

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 160, 161, 164, and 165

[USCG-2005-21869]

RIN 1625-AA99

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to expand the applicability of notice of arrival and departure (NOAD) and automatic identification system (AIS) requirements to more commercial vessels. This proposed rule would expand the applicability of notice of arrival (NOA) requirements to additional vessels, establish a separate requirement for certain vessels to submit notices of departure (NOD), set forth a mandatory method for electronic submission of NOA and NOD, and modify related reporting content, timeframes, and procedures. This proposed rule would also expand the applicability of AIS requirements, beyond Vessel Traffic Service (VTS) areas, to all U.S. navigable waters and require AIS carriage for additional commercial vessels. These proposed changes would improve navigation safety, enhance the Coast Guard's ability to identify and track vessels, heighten our overall maritime domain awareness, and thus help us address threats to maritime transportation safety and security and mitigate the possible

harm from such threats.

DATES: Comments and related material must reach the Docket Management Facility on or before [Insert date 120 days after date of publication in the FEDERAL REGISTER].

Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before [Insert date 120 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2005-21869 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

Online: <http://www.regulations.gov>.

Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

Fax: 202-493-2251.

You must also send comments on collection of information discussed in the Paperwork Reduction Act section of this NPRM (VI. D.) to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail oir_submission@omb.eop.gov (the subject line of the email must include the docket number and Attention: Desk Officer for Coast Guard, DHS) or by fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management

and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

You may inspect the material proposed for incorporation by reference at room 1409, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-372-1563. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on the NOAD portion of this proposed rule, contact Lieutenant Sharmine Jones, Office of Vessel Activities (CG-543), Coast Guard, Sharmine.N.Jones@uscg.mil, telephone 202-372-1234. If you have questions on the AIS portion of this proposed rule, contact Mr. Jorge Arroyo, Office of Navigation Systems (CG-5413), Coast Guard, Jorge.Arroyo@uscg.mil, telephone 202-372-1563. If you have questions on viewing material in the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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Table of Abbreviations and Acronyms

AC	Alternating Current
AIS	Automatic Identification System
AOR	Area of Responsibility
API	American Petroleum Institute
APIS	Advance Passenger Information System
ARPA	Advanced Radar Plotting Aid
ASTM	American Society for Testing and Materials
CBP	U.S. Customs and Border Protection
CDC	Certain Dangerous Cargo
CFR	Code of Federal Regulations
COP	Common Operating Picture
COTP	Captain of the Port
CSTDMA	Carrier-sense Time Division Multiple Access
DGPS	Differential Global Positioning System

DHS	U.S. Department of Homeland Security
ECDIS	Electronic Chart Display and Information System
ECS	Electronic Chart System
eNOAD	Electronic Notice of Arrival and Departure
FCC	Federal Communications Commission
GPS	Global Positioning System
GT	Gross Registered Tons
IEC	International Electrotechnical Commission
IMO	International Maritime Organization
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
MDA	Maritime Domain Awareness
MISLE	Marine Information for Safety and Law Enforcement
MKD	Minimal Keyboard Display
MMSI	Maritime Mobile Service Identity
MTS	Marine Transportation System
MTSA	Maritime Transportation Security Act of 2002
NAICS	North American Industry Classification System
NAIS	Nationwide Automatic Identification System
NARA	National Archives and Records Administration
NEPA	National Environmental Policy Act of 1969
NOA	Notice of Arrival
NOAD	Notice of Arrival and Departure
NOD	Notice of Departure
NPRM	Notice of Proposed Rulemaking
NTTAA	National Technology Transfer and Advancement Act
NVMC	National Vessel Movement Center
OMB	Office of Management and Budget
OSRV	Oil Spill Response Vessel
PV	Present Value
PWSA	Ports and Waterways Safety Act
RA	Regulatory Assessment
RFA	Regulatory Flexibility Act
RTCM	Radio Technical Commission for Maritime Services
SBA	Small Business Administration
SCC	Sector Command Center
SOLAS	International Convention for the Safety of Life at Sea
U.S.C.	United States Code
USCS	United States Customs Service
VSL	Value of Statistical Life
VTC	Vessel Traffic Center
VTS	Vessel Traffic Service

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2005-21869), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under ADDRESSES, but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on “Search

for Dockets,” and enter the docket number for this rulemaking (USCG-2005-21869) in the Docket ID box, and click enter. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

D. Public Meeting

We plan to hold one public meeting in Washington, DC. The date, time, and location will be announced by a later notice in the Federal Register. You may submit a request for additional public meetings under ADDRESSES explaining why one would be beneficial. If we determine that additional public meetings would aid this rulemaking, we will hold one or more at a time and place announced by a later notice in the Federal Register.

II. Background and Purpose

This section discusses threats to the maritime transportation system, and provides background information on the elements of notice of arrival and departure (NOAD) and the automatic identification system (AIS). This section also discusses maritime domain

awareness, the Nationwide AIS project, and the role NOAD and AIS will play in increasing our understanding of the maritime domain.

A. Threat to the Marine Transportation System

A terrorist attack against the U.S. marine transportation system (MTS) has the potential to inflict a disastrous impact on global shipping, international trade, and the world economy. Waterborne commerce enters the United States through more than 360 ports, transiting over 26,000 miles of commercially navigable waterways, carried by more than 8,000 foreign vessels, making more than 50,000 port calls a year. Over six million cruise ship passengers travel annually from U.S. ports, and domestic ferries transport over 180 million passengers annually. At any given time, we estimate that over 5,000 commercial vessels are within 2,000 nautical miles or 96 hours of our shores.

Threats to our MTS can come from a variety of scenarios. Use of explosive-laden small boats to attack larger vessels to cause injury and loss of life has already been demonstrated in the cases of the USS Cole and the MT Limburg. The use of an explosive device on a commercial ferry was also demonstrated when, in August 2005, several persons were killed and dozens of others were injured after a bomb exploded on the M/V Dona Ramona in the Philippines. Other possible terrorist scenarios include use of maritime transportation routes to smuggle weapons of mass destruction or terrorists into the United States. In December 1999, a person planning to bomb the Los Angeles International Airport was arrested at Port Angeles, WA, after he got off a ferry arriving from Canada and customs agents discovered explosives in the trunk of his car. The large geographic area that is occupied by U.S. waterways, combined with the high volume of commercial and recreational vessel traffic on those waterways, presents enormous

challenges for preventing terrorist incidents.

