective measures, including protecting surrounding critical infrastructures from attacks using the vessel and/or protecting the vessel itself from attack. Given the range of attacks from a small passenger vessel to a cruise ship and the type of attack from a small device to a large VBIED as presented in the regulatory analysis, the casualty range can vary greatly, where the breakeven point can be minor to extremely minor. NOA may help prevent attacks from a man portable device with just one fatality, which would require only one attack prevented every 88 years up to an

attack with major consequences from a WMD or WME.

The AIS provisions support real-time situational awareness of vessel position and movements, and enable the detection of unusual/threatening operations and subsequent interdiction. AIS requirements also provide for a better understanding of resources in the area of an incident and thus enable more effective response planning. Combined with NOA provisions, AIS requirements further provide the ability to compare actual operations with stated plans, thus enabling the identification of potentially threatening activities.

See the "Regulatory Analysis" in Docket No. USCG–2005–21869 at <http://www.regulations.gov> for details of these calculations. The following link will take you directly to the docket: <http://www.regulations.gov/#/docketDetail;D=USCG-2005-21869>.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this final 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.

Final Regulatory Flexibility Analysis

When an agency promulgates a final rule under section 4 of the Administrative Procedure Act, 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, under 5 U.S.C. 603(a), the agency must prepare a Final Regulatory Flexibility Analysis (FRFA) or have the head of the agency certify pursuant to 5 U.S.C. 605(b) that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act (RFA) prescribes the content of the FRFA in 5 U.S.C. 604(a), a summary of which we discuss below.

(1) The RFA requires a succinct statement of the need for, and objectives of, the final rule.

Coast Guard response: The need and objective of this final rule is to (1) fully implement the Marine Transportation Security Act of 2002 AIS directive found at 46 U.S.C. 70114, (2) implement SOLAS AIS requirements including provisions in V/19.2.4.3 that went into force internationally July 1, 2008, and (3) expand NOA requirements and streamline the processing of these data to further enhance Homeland Security under Ports and Waterways Safety Act authority (33 U.S.C. 1225 & 1226) by increasing our awareness of vessels and people entering or departing U.S. ports or places. Prompt receipt of NOA and AIS data will assist the Coast Guard in preventing damage to structures on, in, or adjacent to the navigable waters of the United States and in protecting those navigable waters in the marine environment. AIS data will also assist vessels in avoiding collisions. This rule will affect a larger portion of relatively smaller vessels, which are not currently included under existing regulations (including fishing vessels).

(2) The RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the

proposed rule as a result of such comments.

Coast Guard response: We summarize the public comments we received on the NPRM in section VI.C of the preamble.

(3) The RFA requires a description of and an estimate of the number of small entities to which the final rule will apply or an explanation of why no such estimate is available.

Coast Guard response: As previously discussed, this rule will affect owners and operators of vessels that will be required to submit an NOA in addition to vessel owners and operators that will be required to carry and operate an AIS unit onboard. This Final Regulatory Flexibility Analysis is based on our analysis of the requirements of the AIS portion of this rule as discussed in the separate Regulatory Analysis available in the docket for review. The addition of nine data fields to the NOA information requirements (only three of which are new to industry) will impose minor costs on industry because of the small burden associated with performing the task. The majority of the cost impact of this rule on small entities stems primarily from the AIS portion of this rule. We estimate that 5,821 U.S.-flag vessels will be affected by the AIS portion of this rule and we expect that a majority of these vessels may be owned by small entities based on our analysis.

Based on current Coast Guard data, we estimate this rule will affect about 3,333 U.S. companies (entities) that own approximately 9,278 vessels. We randomly selected a sample size of 345 vessel owners and operators to reach the 95 percent confidence level. We found revenue and employee information on 104 of the entities in the sample using publicly available information. Of these, we found 77 to be small entities according to Small Business Administration (SBA) size standards. We did not find government or non-profit entities in our sample. We consider the 241 with no revenue or employee information to be small entities, as the lack of available information likely indicates smaller entity size.

We estimated the potential initial and annual revenue impact for each owner and operator that will be required to have AIS on board. We multiplied the initial and annual costs of AIS installation by the number of vessels that each entity owns and then divided by the average annual revenues for each small entity to obtain the share of costs to total annual revenues.

We classified small entities by the North American Industry Classification System (NAICS) code for those entities

that had revenue and size data. The 77 small entities with data are represented by 34 different NAICS codes or categories. We determined if a business was small by using the SBA size standards for each NAICS code. We found that 7 NAICS categories represent about 55 percent or 42 of the 77 small entities that we analyzed. The remaining 45 percent (or 35 small entities) of small entities are represented by 27 different NAICS categories with about 1 percent of the population of small entities in a majority of the categories.

Based on the 7 NAICS categories that represent 55 percent of the small entities with data, about 43 percent or 33 of the 77 small entities are classified by 5 NAICS categories: “Finfish Fishing,” “Inland Water Freight Transportation,” “Shellfish Fishing,” “Navigational Services to Shipping,” and “Fish and Seafood Merchant Wholesalers”. Based on available data, we did not find evidence that small not-for-profit organizations or small government jurisdictions will be impacted by this rule.

(4) The RFA requires a description of the projected reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Coast Guard response: The final rule will require modifications to two existing OMB-approved collections “Advance Notice of Arrival and Departure” (OMB Control Number 1625-0100) and “Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data” (OMB Control Number 1625-0112). Five data elements will be added to the collection of information (1625-0100) and one will be deleted; of the five added data elements, only three (MMSI, Whether vessel is 300 GT or less, and whether the vessel’s voyage time is less than 24 hours) are new to industry. We believe the burden for this additional element is so minimal that a change to the total burden estimate for this collection is unnecessary.

The projected reporting and recordkeeping, other compliance requirements of the final rule, and types of activities and skills necessary for the preparation of NOAs and AIS information are described in section VIII. D., “Collection of Information.”

(5) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement

of any change made to the proposed rule in the final rule as a result of the comments.

Coast Guard response: The Coast Guard did not receive comments on the NPRM from the Chief Counsel for Advocacy of the Small Business Administration.

(6) The RFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the final rule considered by the agency which affect the impact on small entities was rejected.

Coast Guard response: The requirements for notice of arrival in this final rule for vessels, regardless of size, coming from a foreign port or place will be applied to vessels that are already required to comply with the CBP's APIS requirements. The evaluation of alternatives for this part of the final rule is unnecessary since the CBP's final rule precedes the Coast Guard's final rule for the submission of notices of arrival. Two aspects where our rule differs from the CBP's final rule are the Coast Guard NOA requirement (1) for foreign-flag commercial vessels less than 300 gross tons transiting two different COTP zones and (2) vessels carrying CDC. Vessels in the second category above will have to submit an NOA for nearly all transits. In addition, each COTP will have the discretion to grant waivers for these vessels under 33 CFR 160.214. The Coast Guard has established an

exception for certain ferries that transit more than one COTP zone and some ferries will continue to qualify for the operating-exclusively-within-a-single-COTP-zone exception.