The terrorist attacks of September 11, 2001, along with maritime-related terrorist events listed in the paragraph above, call attention to the vulnerability of the United States to potential terrorist attacks. U.S. waterways and ports present both vulnerable and attractive targets, as well as a means of transportation for terrorists. The Coast Guard, working with other international, national, State, and local agencies, has acted to identify and counter the threat to our MTS. In an effort to ensure that we make the most cost-effective use of our resources and funding, we have identified the need for a comprehensive knowledge and understanding of all activities in our maritime domain as key to preventing a terrorist attack.

B. Notice of Arrival and Departure

Under 33 CFR part 160, owners, agents, masters, operators, or persons in charge of vessels must file notices of arrival (NOA) before such vessels enter a U.S. port. The Coast Guard's NOA requirements had been in effect for decades before the terrorist attacks of 9/11. Vessels over 300 gross tons submitted pre-arrival notices directly to the applicable arriving port only 24 hours in advance. On October 4, 2001, the Coast Guard published a temporary final rule under the authority of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221-1232), increasing the submission time for a notice of arrival (NOA) from 24 to 96 hours prior to arriving at a U.S. port or place; required centralized submissions of this information to the National Vessel Movement Center (NVMC); temporarily suspended exemptions from reporting requirements for some groups of vessels; and required submission of passenger, crew, and cargo information. See 66 FR 50565 (Oct. 4, 2001).

The information in notices of arrival provides the Coast Guard with valuable data for screening vessels for safety and security purposes. We have no current regulation in place, however, to capture vessel, crew, passenger, or specific cargo information on vessels 300 gross tons or less intending to arrive at or depart from U.S. ports or places unless they are arriving with certain dangerous cargo (CDC) or are arriving at a port or place in the Seventh Coast Guard District--which includes South Carolina, most of Georgia and Florida, and the island possessions of the United States pertaining to Puerto Rico and the Virgin Islands. See 33 CFR 160.203(b)(1) and 160.210(c). This proposed rule would expand the applicability for NOADs to further enhance homeland security by increasing our awareness of vessels and people entering or departing U.S. ports or places.

We propose to eliminate the current 300-gross-tons threshold exception and to require NOADs from all foreign commercial vessels departing to or coming from a port or place in the United States and all U.S. commercial vessels coming to a U.S. port or place from a foreign port. Requiring more vessels to report a NOAD will allow the Coast Guard to screen more vessels for safety and security purposes well in advance of an arrival, thereby enhancing the safety and security of our ports and waterways.

C. Automatic Identification System

Section 102 of the Maritime Transportation Security Act of 2002 (MTSA), Public Law 107-295, 116 Stat. 2064, mandates that automatic identification systems (AIS) be installed and operating on most commercial vessels on navigable waters of the United States. See 46 U.S.C. 70114.

AIS automatically broadcasts dynamic, static, and voyage-related vessel information that is received by other AIS-equipped stations. AIS has achieved

acceptance through worldwide adoption of performance and technical standards developed by diverse international bodies, such as the International Maritime Organization (IMO), the International Telecommunications Union (ITU), and the International Electrotechnical Commission (IEC), that ensure commonality, universality, and interoperability. Further, installation of such equipment is required on vessels subject to the International Convention for the Safety of Life at Sea, 1974, (SOLAS), as amended. See specifically SOLAS, Chapter V, regulation 19.2.4.

<http://www.navcen.uscg.gov/enav/ais/SOLAS.V.19.2.1-5.pdf>.

In ship-to-ship mode, AIS provides essential information to other vessels, such as name, position, course, and speed, that is not readily available on board vessels. In the ship-to-shore mode, AIS allows for the efficient exchange of vessel traffic information that previously was only available via voice communications with a VTS. In either mode, AIS enhances the mariner's situational awareness, makes possible the accurate exchange of navigational information, mitigates the risk of collision through reliable passing arrangements, facilitates vessel traffic management while simultaneously reducing voice radiotelephone transmissions, and enhances maritime domain awareness (MDA).

For further information and background on AIS, see 68 FR 39353, 39355 (July 1, 2003); 68 FR 60559, 60560 (Oct. 22, 2003); or visit <http://www.navcen.uscg.gov/enav>.

D. AIS Displays and Integration

Shipboard AIS devices are divided into two classes. AIS Class A devices come with a minimal keyboard display (MKD) that allows the user to input AIS information (e.g., vessel identity, dimensions, navigation status, and antenna location) and to access

all information received from other devices. AIS Class B devices require this input to be pre-programmed into the device. For further discussion of AIS Class A and Class B, their differences and similarities, see Section IV, Discussion of Comments below. Both types of shipboard AIS allow multiple input-output and display (presentation) options that facilitate using or integrating AIS data on other navigational systems, such as radar, Advanced Radar Plotting Aid (ARPA), Electronic Chart Display and Information System (ECDIS), and Electronic Chart System (ECS).

The greatest benefits of AIS will be achieved by its widest use, both by the number of vessels that use it and its integration and synergy with other shipboard systems. Although we encourage full integration of AIS with all navigation systems, this proposed rule would not require such integration because of the current limited availability of type-approved equipment that can readily and reliably integrate AIS and these other systems (e.g., ECDIS, ARPA, radar, and chart plotters). We caution mariners who seek to integrate the equipment on their own, particularly on non type-approved equipment. This view is also set forth in recommendations by the Transportation Research Board's "Special Report 272, Shipboard Automatic Identification System: Meeting the Needs of the Mariners"; see <http://fermat.nap.edu/catalog/10708.html>.

The Conference Report accompanying the Coast Guard and Maritime Transportation Act of 2004 (Public Law 108-293) states “[we] should require the AIS system information to be integrated with the electronic chart display.” See H. Conf. Rep. No. 108-617, at 82 (July 20, 2004). Section 410 of this Act mandates that electronic charts be installed and operational on basically the same vessel population mandated to have AIS under the MTSA. The Coast Guard expects to implement this electronic chart

mandate and address the display of AIS on electronic charts through a separate rulemaking.

E. Maritime Domain Awareness

In October 2005, the National Security Council and Homeland Security Council jointly published “The National Plan to Achieve Maritime Domain Awareness,” (available at www.dhs.gov/xlibrary/assets/HSPD_MDAPlan.pdf), a collaborative inter-agency effort in support of the National Strategy for Maritime Security. This plan defines MDA as the effective understanding of anything associated with the global maritime domain that could impact the security, safety, economy, or environment of the United States. The Plan also identifies MDA as a key component of an active, layered maritime defense in depth—expanding maritime boundaries.

MDA involves both the process of receiving and analyzing data as well as the system of technology that facilitates this process. To maximize the employment of our resources, MDA, among other things, requires monitoring and tracking vessels, cargo, and people. Cold War legacy data collection capabilities must be integrated with current and emerging capabilities and systems to provide near real-time awareness of maritime threats.

Our primary method for collecting AIS information will be the Nationwide Automatic Identification System (NAIS) network. These data will be used in conjunction with the national maritime common operating picture (COP). The COP is a near real-time information grid that will be shared by all U.S. Federal, State, and local agencies with maritime interests and responsibilities. COP data will be accessible to all users, except when limited by security restrictions, policy, or regulations.

NOAD, NAIS, and AIS, when employed together, provide a major portion of the information needed for MDA. AIS provides real-time information on vessels that can be correlated with NOAD data to enable us to track vessel movements in or bound for U.S. waters via NAIS COP.

Expanding NOAD and AIS applicability broadens our sources of information and enhances MDA. The combined NOAD and AIS information is one critical element in the overall MDA process, along with data collected from other various maritime and maritime-related sources. These data streams will form part of the COP and will also then be reviewed by analysts to identify vessels, persons, and activities that might be suspect through a process known as anomaly detection.

Anomaly detection assists us in the early identification of possible terrorist or other suspicious activities, which in turn allows us to take appropriate preventive measures to protect public safety and economic security. This enhanced MDA would improve our ability to prevent and respond to terrorist attacks.

The greater synergy of NOAD and AIS is realized when they are combined to provide a comprehensive picture of the maritime domain. The COP uses input from various sources to provide both a visual display of ship movements as well as a display of each vessel's accompanying information.

The intent of the system is to allow the Coast Guard to review the different data elements against one another to detect anomalies. For example, a Coast Guard unit may identify a vessel prepared to enter a U.S. harbor. The Coast Guard unit could call up that vessel's information and review its destination. At that time, the Coast Guard would review the vessel's notice of arrival (NOA) and may observe that the vessel has reported

it is bound for the container docks. Later, the AIS broadcast may indicate that the vessel did not maneuver to turn down the channel to the container docks as expected and is instead proceeding on a collision course with a major marine transportation infrastructure on the other side of the harbor. In this example, the comparison of different data sources would have allowed the Coast Guard to recognize this anomaly in reported data, to deploy the necessary resources, and to notify the surrounding infrastructure.

This is just one of many scenarios that fuse NOAD and AIS data to ensure maritime traffic is being monitored and evaluated.

F. Nationwide AIS

In response to a Congressional mandate in 46 U.S.C. 70113 (a), emerging homeland security requirements, and the need to improve navigational safety, the Coast Guard initiated the Nationwide AIS (NAIS) project: a major Federal acquisition project to collect, aggregate, and share information concerning AIS equipped vessels operating on or bound for waters subject to the jurisdiction of the United States. NAIS will consist of an integrated system of AIS equipment (e.g., base station radios, antennas), data storage, processing, and networking infrastructure. NAIS will also be integrated with other systems for the purpose of sharing infrastructure and improving NAIS' overall performance.

NAIS will process (e.g., validate and filter) and store AIS data and make these data available for use by other existing operational systems (e.g., COP, Sector Command Center (SCC), Marine Information for Safety and Law Enforcement (MISLE), and VTS). It is expected that these other systems will provide data processing functions (e.g., vessel tracking correlation, information processing, traffic analysis, and anomaly detection) and

user interfaces necessary to take full advantage of AIS data exchange functionality. NAIS information will be displayed in the Coast Guard's national maritime COP and shared--along with correlated data and intelligence, as appropriate--with other entities. Access to these NAIS data by other authorized governmental entities is intended to enhance maritime safety and security and promote interagency cooperation. Portions of the COP will also be available to local port partners in support of local security and safety operations. Some users of NAIS capabilities (e.g., U.S. Coast Guard units, other governmental entities, and strategic port partners) may indirectly access AIS data via other systems. Having such near real-time information of vessels' identity, location, and cargo will be invaluable.

NAIS will be deployed regionally and incrementally. As of the end of September 2008, AIS-receive coverage has been established in 58 major ports and 16 critical coastal areas across the nation under Increment One of the NAIS project. All Coast Guard Sectors have at least one AIS receiver site within their Area of Responsibility (AOR) and also have the capability to view AIS vessel tracks outside their AOR (e.g., for an adjacent CG Sector or nationwide) via the maritime COP. Increment Two will expand our detection and surveillance nationwide and add AIS transmit capability out to 24 nautical miles. Finally, Increment Three will provide AIS detection and surveillance capability out to 2,000 nautical miles. NAIS full operational capability (i.e., AIS long range detection, system integration, data processing and sharing, etc.) is anticipated to be achieved by 2014.

III. Regulatory History

Since the tragic events of September 11, 2001, the Coast Guard has modified the

NOA requirements for vessels numerous times and implemented SOLAS AIS regulations and carriage requirements for AIS in VTS waters. The summary below describes this evolution of NOA and AIS regulations since 2001 and provides background intended to assist the reader as we later describe existing regulations we are seeking to revise through this proposed rule. The summary compiles Federal Register citations in tables and presents them in chronological order to assist those who seek to review these past rulemaking documents or notices.

A. Notice of Arrival

On October 4, 2001, we published a temporary final rule entitled “Temporary Requirements for Notification of Arrival in U.S. Ports” in the Federal Register. See 66 FR 50565. As noted previously, that temporary rule increased the submission time for a NOA from 24 to 96 hours prior to arriving at a U.S. port or place; required centralized submissions; temporarily suspended exemptions from reporting requirements for some groups of vessels; and required submission of passenger, crew, and cargo information. We extended the effective period of that temporary rule to allow us to complete a rulemaking for permanent changes. See 67 FR 37682 (May 30, 2002) and 67 FR 55115 (Aug. 28, 2002).

Following a notice of proposed rulemaking published June 19, 2002, we published a final rule on February 28, 2003, that replaced temporary regulations and revised NOA requirements in 33 CFR part 160 by consolidating the notice of departure (NOD) into the NOA, requiring electronic submission of cargo manifest information to the then United States Customs Service (USCS), and requiring additional crew and passenger information. See 67 FR 41659 and 68 FR 9537.

On May 22, 2003, after consultation with U.S. Customs and Border Protection (CBP), we suspended the NOA requirement for electronic submission of cargo manifest information (Customs Form 1302) pending further CBP regulatory action under then-recent legislation, including the Trade Act of 2002. See 68 FR 27907.