In drafting this rule, the Coast Guard originally contemplated reducing the threshold for NOADs to 100 gross tons, but we determined that this would have left the Coast Guard without the necessary visibility of these smaller vessels to ensure that we can conduct necessary inspections.

These vessels also pose a unique threat due to their size and can be utilized as weapons, targets, or transports of suspicious persons and/or materials. By capturing vessels down to zero gross tons for notice of arrival, we have ensured that all commercial vessels would be required to submit NOAs if coming from a foreign port or place, and by more closely aligning this requirement with CBP's requirement, we reduce some confusion within the industry. It also allows the Coast Guard to identify and assess a vessel's threat level based on size, cargo, crew, and route.

The Coast Guard also considered carriage of AIS units on passenger vessels that carry more than 12 passengers, a passenger vessel threshold mandated by SOLAS regardless of size or type of voyage. These vessels carry up to 150 passengers (and thus, the threshold of more than 150 passengers does not apply to them) who may be injured or killed in a collision or terrorist attack. However, the domestic population of passenger vessels that carry more than 12 passengers and up to 150 passengers and less than 65 feet in length is estimated to be 4,450

vessels, which are predominantly owned by small entities. We estimate the cost for the carriage (including installation and operation and maintenance costs) of AIS units (assuming Class A units) on this population of vessels to be between \$36.0 and \$42.4 million at 7- and 3-percent discount rates, respectively. This would have been a relatively large cost burden for small entities that operate these vessels with very few marginal benefits; therefore, the Coast Guard rejected this passenger vessel threshold for AIS carriage.

The AIS portion of this final rule is based on a statutory directive for the carriage of AIS devices onboard commercial vessels of a certain size or type; some of these vessels are expressly identified in 46 U.S.C. 70114(a)(1)(A) and (C), and others are identified based on a decision by the Secretary as called for in 46 U.S.C. 70114(a)(1)(B) and (D). See Table 9 that follows for the source of authority for each § 164.46 applicability paragraph, including those based on a SOLAS requirement. Based on public comments that the rulemaking is too costly for smaller vessel owners and operators and our assessment of alternatives to requirements we proposed, the Coast Guard has set its passenger threshold to vessels certificated to carry more than 150 passengers—up from our proposed threshold of 50 or more passengers—and will also allow certain vessel owners and operators to install the less costly Class B AIS unit, which should alleviate some of the cost burden on smaller vessel owners and operators. See the Regulatory Analysis in the docket for further details.

TABLE 9—NATURE OF AUTHORITY TO REQUIRE INSTALLATION AND USE OF AUTOMATIC IDENTIFICATION SYSTEM (AIS)

| 33 CFR 164.46 | Text of final rule | Expressly required by statute | Expressly required by international convention | Based on discretion exercised by Coast Guard |
|-------------------|--|--|--|--|
| (b)(1) | AIS Class A device. The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device: | | | |
| (b)(1)(i) | A self-propelled vessel of 65 feet or more in length, engaged in commercial service. | 46 U.S.C. 70114(a)(1)(A) (“A self-propelled commercial vessel of at least 65 feet overall in length.”). | | |
| (b)(1)(ii) | A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial towing. | 46 U.S.C. 70114(a)(1)(C) (“A towing vessel of more than 26 feet overall in length and 600 horsepower.”). | | |
| (b)(1)(iii) | A vessel that is certificated to carry more than 150 passengers. | 46 U.S.C. 70114(a)(1)(B) (“A vessel carrying more than a number of passengers for hire determined by the Secretary.”). | | 46 U.S.C. 70114(a)(1)(D) (“Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.”). |

TABLE 9—NATURE OF AUTHORITY TO REQUIRE INSTALLATION AND USE OF AUTOMATIC IDENTIFICATION SYSTEM (AIS)—
Continued

| 33 CFR 164.46 | Text of final rule | Expressly required by statute | Expressly required by inter- national convention | Based on discretion exercised by Coast Guard |
|-------------------|---|-------------------------------|---|--|
| (b)(1)(iv) | A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels. | ..... | ..... | 46 U.S.C. 70114(a)(1)(D). |
| (b)(1)(v) | A self-propelled vessel engaged in the movement of— (A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or (B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1. | ..... | ..... | 46 U.S.C. 70114(a)(1)(D). |
| (b)(2)(i) | (2) AIS Class B device. Use of a U.S. Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew: (i) Fishing industry vessels; | ..... | ..... | 46 U.S.C. 70114(b) (“The Secretary shall prescribe regulations implementing subsection (a), including requirements for the operation and maintenance of the automatic identification systems required under subsection (a).”). |
| (b)(2)(ii) | (ii) Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers, and that— (A) Do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and (B) Do not operate at speeds in excess of 14 knots; and | ..... | ..... | 46 U.S.C. 70114(b). |
| (b)(2)(iii) | (iii) Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations. | ..... | ..... | 46 U.S.C. 70114(b). |
| (c) | (c) SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03): | ..... | SOLAS Art. I, SOLAS, 32 U.S.T. 47, and the Protocol of 1978 relating to SOLAS, 32 U.S.T. 5577. | |
| (c)(1) | (1) A vessel of 300 gross tonnage or more, on an international voyage. | ..... | Same as above, and SOLAS Chapter V, regulation 19.2.4, that requires all ships of 300 gross tonnage and upwards engaged on international voyages to be fitted with AIS. | |

TABLE 9—NATURE OF AUTHORITY TO REQUIRE INSTALLATION AND USE OF AUTOMATIC IDENTIFICATION SYSTEM (AIS)—Continued

| 33 CFR 164.46 | Text of final rule | Expressly required by statute | Expressly required by inter- national convention | Based on discretion exercised by Coast Guard |
|------------------|--|-------------------------------|--|---|
| (c)(2) | (2) A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage. | ..... | Same as above with addition of SOLAS V, regulation 1.4, which gives the United States discretion in implementing these AIS requirements for ships less than 150 gross tonnage. | |

C. 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 final rule so that they could better evaluate its effects on them and participate in the rulemaking. If you think that this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning these provisions or options for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule. We will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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).

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule relates to two existing OMB-approved collections of information,

1625–0100 and 1625–0112. Details are provided below.

The summary of revised 1625–0100 collection follows:

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Summary Of The Collection Of Information: We require arrival notices from certain vessels bound for a port or place in the United States. This rule revises the applicability of vessels required to submit an NOA, adds three new data elements that will be required by 33 CFR part 160, and removes 1 data element with no impact on burden.

Need For Information: To strengthen port safety and security and to ensure the uninterrupted flow of commerce. To this end, we must modify our NOA regulations.