On August 18, 2004, we published a temporary final rule with request for comment that changed the definition of CDC to include ammonium nitrate and certain ammonium nitrate based fertilizers, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk. That temporary final rule also allowed vessels to submit notices of arrival electronically; in this rulemaking, we propose to make electronic methods of submission mandatory. See 69 FR 51176. On December 16, 2005, we published an interim rule with a request for comments that adopted the temporary final rule's definition of "certain dangerous cargo" to include (1) ammonium nitrate, in bulk; (2) ammonium nitrate based fertilizers, in bulk; and (3) propylene oxide, alone or mixed with ethylene oxide, in bulk, as well as adding an option for vessels to submit notices of arrival electronically. See 70 FR 74663. That interim rule is part of a separate rulemaking focused on CDC.

Table 1 lists NOA rulemaking documents discussed above and associated corrections.

Table 1 – NOA Rulemakings

Date	Action	FR Cite	Title of Rule [Docket Number]
10/04/2001	Temporary final rule	66 FR 50565	Temporary Requirements for Notification of Arrival in U.S. Ports [USCG-2001-10689]
11/19/2001	Temporary final rule; request for comments; correction	66 FR 57877	”
01/18/2002	Temporary final rule; request for comments; correction	67 FR 2571	”
05/30/2002	Temporary rule; change of effective date	67 FR 37682	”
06/19/2002	Notice of proposed rulemaking	67 FR 41659	Notification of Arrival in U.S. Ports [USCG-2001-11865]
08/28/2002	Temporary rule; change of effective date	67 FR 55115	Temporary Requirements for Notification of Arrival in U.S. Ports [USCG-2001-10689]
02/28/2003	Final rule	68 FR 9537	Notification of Arrival in U.S. Ports [USCG-2002-11865]
05/22/2003	Final rule; partial suspension of regulation	68 FR 27907	”
08/18/2004	Temporary final rule; request for comments	69 FR 51176	Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission [USCG-2003-16688]
12/16/2005	Interim rule; request for comments	70 FR 74663	Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission [USCG-2005-19963]

B. Automatic Identification System

On July 1, 2003, we published a temporary interim rule with a request for comments and notice of public meeting titled “Automatic Identification System; Vessel Carriage Requirement” in the Federal Register. See 68 FR 39353. That temporary interim rule was one of six Coast Guard maritime security rules published July 1, 2003, in response to the MTSA. The interim rule implemented AIS requirements under MTSA and SOLAS, and required AIS on all vessels subject to SOLAS AIS provisions, Vessel Traffic Service Users and certain other commercial vessels identified in the MTSA.

On October 22, 2003, we published a final rule which adopted, with changes, the requirements of the AIS temporary interim rule. The major changes were to adopt a uniform U.S. implementation date of December 31, 2004, and to not require AIS on certain fishing and passenger vessels. See 68 FR 60559 and 60562.

Table 2 lists the two AIS rulemaking documents discussed above and a correction document.

Table 2 - Automatic Identification System;
Vessel Carriage Requirement [USCG-2003-14757]

Date	Action	FR Cite
07/01/2003	Temporary interim rule with request for comments and notice of meeting	68 FR 39353
07/16/2003	Correcting amendments	68 FR 41913
10/22/2003	Final rule	68 FR 60559

C. Expansion of AIS Carriage

On the same date the AIS temporary interim rule was published, we published a

notice in the Federal Register posing eight questions and requesting comments on how best to address implementation beyond the then-published AIS regulations. See 68 FR 39369 (July 1, 2003). We held public meetings and extended the comment period to January 5, 2004, to allow the public and, specifically, the fishing and small passenger vessel industry, the opportunity to submit comments after they had seen the final rule published October 22, 2003. See 68 FR 55643 (Sept. 26, 2003) and 68 FR 61818 (Oct. 30, 2003). In Section IV, below, we discuss the many comments we received and note proposed changes from the 2003 final rule based on these comments.

Table 3 lists the three documents we published requesting comments on AIS expansion discussed above.

Table 3 - Automatic Identification System:
Expansion of Carriage Requirements for U.S. Waters
[USCG-2003-14878]

Date	Action	FR Cite
07/01/2003	Notice; request for comments	68 FR 39369
09/26/2003	Notice; request for comments; extension of comment period; notice of public meetings	68 FR 55643
10/30/2003	Notice; request for comments; notice of public meetings	68 FR 61818

IV. Discussion of Comments Received on Expansion of AIS Carriage

We thank the more than 180 persons or organizations who responded to our request for comments and participated in our public meetings on the expansion of AIS requirements [see docket USCG-2003-14878]. Their answers to our original eight questions (68 FR 39369) and subsequent two questions (68 FR 61818) posed in 2003 assisted us in crafting or amending various provisions of the AIS portion of this rule as

stated in the “AIS Revisions” section below. We also received numerous comments beyond the scope of our ten questions that were similar or reiterated concerns expressed during the previous rulemaking [see USCG-2003-14757]. Our opinion and resolution of these comments remains as stated in our final rule (68 FR 60559), with the following exceptions:

A. Need for AIS and Scope of Availability

Numerous commenters, for various reasons, do not believe that AIS requirements are needed or that they should apply to their type of vessel. In general, we disagree. Congress has given us an AIS mandate to implement. The Coast Guard has been involved in the development of AIS since the 1990s and has done so in response to industry demands [see USCG 2003-14757-8] for “silent VTSs” and the need to provide mariners with pertinent, near real-time navigation information in a seamless manner which AIS does while reducing the need for voice communication. We recognize AIS is not a panacea. It will not in itself prevent a collision or terrorist attack; if AIS is coupled with other information sources, however, it does provide the mariner and the government with situational awareness to help thwart these events. It is not intended to replace the radiotelephone, radio, sound signals, security measures, or other similar items; rather, it is there to complement them.

The starting point or initial affected population of AIS has been determined for the most part by the MTSA. Congress has stated that all self-propelled commercial vessels of 65 feet or greater or 26 feet or greater and over 600 horsepower when engaged in towing and certain passenger vessels (which we have determined to be those carrying 50 or more passengers) should have AIS; a portion of the same population is also

required to have radiotelephones under the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (Radiotelephone Act), Public Law 92-63, 85 Stat. 164. See 33 U.S.C. 1201 et seq. A principal purpose of both the MTSA and the Radiotelephone Act is to improve navigation safety. AIS and the radiotelephone, working together, provide the necessary tools to potentially prevent and mitigate collisions and other mishaps.

The Radiotelephone Act requires every power-driven vessel of 20 meters (65 feet) or more in length; towing vessels of 26 feet or more in length; vessels of 100 gross tons and upward carrying one or more passengers for hire; and dredge and floating plants, in or near a channel or fairway, engaged in operations likely to restrict or affect navigation to be equipped and monitor the Bridge-to-Bridge Radiotelephone (33 U.S.C. 1203, 1204).

We also propose in this NPRM to require AIS on dredges or floating plants near commercial channels because these vessels--given the nature of their operation--pose a unique challenge to navigation. As for passenger vessels, the AIS provision of the MTSA grants the Coast Guard discretion as to number of passengers for hire a vessel less than 65 feet may carry. In our 2003 Temporary Interim Rule, we established that threshold at carrying 50 or more passengers for hire. Subsequently, in our Final Rule, we excepted these vessels (and fishing vessels) and established a 150-passengers-for-hire threshold.

After we published the Final Rule, we posed two additional questions via a Request for Comments (68 FR 61818), specific to these segments of industry--fishing and small passenger operators--and the burden that these regulations placed on these predominantly small entities. We reviewed all of these comments and made Congress aware of the various concerns expressed by industry [see USCG-2003-14757-129];

nonetheless, this segment of industry is not uniquely impacted by the regulations and can greatly benefit from AIS. We therefore propose in this NPRM, AIS carriage requirements on fishing vessels of 65 feet or more and on vessels carrying 50 or more passengers. We propose to omit the distinction of “for hire” because we believe all passengers, whether paying or not, are subject to a similar safety risk and thus deserve the navigation safety and maritime security benefit afforded to them by AIS.

Finally, we propose that any vessel moving CDC also be required to carry AIS because of the unique risk the movement of CDC poses to the marine transportation system.

B. Reason AIS Requirement Was Not Expanded to All Vessels

Many commenters expressed the desire that all vessels have AIS. Ultimately, we believe all vessels should avail themselves of AIS; however, we propose to apply this rule only to those vessels for which we have current authority to mandate carriage of AIS. We propose to add two classes of vessels, not specifically addressed in the Radiotelephone Act: high-speed passenger vessels and vessels involved in the movement of certain dangerous cargo. High-speed passenger vessels and vessels that transport dangerous cargo pose unique challenges that AIS is well-suited to address.

With the advent of AIS Class B devices and the continual drop in prices for Class A devices, these systems will become more affordable. Consequently, more vessels will use AIS and the collective benefit AIS provides will increase. Someday, we hope all vessels will avail themselves of AIS, as many have done so with charts, radiotelephones, radars, and other navigation equipment.

C. Use of AIS Class B Devices

Some commenters recommended that the Coast Guard permit the use of AIS Class B devices. We agree. Since publication of the 2003 final rule (68 FR 60559) and through the diligent work of various standards bodies, we now have AIS Class B devices that are interoperable with AIS Class A devices. Class B devices differ slightly in features and nature of design, which reduce their cost (on average half the cost of Class A devices); however, their performance is somewhat limited. They report at a fixed rate (30 seconds) vice the Class A's variable rate (2-10 seconds dependent on speed and course change). They consume less power, but also report at lower power (2 watts versus 12 watts of AIS Class A), thus impacting their broadcast range. Despite these design limitations, and after extensive testing by the Coast Guard Research and Development Center (see International Telecommunication Union study group report "Performance Assessment and Interoperability of Proposed Class B AIS With Existing Class A AIS System Using Simulation Software" dated September 9, 2005), we deem AIS Class B devices can operate properly and safely amongst Class A devices and offer similar AIS benefits. They broadcast and receive virtually the same vessel identification and other information. They have the same ability to see targets that radar may not always show (around the bend, in sea clutter, or during foul weather). For these reasons, we have concluded that AIS Class B devices do enhance navigation safety and assist in collision avoidance comparable to AIS Class A devices; however, given their design limitations, we caution users that they may not be the best alternative for vessels that are highly maneuverable, travel at high speed, or routinely transit congested waters.

The Coast Guard seeks comment in this NPRM on whether AIS Class B devices should be permitted only on certain vessels or waterways, or whether this decision should

be best left to the master or owner's discretion.

We welcome the advent of lower cost AIS Class B devices and the continual drop in price of AIS Class A devices--currently averaging approximately \$3,000 vice \$7,000 in 2003. Fishing vessels and small passenger vessels, previously included in the original AIS carriage requirements of our temporary interim rule (68 FR 39353), will be less impacted by the current cost of AIS Class A devices and the potential to use even lower cost AIS Class B devices.

D. Deviation from AIS Requirements

There were a number of comments stating that AIS should not be required on vessels operating on certain waterways. We recognize that the MTSA provides us authority to waive AIS requirements on waterways where we determine AIS is not needed for safe navigation; however, we have decided not to create a patchwork of waterways where AIS is or is not required. Rather than waive requirements on specific waterways we propose here to grant a deviation based on where or how vessels operate. To that end, we propose to define what conditions under which a deviation may be sought. Vessels that operate--

(1) Solely within a very confined area (e.g., less than a one nautical mile radius, shipyard, fleeting area);

(2) On short and fixed scheduled routes (e.g., a bank-to-bank river ferry service);

or

(3) In a manner that makes it unlikely they will encounter other AIS users may request a yearly deviation from AIS requirements as set forth in § 164.55.

E. Relation of Coast Guard AIS Receiving Infrastructure to Requirement for AIS

in All Waters

Some commenters stated that we should not require the carriage of AIS in areas where the Coast Guard does not have infrastructure in place to receive these data. First, we note that the use of AIS may prevent collisions wherever it is used, regardless of the existence of shore-side AIS infrastructure. Second, we are working to establish nationwide capability to fully utilize AIS data wherever we require it to be transmitted.

As discussed in the Nationwide AIS section above, a NAIS project is being conducted to provide the Coast Guard with the capability to receive and distribute information from shipboard AIS equipment in order to enhance MDA. That project will provide detection and surveillance of vessels carrying AIS equipment approaching or operating in the maritime domain where little or no shore-side vessel tracking currently exists. Although the NAIS project is not projected to be fully operational until 2014, we have achieved initial operational capability for the receive-only increment of the project, and we anticipate achieving initial operational capability in three Coast Guard sectors for the transmit-and-receive increment by 2010. Our existing AIS network of over 90 sites and initial NAIS (Increment One) capability, in conjunction with other resources to benefit our overall MDA, would be available before the implementation date of the AIS requirements proposed here. To complement our existing AIS and future NAIS infrastructure, all Coast Guard cutters, many boats and some aircraft are AIS capable.

For more details on that project, please see the NAIS programmatic environmental impact statement notice published November 23, 2005 (70 FR 70862); the NAIS programmatic environmental impact statement record of decision published November 6, 2006 (71 FR 64977); or the NAIS web site at <http://www.uscg.mil/hq/g->

a/Ais/.

V. Discussion of Proposed Rule

In this section we discuss how we propose to revise our NOAD and AIS regulations.