Proposed Use Of Information: This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

Description Of The Respondents: Respondents are the owner, agent, Master, operator, or person in charge of a vessel that arrives at or departs from a port or place in the United States.

Number Of Respondents: The existing OMB-approved number of respondents is 31,594. This rule will decrease that number by 13,217. The total number of respondents will be 18,377. We attribute this decrease in the number of respondents to our improved analysis of the number of vessels impacted by this rulemaking.

Frequency Of Response: The existing OMB-approved number of responses is 170,866, not including 150 waivers. This rule will decrease that number by 63,261. The total number of responses will be 107,605 (not including waivers).

Burden Of Response: The existing OMB-approved burden of response is approximately 30 minutes per response plus an additional 2 minutes for the three new data fields that are new to industry: Maritime Mobile Service Identity (MMSI), whether a vessel is 300 GT or less, and whether the vessel’s voyage time is less than 24 hours.

Estimate Of Total Annual Burden:

The existing OMB-approved total annual burden is 163,994 hours (ICR Ref. No. 201012–1625–002), not including 150 waivers. This rule will increase that number by 4,168 hours. The estimated total annual burden will be 168,312 hours (not including waivers).

As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, we are not making §§ 160.204(a)(5)(vii), 160.205 and 160.208 effective until our information collection request is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB’s decision to approve, modify, or disapprove the collection.

The summary of revised 1625–0112 collection follows:

Title: Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–0112.

Summary of the Collection of Information: We plan to collect, store, share, and analyze data transmitted by AIS to enhance MDA. Awareness and threat knowledge are critical for securing and maintaining safety in the maritime domain and the key to preventing adverse events. Domain awareness enables the early identification of potential threats and enhances appropriate responses, including interdiction at an optimal distance with capable prevention forces and increases the timeliness and effectiveness of response to an incident.

Need for Information: To ensure maritime safety and security and to ensure the effective movement of commerce.

Proposed Use of Information: This information collection, storage, and analysis would greatly expand the breadth and depth of our MDA. This enhanced MDA would enable quicker, more efficient responses to marine casualties and improve our ability to

prevent and respond to potential terrorist threats. It would also contribute an essential aspect to our COP, which is our system for sharing operational data among those who need it to perform their missions.

Description of the Respondents:

Respondents are the operators or persons in charge of vessels that carry AIS. The MTSA requires the following vessels to carry AIS:

- A self-propelled commercial vessel of at least 65-feet in overall length.
- A towing vessel of more than 26 feet overall in length and 600 horsepower.

- Vessels carrying more than a number of passengers for hire determined by the Secretary.
- Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel. In addition to vessels subject to the MTSA, we estimate an additional 10 percent of voluntary compliance with this rule and information collection.

Number of Respondents: The existing OMB-approved number of respondents is 613—LRIT system users. The AIS portion of this rule will increase that number by 8,922 (about 5,848 U.S.-flag vessels and 74 foreign-flag vessels estimated for this rule including about 3,000 existing AIS users). The total number of respondents is estimated to be 9,535 including 613 respondents from LRIT.

Frequency of Response: The existing OMB-approved number of responses is 613. This final rule will increase that number by 534,557 (533,574 for U.S.-flag vessels and 370 for foreign-flag vessels) for a total of 534,944 responses including 613 responses from LRIT annually.

Burden of Response: The existing OMB-approved burden of response is approximately 20 minutes per response. We retain this estimate to initialize the unit plus about five minutes per voyage to enter the information for Class A users.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 204 hours (ICR Ref. No. 201009–1625–012). This rule will increase that number by 46,986 hours annually for a total of 47,190 hours. The hour burden is a function of the 20 minutes dedicated to the initial encoding of the AIS device with the vessel's static data (MMSI, IMO number, name, call sign, type, and dimension) and approximately 5 minute per voyage to update the vessel's dynamic data (status, destination, estimated time of arrival, and, static draft), which is based on the number of vessels subject to

Class A AIS carriage performing an average 164 voyages per year for U.S.-flag vessels.

As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, we are not making § 164.46(b) and (c) effective until its information collection request is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

To the extent States have a current requirement in effect for notices of vessel arrivals to a State agency—for example, notices to pilot authorities for pilot services—we do not intend to preempt those requirements with this final rule. However, we reserve our position with respect to preemption of any prospective new State rule or legal requirement for a notice of arrival or submission of information requirements that are similar to those set forth in this final rule. The U.S. Supreme Court in *United States v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000), held that pursuant to title I of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221–1232), the authority for the NOA portion of this final rule, we can preempt conflicting or similar State requirements on vessel operation. Accordingly, based on the Supreme Court's holding in the *Locke* case, we believe that any prospective State requirement for an NOA or information gathering requirement directed at vessel owners or operators that is similar to that contained in this final rule is inconsistent with the Federalism principles enunciated in that case and is preempted.

Regarding the AIS portion of this final rule, 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), 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. Our AIS carriage requirements fall into the category of equipping of vessels which, based on the principles in *Locke*, are within a field foreclosed from regulation by States. In addition, under the authority of Title I of the PWSA (specifically 33 U.S.C. 1223) and the MTSA, this final rule will preempt any State action on the subject of AIS carriage requirements. See *Locke*.

In light of the analyses above, this final rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

F. 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 tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any 1 year. Though this final rule will not result in such an expenditure, we discuss the effects of this final rule elsewhere in this preamble.

G. Taking of Private Property

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. 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.

I. Protection of Children

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

J. 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.

K. 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. Though it is a “significant regulatory action” under Executive Order 12866, this final rule 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, this final rule does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule uses the following voluntary consensus standards:

- IMO Resolution A.917(22), Guidelines for the Onboard Operational Use of Shipborne Automatic Identification System (AIS), adopted November 29, 2001
- IMO SN/Circ 227, Guidelines for the Installation of a Shipborne Automatic Identification System (AIS), dated January 6, 2003
- IMO SN/Circ 244, Guidance on the Use of the UN/LOCODE in the Destination Field in AIS Messages, dated December 15, 2004
- IMO SN/Circ 245, Amendments to the Guidelines for the Installation of a

Shipborne Automatic Identification System (AIS) (SN/Circ.227), dated December 15, 2004

- IMO SN.1/Circ 289, Guidelines on the Use of AIS Application-specific Messages, dated June 2, 2010
- National Marine Electronics Association (NMEA) 0400, Installation Standard for Marine Electronic Equipment used on Moderate-Sized Vessels, Version 3.10, dated February 2012

The section that references these standards and the locations where these standards are available are listed in § 164.03.

M. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide us in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a), (d), (e), and (i) of the Instruction and under section 6.a. of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, 48245, July 23, 2002). This rule involves regulations concerning reporting procedures, equipping of vessels, equipment carriage requirements, aid of navigation, and vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 62

Navigation (water).

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 117

Bridges.

33 CFR Part 118

Bridges.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

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.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 148

Cargo vessels, Hazardous materials transportation, Marine safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 62, 66, 101, 110, 117, 118, 151, 160, 161, 164, and 165, and 46 CFR parts 4 and 148, as follows:

Title 33—Navigation and Navigable Waters

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

- 1. The authority citation for part 62 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1222, 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 62.52 to read as follows:

§ 62.52 Automatic Identification System Aids to Navigation (AIS AtoN).

(a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a

maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.

(b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).

(c) AIS AtoN can also be used to broadcast both laterally (e.g., Port Hand Mark) and non-laterally significant marine safety information (e.g., environmental data, tidal information, and navigation warnings).

PART 66—PRIVATE AIDS TO NAVIGATION

■ 3. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 84, 85; 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1.

§ 66.01–1 [Amended]

■ 4. In § 66.01–1, remove paragraph (d).

■ 5. Revise § 66.01–5(i) to read as follows:

§ 66.01–5 Application procedure.

* * * * *

(i) For AIS AtoN and racons: Manufacturer and model number of AIS AtoN and racon, position and height above water of desired installation, and requested MORSE coding or AIS AtoN message characteristics. Equipment must have FCC authorization.

PART 101—MARITIME SECURITY: GENERAL

■ 6. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.105 [Amended]

■ 7. In § 101.105, in the definition of Certain Dangerous Cargo, remove the certain reference “160.204” and add, in its place, the section reference “160.202”.

PART 110—ANCHORAGE REGULATIONS

■ 8. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

§ 110.158 [Amended]

■ 9. In § 110.158(b), remove the words “Sec. 160.203 of this title” and add, in their place, the words “§ 160.202 of this chapter”.

§ 110.168 [Amended]

■ 10. In § 110.168(b), in the definition of Dangerous cargo, remove the section reference “§ 160.204 of this title” and add, in its place, the section reference “§ 160.202 of this chapter”.

§ 110.214 [Amended]

■ 11. In § 110.214(a)(2)(ii) and (d)(1), remove the section reference “§ 160.203” and add, in its place, the section reference “§ 160.202”.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 12. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

§ 117.1007 [Amended]

■ 13. In § 117.1007(b)(2), remove the section reference “160.204” and add, in its place, the section reference “160.202”.

PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

■ 14. The authority citation for part 118 continues to read as follows:

Authority: 33 U.S.C. 494; 14 U.S.C. 85, 633; Department of Homeland Security Delegation No. 0170.1.

■ 15. In § 118.120, add a new sentence at the end of the section to read as follows:

§ 118.120 Radar reflectors and racons.

* * * The District Commander may authorize the use of Automatic Identification System Aids to Navigation in lieu of or in addition to a racon.

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 16. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

§ 151.2005 [Amended]

■ 17. In § 151.2005(a), remove the reference “160.204” and add, in its place, the reference “160.202”.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 18. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

Subpart C—Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargoes

■ 19. Revise the heading to subpart C to read as shown above.

■ 20. Revise § 160.201 to read as follows:

§ 160.201 General.

This subpart contains requirements and procedures for submitting a notice of arrival (NOA), and a notice of hazardous condition. The sections in this subpart describe:

- (a) Applicability and exemptions from requirements in this subpart;
- (b) Required information in an NOA;
- (c) Required updates to an NOA;
- (d) Methods and times for submission of an NOA, and updates to an NOA;
- (e) How to obtain a waiver; and
- (f) Requirements for submission of the notice of hazardous condition.

Note to § 160.201. For notice-of-arrival requirements for the U.S. Outer Continental Shelf, see 33 CFR part 146.

§ 160.203 [Amended]

■ 21. Lift the suspension of § 160.203(d) and (e).

160.202, 160.203, and 160.204 [Redesignated as 160.203, 160.204 and 160.205]

■ 22. Redesignate §§ 160.202, 160.203, and 160.204, as §§ 160.203, 160.204, and 160.202, respectively.

■ 23. In redesignated § 160.202, revise the introductory text, and add definitions, in alphabetical order, for “boundary waters”, “embark”, “ferry schedule”, “foreign vessel”, and “operating exclusively within a single Captain of the Port zone”, to read as follows:

§ 160.202 Definitions.

Terms in this subpart that are not defined in this section or in § 160.3 have

the same meaning as those terms in 46 U.S.C. 2101. As used in this subpart—

* * * * *

Boundary waters mean the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

* * * * *

Embark means when a crewmember or a person in addition to the crew joins the vessel.

Ferry schedule means a published document that:

- (1) Identifies locations a ferry travels to and from;
- (2) Lists the times of departures and arrivals; and
- (3) Identifies the portion of the year in which the ferry maintains this schedule.

Foreign vessel means a vessel of foreign registry or operated under the authority of a country except the United States.

* * * * *

Operating exclusively within a single Captain of the Port zone refers to vessel movements within the boundaries of a single COTP zone, e.g., from one dock to another, one berth to another, one anchorage to another, or any combination of such transits. Once a vessel has arrived in a port in a COPT zone, it would not be considered as departing from a port or place simply because of its movements within that specific port.

* * * * *

■ 24. In redesignated § 160.203, remove paragraph (b); redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively; and revise paragraph (a) to read as follows:

§ 160.203 Applicability.

(a) This subpart applies to the following vessels that are bound for or departing from ports or places within the navigable waters of the United States, as defined in 33 CFR 2.36(a), which includes internal waters and the territorial seas of the United States, and any deepwater port as defined in 33 CFR 148.5:

- (1) U.S. vessels in commercial service, and
- (2) All foreign vessels.

* * * * *

■ 25. In redesignated § 160.204—

- a. Revise the section heading;
- b. Revise paragraph (a);
- c. From April 30, 2015 through December 31, 2015, add temporary paragraph (a)(6) to read as set out below; and
- d. Revise paragraphs (b) through (c) to read as set out below; and
- e. Remove paragraphs (d) through (f).

§ 160.204 Exemptions and exceptions.

(a) Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart:

(1) A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.

(2) An oil spill response vessel (OSRV) when engaged in actual spill response operations or during spill response exercises.

(3) After December 31, 2015, a vessel required by 33 CFR 165.830 or 165.921 to report its movements, its cargo, or the cargo in barges it is towing.

(4) A United States or Canadian vessel engaged in the salvaging operations of any property wrecked, or rendering aid and assistance to any vessels wrecked, disabled, or in distress, in waters specified in Article II of the 1908 Treaty of Extradition, Wrecking and Salvage (35 Stat. 2035; Treaty Series 502).

(5) The following vessels neither carrying certain dangerous cargo nor controlling another vessel carrying certain dangerous cargo:

(i) A foreign vessel 300 gross tons or less not engaged in commercial service.

(ii) A vessel operating exclusively within a single Captain of the Port zone. Captain of the Port zones are defined in 33 CFR part 3.

(iii) A U.S. towing vessel and a U.S. barge operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia.