A. NOAD Revisions

We propose numerous changes to our NOAD regulations. We propose to expand the applicability of the NOAD regulations by changing the minimum size of vessels covered below the current 300 gross tons, require that a notice of departure be submitted for all vessels required to submit a notice of arrival, and mandate electronic submission of NOAD notices to the National Vessel Movement Center. These changes are described in further detail under the following 11 headings in this section.

1. Applicability

We propose to amend the applicability of our regulations in 33 CFR part 160, subpart C, to clarify that unless a vessel is exempted, NOAD regulations apply to U.S. vessels in commercial service and all foreign vessels departing to or coming from a port or place in the United States. See proposed § 160.203. We have revised some exemptions in proposed § 160.204. For example, foreign vessels 300 gross tons or less not engaged in commercial service and not carrying certain dangerous cargo is one group of vessels that will continue to be generally exempted from submitting a NOA and will no longer have a separate NOA requirement for Coast Guard District Seven.

2. Definitions

We propose to add definitions for commercial service, continental United States (which includes Alaska), disembark, embark, foreign vessel, offshore supply vessel, oil

spill response vessel, passenger vessel, recreational vessel, and towing vessel to the definitions section in 33 CFR part 160, subpart C, proposed § 160.202. These additions would clarify the meaning of these 10 terms used in our NOAD regulations. Most of the new definitions come directly from 46 U.S.C. 2101.

3. Exemptions

We also propose to change the exemptions from reporting requirements currently found in § 160.203. We would revise the exemption for vessels 300 gross tons or less not carrying CDCs so that all commercial vessels coming from a foreign port or place would be required to submit a NOA, regardless of tonnage.

We propose to remove the exemption for foreign commercial vessels 300 gross tons or less whether or not they are coming from a foreign port. Removing this exemption entirely for foreign commercial vessels would allow the Coast Guard to align its vessel reporting requirements with CBP electronic arrival manifest requirements in 19 CFR 4.7b. We propose to maintain the exemption for U.S. commercial vessels 300 gross tons or less, not carrying CDCs, and transiting between ports or places of the United States because most are already screened through specific Federal and State registration and/or licensing programs as are the mariners that operate and crew these vessels.

We currently require all foreign commercial and recreational vessels 300 gross tons or less arriving at a port or place in the Seventh Coast Guard District to submit NOAs directly to the cognizant Captains of the Port (COTPs). We are proposing to remove that unique NOA requirement for foreign recreational vessels arriving in the Seventh Coast Guard District. This will ensure consistency between Coast Guard districts and allow more efficient use of Coast Guard District Seven personnel and

resources.

Vessels over 300 gross tons are currently subject to NOA regulations. We continue to require their compliance so that we can maintain visibility of these vessels because they carry a greater number of passengers and crew and a larger volume of cargo.

We also propose to revise an exemption for vessels operating upon the Mississippi River above mile 235 and its tributaries. That exemption would be limited to vessels required to report to the Inland River Vessel Movement Center (IRVMC) under 33 CFR part 165.

We propose to clarify the exemption for a vessel operating exclusively within a COTP Zone when not carrying certain dangerous cargo. Under both the current 33 CFR 160.203 (b)(2) and proposed 33 CFR 160.204 (a)(4)(ii), once a vessel has arrived at a port or place within a single COTP zone and has submitted the required NOA, if it then transits to another port or place within the same COTP Zone it is considered to be operating exclusively within that Zone and, therefore, is not required to submit a NOAD if it is not carrying CDC. If that vessel, however, is carrying CDC or leaves one COTP Zone and enters another, it is not covered by the exemption under current § 160.203 (b)(2) or proposed § 160.204 (a)(4)(ii) and, therefore, must submit the required notices.

4. Submitter

We have inserted proposed § 160.205 to clarify who must submit notices of arrival and notices of departure. This section would direct the owner, agent, master, operator, or person in charge of a vessel to submit NOADs in compliance with the subpart's time, method, and notice content requirements.

5. NOA Information

We propose to remove the optional submission of INS (now CBP) Form I-418 to satisfy crew and passenger information reporting requirements currently found in § 160.206(c) and to remove the option of submitting consolidated NOAs found in § 160.206(d). The Coast Guard found that many vessels submitting consolidated NOAs, or NOAs with consecutive port submissions, were not reporting changes in their crew, cargo, or persons in addition to crew. The eNOAD system we have developed to support the submission of non-consolidated NOADs meets the requirements of both the Coast Guard and CBP.

We would revise § 160.206, which contains the information requirements for NOA reports. The Coast Guard proposes adding a requirement for the Maritime Mobile Service Identity (MMSI) number for vessels in NOA reports because that number is associated with AIS. For vessels with an MMSI, this would allow the Coast Guard to quickly link a vessel's NOA with its AIS broadcast in order to detect security anomalies.

We also propose to require passport country of issuance and passport date of expiration information from everyone onboard who presents a passport--crewmembers and persons in addition to crew. This additional passport information will aid in the detection of fraudulent passports that may be used by individuals, both foreign and domestic, attempting to enter or depart the United States.

We propose to add a requirement to indicate whether the vessel is 300 gross tons or less and whether the vessel's voyage will be less than 24 hours in NOA reports. This information will allow the Coast Guard to prioritize screening of vessels on brief voyages with a shorter reporting requirement so they are screened before entering their port or

place of destination.

We also propose to add a data field for vessels to submit their estimated time of arrival to the entrance to the port (if applicable). This would be used by COTPs to facilitate vessel traffic management and to coordinate boardings and inspections. Additionally, we propose to clarify through item (2)(i) in the table for proposed 33 CFR 160.206 that vessels that have visited ports or places outside the continental United States need to submit the last five foreign ports or places visited on their NOA. In a separate item from the table, (2)(ix), all vessels must report their last port of call, whether domestic or foreign.

These two data fields, with accompanying items requesting arrival and departure dates from ports or places listed, will better enable us to determine which vessels are coming from foreign ports, and whether they may have been subject to inspection at another U.S. port since entering U.S. navigable waters. A vessel that has not visited a foreign port would make the appropriate entry, as specified by eNOAD, for the (2)(i) and (2)(ii) fields to report they have not visited a foreign port or place.

Finally, in regard to § 160.206, we propose to revise the reporting requirements on the operational condition of equipment. For that item, we have replaced the reference to 33 CFR 164.35 with 33 CFR part 164, so that we would include all relevant navigation equipment, including AIS.

6. NOD Information

We propose that all vessels required to submit a NOA will also be required to submit a NOD when departing from a port or place of the United States. The departure information required by proposed § 160.207--regarding the vessel, voyage, cargo,

crewmembers, and persons in addition to the crew--would increase our awareness of vessel movements and, by supplementing NOA data, would allow us to maintain a complete picture of movements in and out of U.S. ports or places.

Commercial vessels departing U.S. ports or places bound for foreign ports or places are currently required by CBP to submit an electronic passenger departure manifest and an electronic crewmember departure manifest. See 19 CFR 4.64. As noted in their final rule entitled "Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircrafts," published in the Federal Register April 7, 2005 (70 FR 17820, 17833), however, CBP has adopted the use of the Coast Guard's eNOAD to eliminate duplicate reporting requirements and provide a "single window" for filing manifest information. While, as indicated in the paragraph above, we would not limit our NOD requirements to vessels going to foreign ports, our proposed rule will not change what CBP stated in their final rule: eNOAD will capture the notice information we require and the electronic manifest information CBP requires. See 70 FR 17831 (Apr. 7, 2005).

We have worked with 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 mission under 33 U.S.C. 1225--to prevent damage to structures on, in, or adjacent to the navigable waters of the United States, as well as protecting those navigable waters--may differ somewhat from information 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.

7. Electronic Submission

In proposed § 160.210, we would require NOAs and NODs be submitted via electronic formats found at the National Vessel Movement Center's (NVMC) website: <http://www.nvmc.uscg.gov>. Mandating electronic submission of NOADs allows the Coast Guard and CBP to quickly and automatically process, validate, and screen arrival and departure notices. The CBP's Advance Passenger Information System (APIS) regulations, 19 CFR 4.7b and 4.64, mandated that arrival and departure information be submitted by the electronic system. Coast Guard and CBP consolidated the reporting requirements and provided the public with a "single-window" for transmitting NOA and NOD information. Information received through the eNOAD system is automatically forwarded to both the Coast Guard and CBP.

Currently, 87 percent of NOA submissions are made via the eNOAD method. The eNOAD offers a quick and easy way to submit NOAs and NODs.

8. When to Submit NOA

We recognize that the current times for submitting NOAs in § 160.212 might encumber some small commercial vessels transiting between U.S. and foreign ports; therefore, we propose to make the reporting time closer to the departure time for smaller vessels that make frequent, short voyages between U.S. and foreign ports or places.

For U.S. commercial vessels 300 gross tons or less, arriving from a foreign port, and on a voyage of less than 24 hours, we propose in this NPRM a submission time of 60 minutes prior to departure from the foreign port or place. This population of vessels often engages in multiple, unscheduled, short-term voyages within a given 24-hour period. Because of the emergent and spontaneous nature of their business, this portion of

the vessel industry would be disproportionately affected if required to submit NOADs 24 hours before arrival. Additionally, the Coast Guard or State authorities already document commercial vessels of the United States of 300 gross tons or less.

In contrast, we have much less information on some foreign commercial vessels of 300 gross tons or less; nor do we have advance access to foreign merchant mariner documentation or licenses of commercial vessel crews. As a result, our personnel require more time to review and verify the information submitted by foreign commercial vessels 300 gross tons or less; therefore, we are not proposing to reduce the reporting time for this population of foreign vessels.

This proposed rule would also mandate that foreign commercial vessels of 300 gross tons or less that had been required by § 160.210(c) to contact COTPs in the Seventh Coast Guard District would instead submit their NOAs and NODs to the NVMC.

In proposed 33 CFR 160.212 (a)(4) and (b)(4), we have sought to clarify that the times for submitting a NOA or update are based on a vessel's arrival at a port or place.

9. When to Submit NOD

We are proposing a new requirement to mandate times for submitting NODs. This requirement is similar to the time frame for departure notices mandated by CBP in its APIS requirements, 19 CFR 4.7b.

10. Force Majeure

In proposed § 160.215, we specify information to be conveyed by vessels bound for a port or place in the United States under force majeure. The Coast Guard recognizes the special circumstances of such vessels and limits the requirements of 33 CFR part 160, subpart C, to reporting information to the nearest Captain of the Port regarding the vessel

operator's intentions, any hazardous conditions, and whether the vessel is carrying or controlling a vessel carrying CDC. COTP zones are defined in 33 CFR part 3.

11. Customs Form 1302 Removed

Finally, we propose to remove some NOA regulatory text that has been suspended. Requirements for submittal of Customs Form 1302, a cargo declaration, were included in Coast Guard NOA regulations published February 28, 2003. See 68 FR 9537. The paragraphs in 33 CFR part 160 referencing this cargo declaration were suspended 3 months later pending further CBP regulatory action under then recently-enacted legislation. See 68 FR 27907 (May 22, 2003). At the time, we noted that we would remove these cargo-manifest submission requirements from Coast Guard regulations when they were no longer needed.

On December 5, 2003, CBP published its "Required Advance Electronic Presentation of Cargo Information" final rule (68 FR 68140), which fully addressed the requirement for submission of this cargo declaration (Customs Form 1302). 19 CFR 4.7. Our proposed rule would reinstate the suspended paragraphs (d) and (e) regarding Customs Form 1302 in 33 CFR part 160 so that we could then remove them because they are no longer needed.

B. AIS Revisions

We are proposing numerous changes to our automatic identification system and related regulations. Those regulations require the installation and operation of a device that automatically broadcasts information about the vessel--its position, and current voyage--that may be received by other AIS-equipped stations.

The proposed rule would revise current AIS operation requirements and would

expand AIS applicability to all U.S. navigable waters; under our current regulations, vessels not on an international voyage are only required to use AIS in Vessel Traffic Service (VTS) areas. We would also expand AIS applicability to all commercial vessels 65 feet or more in length and the following commercial vessels, regardless of length: vessels carrying 50 or more passengers (whether for hire or not); vessels carrying 12 or more passengers for hire and capable of speeds in excess of 30 knots; dredges and floating platforms operating near or in a commercial channel or shipping fairway; and any vessels carrying or engaged in the movement of CDC. These proposed changes are described in greater detail in the 12 headings below in this section.

1. Changes to VTS Terminology and Definitions

In § 160.5, we replace the term “Commanding Officers, Vessel Traffic Services” with “Vessel Traffic Services Director” to better align with our current sector organizational structure.

In part 161, we are making several changes. Those include adding vessels operating with a type-approved AIS to the definition of “Vessel Traffic Service (VTS) user” in § 161.2. Since all Coast Guard VTSs are AIS-capable, this revision will facilitate vessel traffic management within a VTS and will allow AIS-equipped vessels to avail themselves of VTS services.

2. Administrative Changes and Changes in Definition

In part 161, we propose making two revisions, in §§ 161.12 and 161.19, to reflect the new location (§ 160.202) of our certain dangerous cargo (CDC) definition.