(iv) A public vessel.

(v) Except for a tank vessel, a U.S. vessel operating solely between ports or places of the United States on the Great Lakes.

(vi) A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place.

(vii) Each ferry on a fixed route that is described in an accurate schedule that is submitted by the ferry operator, along with information in paragraphs (a)(5)(vii)(A) through (J) of this section, to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule. At least 24 hours before the first date and time of arrival

listed on the ferry schedule, each ferry operator who submits a schedule under paragraph (a)(5)(vii) of this section must also provide the following information to the Captain of the Port for each port or place of destination listed in the schedule for the ferry, and if the schedule or the following submitted information changes, the ferry operator must submit an updated schedule at least 24 hours in advance of the first date and time of arrival listed on the new schedule and updates on the following items whenever the submitted information is no longer accurate:

- (A) Name of the vessel;
- (B) Country of registry of the vessel;
- (C) Call sign of the vessel;
- (D) International Maritime

Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(E) Name of the registered owner of the vessel;

(F) Name of the operator of the vessel;

(G) Name of the vessel's classification society or recognized organization, if applicable;

(H) Each port or place of destination;

(I) Estimated dates and times of arrivals at and departures from these ports or places; and

(J) Name and telephone number of a 24-hour point of contact.

(6) From April 30, 2015 through December 31, 2015, vessels identified as being subject to 33 CFR 165.830 or 165.921.

(b) A vessel less than 500 gross tons is not required to submit the International Safety Management (ISM) Code Notice (Entry 7 in Table 160.206 of § 160.206).

(c) A U.S. vessel is not required to submit the International Ship and Port Facility Security (ISPS) Code Notice information (Entry 8 in Table 160.206 of § 160.206).

■ 26. Add § 160.205 to read as follow:

§ 160.205 Notices of arrival.

The owner, agent, Master, operator, or person in charge of a vessel must submit notices of arrival consistent with the requirements in this subpart.

■ 27. In § 160.206, lift the suspension of item (8) in Table 160.206 of paragraph (a), and revise § 160.206 to read as follows:

§ 160.206 Information required in an NOA.

(a) Information required. With the exceptions noted in paragraph (b) of this section, each NOA must contain all of the information items specified in Table 160.206. Vessel owners and operators should protect any personal information they gather in preparing notices for

transmittal to the National Vessel Movement Center (NVMC) to prevent unauthorized disclosure of that information.

TABLE 160.206—NOA INFORMATION ITEMS

| Required information | Vessels neither carrying CDC nor controlling another vessel carrying CDC | Vessels carrying CDC or controlling another vessel carrying CDC |
|---|--|---|
| (1) <i>Vessel Information:</i> | | |
| (i) Name; | X | X |
| (ii) Name of the registered owner; | X | X |
| (iii) Country of registry; | X | X |
| (iv) Call sign; | X | X |
| (v) International Maritime Organization (IMO) international number or, if vessel does not have an assigned IMO international number, substitute with official number; | X | X |
| (vi) Name of the operator; | X | X |
| (vii) Name of charterer; | X | X |
| (viii) Name of classification society or recognized organization; | X | X |
| (ix) Maritime Mobile Service Identity (MMSI) number, if applicable; | X | X |
| (x) Whether the vessel is 300 gross tons or less (yes or no); and | X | X |
| (xi) USCG Vessel Response Plan Control Number, if applicable. | X | X |
| (2) <i>Voyage Information:</i> | | |
| (i) Names of last five foreign ports or places visited; | X | X |
| (ii) Dates of arrival and departure for last five foreign ports or places visited; | X | X |
| (iii) For the port or place of the United States to be visited, list the name of the receiving facility, the port or place, the city, and the state; | X | X |
| (iv) For the port or place of the United States to be visited, the estimated date and time of arrival; | X | X |
| (v) For the port or place in the United States to be visited, the estimated date and time of departure; | X | X |
| (vi) The location (port or place and country) or position (latitude and longitude or waterway and mile marker) of the vessel at the time of reporting; | X | X |
| (vii) The name and telephone number of a 24-hour point of contact; | X | X |
| (viii) Whether the vessel's voyage time is less than 24 hours (yes or no); | X | X |
| (ix) Last port or place of departure; and | X | X |
| (x) Dates of arrival and departure for last port or place of departure. | X | X |
| (3) <i>Cargo Information:</i> | | |
| (i) A general description of cargo, other than CDC, on board the vessel (e.g., grain, container, oil, etc.); | X | X |
| (ii) Name of each CDC carried, including cargo UN number, if applicable; and | ..... | X |
| (iii) Amount of each CDC carried. | ..... | X |
| (4) <i>Information for each Crewmember On Board:</i> | | |
| (i) Full name; | X | X |
| (ii) Date of birth; | X | X |
| (iii) Nationality; | X | X |
| (iv) Passport* or mariner's document number (type of identification and number); | X | X |
| (v) Position or duties on the vessel; and | X | X |
| (vi) Where the crewmember embarked (list port or place and country). | X | X |
| (5) <i>Information for each Person On Board in Addition to Crew:</i> | | |
| (i) Full name; | X | X |
| (ii) Date of birth; | X | X |
| (iii) Nationality; | X | X |
| (iv) Passport number; * and | X | X |
| (v) Where the person embarked (list port or place and country). | X | X |
| (6) <i>Operational condition of equipment required by 33 CFR part 164 of this chapter (see note to table):</i> | X | X |
| (7) <i>International Safety Management (ISM) Code Notice:</i> | | |
| (i) The date of expiration for the company's Document of Compliance certificate that covers the vessel; | X | X |
| (ii) The date of expiration for the vessel's Safety Management Certificate; and | X | X |
| (iii) The name of the Flag Administration, or the recognized organization(s) representing the vessel Flag Administration, that issued those certificates. | X | X |
| (8) <i>International Ship and Port Facility Security Code (ISPS) Notice:</i> | | |
| (i) The date of issuance for the vessel's International Ship Security Certificate (ISSC), if any; | X | X |
| (ii) Whether the ISSC, if any, is an initial Interim ISSC, subsequent and consecutive Interim ISSC, or final ISSC; | X | X |
| (iii) Declaration that the approved ship security plan, if any, is being implemented; | X | X |
| (iv) If a subsequent and consecutive Interim ISSC, the reasons therefore; | X | X |
| (v) The name and 24-hour contact information for the Company Security Officer; and | X | X |
| (vi) The name of the Flag Administration or the recognized security organization(s) representing the vessel Flag Administration that issued the ISSC. | X | X |

Note to Table 160.206. For items with an asterisk (*), see paragraph (b) of this section. Submitting a response for item 6 indicating that navigation equipment is not operating properly does not serve as notice to the District Commander, Captain of the Port, or Vessel Traffic Center, under 33 CFR 164.53.

(b) Exceptions. If a crewmember or person on board other than a crewmember is not required to carry a passport for travel, then passport information required in Table 160.206 by items (4)(iv) and (5) (iv) need not be provided for that person.

■ 28. In § 160.208—

■ a. In paragraph (b)(3), remove the reference to “(5)(v)”, and in its place, add “(4)(vii)”.

■ b. Revise the section heading and paragraphs (a) and (c) to read as follows:

§ 160.208 Updates to a submitted NOA.

(a) Unless otherwise specified in this section, whenever events cause NOA information submitted for a vessel to become inaccurate, or the submitter to realize that data submitted was inaccurate, the owner, agent, Master, operator, or person in charge of that vessel must submit an update within the times required in § 160.212.

* * * * *

(c) When reporting updates, revise and resubmit the NOA.

■ 29. In § 160.210, lift the suspension of the last sentence of paragraph (b), the last sentence of paragraph (c), and paragraph (d); and revise § 160.210 to read as follows:

§ 160.210 Methods for submitting an NOA.

(a) National Vessel Movement Center (NVMC). Except as otherwise provided

in this paragraph or paragraph (b) of this section, vessels must submit NOA information required by § 160.206 to the NVMC using methods currently specified at www.nvmc.uscg.gov, which includes submission through the NVMC electronic Notice of Arrival and Departure (eNOAD) World Wide Web site, and XML, which includes the Excel Workbook format. These data may also be submitted using other methods that may be added as future options on www.nvmc.uscg.gov. XML spreadsheets may be submitted via email to enoad@nvmc.uscg.gov. If a vessel operator must submit an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer, and he or she has no shore-side support available, the vessel operator may fax or phone the submission to the NVMC. Fax at 1-800-547-8724 or 304-264-2684. Workbook available at www.nvmc.uscg.gov; or, telephone at 1-800-708-9823 or 304-264-2502.

(b) Saint Lawrence Seaway. Those vessels transiting the Saint Lawrence Seaway inbound, bound for a port or place in the United States, may meet the submission requirements of paragraph (a) of this section by submitting the required information to the Saint Lawrence Seaway Development Corporation and the Saint Lawrence Seaway Management Corporation of

Canada using methods specified at www.nvmc.uscg.gov.

■ 30. In § 160.212, lift the suspension of paragraph (c), and revise § 160.212 to read as follows:

§ 160.212 When to submit an NOA.

(a) Submission of an NOA. (1) Except as set out in paragraphs (a)(2) and (a)(3) of this section, all vessels must submit NOAs within the times required in paragraph (a)(4) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia, must submit an NOA before departure but at least 12 hours before arriving at the port or place of destination.

(3) U.S. vessels 300 gross tons or less, arriving from a foreign port or place, and whose voyage time is less than 24 hours must submit an NOA at least 60 minutes before departure from the foreign port or place. Also, Canadian vessels 300 gross tons or less, arriving directly from Canada, via boundary waters, to a United States port or place on the Great Lakes, whose voyage time is less than 24 hours must submit an NOA at least 60 minutes before departure from the Canadian port or place.

(4) Times for submitting NOAs are as follows:

| If your voyage time is— | Then you must submit an NOA— |
|--------------------------------|---|
| (i) 96 hours or more; or | At least 96 hours before arriving at the port or place of destination; or |
| (ii) Less than 96 hours | Before departure but at least 24 hours before arriving at the port or place of destination. |

(b) Submission of updates to an NOA. (1) Except as set out in paragraphs (b)(2) and (b)(3) of this section, vessels must submit updates in NOA information within the times required in paragraph (b)(4) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places in the contiguous 48 states, Alaska, and the

District of Columbia, must submit updates to an NOA as soon as practicable but at least 6 hours before entering the port or place of destination.

(3) U.S. vessels 300 gross tons or less, arriving from a foreign port or place, whose voyage time is—

(i) Less than 24 hours but greater than 6 hours, must submit updates to an NOA as soon as practicable, but at least

6 hours before entering the port or place of destination.

(ii) Less than or equal to 6 hours, must submit updates to an NOA as soon as practicable, but at least 60 minutes before departure from the foreign port or place.

(4) Times for submitting updates to NOAs are as follows:

| If your remaining voyage time is— | Then you must submit updates to an NOA— |
|---|---|
| (i) 96 hours or more; | As soon as practicable, but at least 24 hours before arriving at the port or place of destination; |
| (ii) Less than 96 hours but not less than 24 hours; or. | As soon as practicable, but at least 24 hours before arriving at the port or place of destination; or |
| (iii) Less than 24 hours | As soon as practicable, but at least 12 hours before arriving at the port or place of destination. |

§ 160.215 [Redesignated as § 160.216]

■ 31. Redesignate § 160.215 as § 160.216, and add a new § 160.215 to read as follows:

§ 160.215 Force majeure.

When a vessel is bound for a port or place of the United States under force majeure, it must comply with the requirements in this section, but not

other sections of this subpart. The vessel must report the following information to the nearest Captain of the Port as soon as practicable:

(a) The vessel Master’s intentions;

(b) Any hazardous conditions as defined in § 160.202; and

(c) If the vessel is carrying certain dangerous cargo or controlling a vessel carrying certain dangerous cargo, the amount and name of each CDC carried, including cargo UN number if applicable.

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 32. 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.

■ 33. In § 161.2, revise the definition of “VTS User” to read as follows:

§ 161.2 Definitions.

* * * * *

VTS User means a vessel or an owner, operator, charterer, Master, or person directing the movement of a vessel within a VTS area that is:

(1) Subject to the Vessel Bridge-to-Bridge Radiotelephone Act;

(2) Required to participate in a VMRS; or

(3) Equipped with a Coast Guard type-approved Automatic Identification System (AIS).

* * * * *

■ 34. In § 161.5, revise paragraph (b) to read as follows:

§ 161.5 Deviations from the rules.

* * * * *

(b) Requests to deviate from any provision in this part due to circumstances that develop during a transit or immediately preceding a transit may be made to the appropriate Vessel Traffic Center (VTC). Requests to deviate must be made as far in advance as practicable. Upon receipt of the request, the VTC may authorize a deviation if it is determined that, based on vessel handling characteristics, traffic density, radar contacts, environmental conditions and other relevant information, such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances.

§ 161.12 [Amended]

■ 35. In § 161.12, in paragraph (c), remove the words “§§ 161.21 and 164.46 of this subchapter” from the last sentence of Note 1 of table 161.12(c), and add, in their place, the words “§ 161.21”; and in paragraph (d)(5), remove the section reference

“§ 160.204” and add, in its place, the section reference “§ 160.202”.

■ 36. In § 161.19, revise paragraph (f) to read as follows:

§ 161.19 Sailing Plan (SP).

* * * * *

(f) Dangerous cargo on board or in its tow, as defined in § 160.202 of this chapter.

PART 164—NAVIGATION SAFETY REGULATIONS

■ 37. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.46 also issued under 46 U.S.C. 70114 and Sec. 102 of Pub. L. 107–295. Sec. 164.61 also issued under 46 U.S.C. 6101.

■ 38. In § 164.02, revise the introductory text of paragraph (a) to read as follows:

§ 164.02 Applicability exception for foreign vessels.

(a) Except for § 164.46(c), none of the requirements of this part apply to foreign vessels that:

* * * * *

■ 39. Revise § 164.03 to read as follows:

§ 164.03 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. Also, it is available for inspection at the Commandant (CG–NAV), U.S. Coast Guard Stop 7418, Attn: Office of Navigation Systems, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7418, and is available from the sources listed below.

(b) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005–4070, 202–682–8000, www.api.org:

(1) API Specification 9A, Specification for Wire Rope, Section 3, Properties and Tests for Wire and Wire Rope, May 28, 1984, IBR approved for § 164.74.

(2) [Reserved]

(c) ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, 610–832–9585, www.astm.org:

(1) ASTM D4268–93, Standard Test Method for Testing Fiber Rope, IBR approved for § 164.74.

(2) [Reserved]

(d) Cordage Institute, 350 Lincoln Street, Hingham, MA 02043.

(1) CIA–3, Standard Test Methods for Fiber Rope Including Standard Terminations, Revised, June 1980, IBR approved for § 164.74.

(2) [Reserved]

(e) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, www.imo.org:

(1) IMO Resolution A342(IX), Recommendation on Performance Standards for Automatic Pilots, November 12, 1975, IBR approved for § 164.13.

(2) IMO Resolution A.917(22), Guidelines for the Onboard Operational Use of Shipborne Automatic Identification System (AIS), January 25, 2002, IBR approved for § 164.46.

(3) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne Automatic Identification System (AIS), May 12, 1998, IBR approved for § 164.46.

(4) SN/Circ.227, Guidelines for the Installation of a Shipborne Automatic Identification System (AIS), January 6, 2003, IBR approved for § 164.46.

(5) SN/Circ.244, Guidance on the Use of the UN/LOCODE in the Destination Field in AIS Messages, December 15, 2004, IBR approved for § 164.46.

(6) SN/Circ.245, Amendments to the Guidelines for the Installation of a Shipborne Automatic Identification System (AIS)(SN/Circ.227), December 15, 2004, IBR approved for § 164.46.

(7) SOLAS, International Convention for the Safety of Life at Sea, 1974, and 1988 Protocol relating thereto, 2000 Amendments, effective January and July 2002, (SOLAS 2000 Amendments), IBR approved for § 164.46.

(8) Conference resolution 1, Adoption of amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, and amendments to Chapter V of SOLAS 1974, adopted on December 12, 2002, IBR approved for § 164.46.

(9) SN.1/Circ.289, Guidance on the Use of AIS Application-Specific Messages, June 2, 2010, IBR approved for § 164.46.

(f) National Marine Electronics Association (NMEA), 7 Riggs Avenue, Severna Park, MD 21146, 800–808–6632, www.nmea.org:

(1) NMEA 0400, Installation Standard for Marine Electronic Equipment used on Moderate-Sized Vessels, Version 3.10, February 2012, IBR approved for § 164.46.

(2) [Reserved]

(g) Radio Technical Commission for Maritime Services (RTCM), 1611 N. Kent St., Suite 605, Arlington, VA 22209, 703-527-2000, www.rtcn.org:
(1) RTCM Paper 12-78/DO-100, Minimum Performance Standards, Loran C Receiving Equipment, 1977, IBR approved for § 164.41.

(2) RTCM Paper 71-95/SC112-STD, RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1, October 10, 1995, IBR approved for § 164.72.

(3) RTCM Paper 191-93/SC112-X, RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.2, December 20, 1993, IBR approved for § 164.72.

§ 164.43 [Removed]

■ 40. Remove § 164.43.

■ 41. Revise § 164.46 to read as follows:

§ 164.46 Automatic Identification System.

(a) *Definitions.* As used in this section—Automatic Identification Systems or AIS means a maritime navigation safety communications system standardized by the International Telecommunication Union (ITU), adopted by the International Maritime Organization (IMO), that—

(1) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(2) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(3) Exchanges data with shore-based facilities.

Gross tonnage means tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969.

International voyage means a voyage from a country to which the present International Convention for the Safety of Life at Sea applies to a port outside such country, or conversely.

Properly installed, operational means an Automatic Identification System (AIS) that is installed and operated using the guidelines set forth by the International Maritime Organization (IMO) Resolution A.917(22) and Safety of Navigation Circulars (SN/Circ.) 227, 244, 245, and SN.1/Circ.289; or National

Marine Electronics Association (NMEA) Installation Standard 0400-3.10 in lieu of SN/Circ.227 and 245 (incorporated by reference, see § 164.03).

(b) *AIS carriage*—(1) *AIS Class A device.* The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device:

(i) A self-propelled vessel of 65 feet or more in length, engaged in commercial service.

(ii) A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial service.

(iii) A vessel that is certificated to carry more than 150 passengers.

(iv) A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.

(v) A self-propelled vessel engaged in the movement of—

(A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or

(B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25-1, Table 30.25-1.

(2) *AIS Class B device.* Use of a Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew:

(i) Fishing industry vessels;

(ii) Vessels identified in paragraph

(b)(1)(i) of this section that are certificated to carry less than 150 passengers and that—

(A) Do not operate in a Vessel Traffic Service (VTS) or Vessel Movement Reporting System (VMRS) area defined in Table 161.12(c) of § 161.12 of this chapter, and

(B) Do not operate at speeds in excess of 14 knots; and

(iii) Vessels identified in paragraph

(b)(1)(iv) of this section engaged in dredging operations.

Note to paragraph (b): Under 33 U.S.C. 1223(b)(3) and 33 CFR 160.111, a Coast Guard Captain of the Port (COTP) may restrict the operation of a vessel if he or she determines that by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, the restriction is justified in the interest of safety. In certain circumstances, if a COTP is concerned that the operation of a vessel not subject to § 164.46 would be unsafe, the COTP may determine that voluntary installation of AIS by the operator would mitigate that concern.

(c) *SOLAS provisions.* The following self-propelled vessels must comply with International Convention for Safety of

Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03):

(1) A vessel of 300 gross tonnage or more, on an international voyage.

(2) A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage.

(d) *Operations.* The requirements in this paragraph are applicable to any vessel equipped with AIS.

(1) Use of AIS does not relieve the vessel of the requirements to sound whistle signals or display lights or shapes in accordance with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), 28 U.S.T. 3459, T.I.A.S. 8587, or Inland Navigation Rules, 33 CFR part 83; nor of the radio requirements of the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201-1208, part 26 of this chapter, and 47 CFR part 80.

(2) AIS must be maintained in effective operating condition, which includes—

(i) The ability to reinitialize the AIS, which requires access to and knowledge of the AIS power source and password;

(ii) The ability to access AIS information from the primary conning position of the vessel;

(iii) The accurate broadcast of a properly assigned Maritime Mobile Service Identity (MMSI) number;

(iv) The accurate input and upkeep of all AIS data fields and system updates; and

(v) For those vessels denoted in paragraph (b) of this section, the continual operation of AIS and its associated devices (e.g., positioning system, gyro, converters, displays) at all times while the vessel is underway or at anchor, and, if moored, at least 15 minutes prior to getting underway; except when its operation would compromise the safety or security of the vessel or a security incident is imminent. The AIS should be returned to continuous operation as soon as the compromise has been mitigated or the security incident has passed. The time and reason for the silent period should be recorded in the ship's official log and reported to the nearest Captain of the Port or Vessel Traffic Center (VTC).

(3) AIS safety-related text messaging must be conducted in English and solely to exchange or communicate pertinent navigation safety information (analogous to a SECURITE broadcast). Although not prohibited, AIS text messaging should not be relied upon as the primary means for broadcasting

distress (MAYDAY) or urgent (PAN PAN) communications. (47 CFR 80.1109, Distress, urgency, and safety communications).

(4) AIS application-specific messaging (ASM) is permissible, but is limited to applications adopted by the International Maritime Organization (such as IMO SN.1/Circ.289) or those denoted in the International Association of Marine Aids to Navigation and Lighthouse Authorities' (IALA) ASM Collection for use in the United States or Canada, and to no more than one ASM per minute.

Note to paragraph (d): The Coast Guard has developed the "U.S. AIS Encoding Guide" to help ensure consistent and accurate data encoding (input) by AIS users. This Guide is available at our "AIS Frequently Asked Questions" (FAQ #2) World Wide Web page at www.navcen.uscg.gov. Although of great benefit, the interfacing or installation of other external devices or displays (e.g., transmitting heading device, gyro, rate of turn indicator, electronic charting systems, and radar), is not currently required except as denoted in § 164.46(c). Most application-specific messages require interfacing to an external system that is capable of their portrayal, such as equipment certified to meet Radio Technical Commission for Maritime Services (RTCM) electronic chart system (ECS) standard 10900 series.

(e) Watchkeeping. AIS is primarily intended for use by the Master or person in charge of the vessel, or by the person designated by the Master or person in charge to pilot or direct the movement of the vessel, who must maintain a periodic watch for AIS information.

(f) Portable AIS. 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 device may be transmitting on board a vessel at any one time.

(g) AIS Pilot Plug. The AIS Pilot Plug on any vessel subject to pilotage by other than the vessel Master or crew must be readily available and easily accessible from the primary conning position of the vessel and permanently affixed (not an extension cord) and adjacent (within 3 feet) to a 120-volt 50/60 Hz AC power receptacle (NEMA 5–15).

(h) Exceptions. The following vessels may seek up to a 5-year deviation from the AIS requirements of this section by requesting a deviation under § 164.55.

(1) Vessels that operate solely within a very confined area (e.g., less than a 1 nautical-mile radius, shipyard, or barge fleeting facility);

(2) Vessels that conduct only short voyages (less than 1 nautical mile) on a

fixed schedule (e.g., a bank-to-bank river ferry service or a tender vessel);

(3) Vessels that are not likely to encounter other AIS-equipped vessels;

(4) Vessels whose design or construction makes it impracticable to operate an AIS device (e.g., those that lack electrical power, have an exposed or open cabin, or are submersible); or

(5) Vessels denoted in paragraph (b)(2) that seek a deviation from requirements in paragraphs (d)(2)(ii) and (e) of this section because their AIS Class B device lacks a display.

(i) Prohibition. Except for maritime support stations (see 47 CFR 80.5) licensed by the Federal Communications Commission (FCC), broadcasts from AIS Class A or B devices on aircraft, non-self propelled vessels or from land are prohibited.

(j) Implementation date. Those vessels identified in paragraphs (b) and (c) of this section that were not previously subject to AIS carriage must install AIS no later than March 1, 2016.

§ 164.53 [Amended]

■ 42. In § 164.53(b), after the word "vessel's", add the phrase "automatic identification system (AIS)".

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 43. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.503 [Amended]

■ 44. In § 165.503(a), in the definition of *Certain dangerous cargo or CDC*, remove the section reference "160.204" and add, in its place, the section reference "160.202".

§ 165.510 [Amended]

■ 45. In § 165.510(b), in the definition of *Dangerous Cargo*, remove the section reference "§ 160.203" and add, in its place, the section reference "§ 160.202".

§ 165.753 [Amended]

■ 46. In § 165.753(c)(6), remove the reference "160.203" and add, in its place, the reference "160.202".

§ 165.811 [Amended]

■ 47. In § 165.811(e)(2), remove the section reference "§ 160.203" and add, in its place, the section reference "§ 160.202".

§ 165.830 [Amended]

■ 48. In § 165.830(c), in the definition of *Barge*, remove the reference "160.204"

and add, in its place, the reference "160.202".

§ 165.921 [Amended]

■ 49. In § 165.921(c), in the definition of *Barge*, remove the reference "160.204" and add, in its place, the reference "160.202".

§ 165.1181 [Amended]

■ 50. In § 165.1181(e)(1)(ii)(C)(1), remove the words "section 160.203" and add, in their place, the section reference "§ 160.202".

§ 165.1183 [Amended]

■ 51. In § 165.1183(a)(2), in the definition of *High Value Asset*, remove the reference "160.204" and add, in its place, the reference "160.202".

§ 165.1704 [Amended]

- 52. In § 165.1704—
- a. In paragraph (c)(4), after the punctuation mark ":", add the word "and";
 - b. In paragraph (c)(5), after the term "6 knots", remove the text ":", and" and add, in its place, the punctuation mark ":", and
 - c. Remove paragraph (c)(6).

Title 46—Shipping

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 53. The authority citation for part 4 continues to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, and 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 0170.1. Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

§ 4.05–1 [Amended]

■ 54. In § 4.05–1(b), remove the reference "160.204" and add, in its place, the reference "160.202".

PART 148—CARRIAGE OF BULK SOLID MATERIALS THAT REQUIRE SPECIAL HANDLING

■ 55. The authority citation for part 148 continues to read as follows:

Authority: 33 U.S.C. 1602; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 46 U.S.C. 3306, 5111; 49 U.S.C. 5103; Department of Homeland Security Delegation No. 0170.1.

§ 148.11 [Amended]

■ 56. In § 148.11(b), in the last row of the Table of Hazardous or Potentially Dangerous Characteristics, remove the reference "160.204" and add, in its place, the reference "160.202".

Dated: January 15, 2015.

Paul F. Zukunft,

Admiral, U.S. Coast Guard, Commandant.

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