In part 164, we are making several revisions including in § 164.02(a), in which we are revising the section reference to § 164.46 to reflect the new location of AIS

requirements for SOLAS vessels in that section, paragraph (c), which, unlike the rest of the part, apply to vessels in innocent passage.

We are adding four items to the incorporation by reference list in § 164.03 ((f)(2), (5), (6), and (8)) reflecting new guidance regarding AIS installation, use of binary applications and the AIS destination field, and deleting the IEC and ITU portions.

We are revising § 164.46 to expand its applicability and better define the proper operation of AIS.

We are moving three terms—gross tonnage, length, and properly installed—previously discussed in the note to § 164.46(a) and adding them to a new proposed “Definitions” paragraph at § 164.46(a). This paragraph (a) also includes definitions for Automatic Identification System (AIS) and International Voyage. We have combined the properly installed definition with the broader properly installed, operational definition.

We are making a revision to § 164.46(b) to denote only “Coast Guard type-approved” equipment as meeting our requirements. This would include various newly, Coast Guard type-approved AIS Class B devices, but these devices currently await FCC certification (FCC rules regarding AIS Class B certification are pending; see 71 FR 60102, October 12, 2006). We have done so in response to the many commenters who asked about alternative or less expensive ways to meet the requirement with AIS Class B devices.

3. Expansion of AIS Carriage Requirements

We propose to revise AIS requirements and extend applicability beyond VTS areas to all U.S. navigable waters. Further, we would expand applicability to all commercial vessels 65 feet or more in length, including fishing vessels and vessels

carrying passengers regardless of the number of passengers. We would also require commercial passenger vessels carrying 50 or more passengers (whether for hire or not), reducing the previous passenger threshold from 150 or more for hire. Additionally, we propose that vessels carrying 12 or more passengers for hire and capable of speeds in excess of 30 knots; dredges and floating platforms operating near or in a commercial channel or shipping fairway; and any vessels carrying or controlling vessels carrying CDC be required to install and use AIS.

4. Class A and Class B AIS Devices

We have also added a note that addresses the use of AIS Class B devices. AIS Class B devices differ slightly in features and nature of design, which reduces their cost (on average half the cost of AIS Class A devices) but also impacts their performance. They report at a fixed rate (30 seconds) versus the AIS Class A variable rate (2-10 seconds dependent on speed and course change). They consume less power but also report at lower power (2 watts versus 12 watts of AIS Class A), thus impacting their broadcast range. Despite these design limitations, AIS Class B devices offer similar AIS benefits. They broadcast and receive virtually the same vessel identification and information. They have the same ability to see targets that radar may not always show (around the bend, in sea clutter, or during foul weather). For these reasons, and after conducting our own AIS Class B testing, we have concluded that AIS Class B devices would enhance navigation safety and assist in collision avoidance as do Class A devices; however, we caution users that they may not be the best alternative for vessels that are highly maneuverable, travel at high speed, or routinely transit congested waters.

5. Changes Regarding SOLAS AIS Requirements

As previously noted, we propose to revise paragraph (b) of § 164.02 to reflect the new location in § 164.46 for SOLAS requirements. In our proposed § 164.46(c), we omit SOLAS implementation dates because those dates have lapsed. In the proposed paragraph (c), we would also reflect SOLAS applicability for self-propelled vessels in three paragraphs rather than four:

- 500 gross tonnage or more,
- 300 gross tonnage or more on international voyage, or
- 150 gross tonnage or more carrying more than 12 passengers.

The first two paragraphs, § 164.46(c)(1) and (2), would properly reflect SOLAS applicability for tankers; therefore, there is no need to list tanker applicability separately.

6. Clarification of Operating Requirements

In response to numerous comments and suggestions, we have expanded operating requirements in new paragraph § 164.46(d) clarifying that the use of AIS does not relieve the vessel of existing requirements in 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 U.S.C. 2001 through 2073, the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 through 1208), part 26 of this chapter, nor requirements of the Federal Communications Commission (FCC) specified in 47 CFR part 80. AIS-equipped vessels are to sound whistle signals and display lights or shapes to denote a vessel's navigation status. Vessels should ensure that their AIS "navigation status" field accurately reflects the vessel status as denoted by its navigation lights or displayed shapes. Vessels must also make appropriate voice broadcasts and passing

arrangements on the designated VHF bridge-to-bridge channel. We also address the use of AIS messaging and note that it should not be relied upon for distress or urgent marine communications.

We also propose a requirement for the vessel to ascertain that its AIS and associated equipment is properly operating prior to navigating. We have done so in response to the many improperly operating AIS we have encountered in enforcing the current regulations. Many users are not aware that proper operation of AIS on SOLAS certificated vessels requires the use of external devices (the vessel's navigation system, gyro, and their associated converters) or that they broadcast the pertinent information regarding the vessel's description, dimensions, and navigation status. We reiterate here that vessels not ascertaining that their broadcast AIS information is correct prior to navigation will now be in clear violation of the rules. This also pertains to the broadcasts of an unassigned or improper Maritime Mobile Service Identity (MMSI) number. Each vessel's properly assigned MMSI is what distinguishes its reports from other vessel's reports. Duplicate or improper MMSIs may cause a vessel's reports not to be heard or to interfere with the reports of other vessels.

7. Location and Use of AIS

We further propose that the functionality and the display of AIS information be located at or near the conning position of the vessel and be used by the master or the person in charge to pilot or direct the movement of the vessel. The safety benefits of AIS can only be accrued by those who avail themselves of its information; thus, we deem it should be located at the conning position for use by the master and conning officer and that a periodic watch be kept of AIS information. Note, we do not require that the unit

itself be installed there, only that access to AIS information be available there. This can be accomplished by the AIS MKD or some other appropriate AIS presentation device, such as an AIS-capable radar or electronic chart system being installed there.

8. Integration of External Sensors

We recognize the use of external sensors or devices, such as transmitting heading devices, gyros, rate of turn indicators, ECDIS/ECS, or radar, and we are aware that such devices may improve AIS performance; however, as of the date of this publication, we do not require their installation or integration, except for those vessels subject to requirements in SOLAS Regulation V/19 as denoted in proposed § 164.46(c). We are also mindful that the MKD is not the most optimal interface to access and use AIS information; it was never intended to be so. Each AIS has, at minimum, two high speed input/output ports for connection of onboard control equipment, ECDIS/ECS, radar, etc., and a pilot/auxiliary port for connection of an AIS pilot system. Use of these ports for external display systems is certainly envisioned and desirable; however, we note that technical requirements to do so are still in development. Requirements regarding electronic chart systems and the display and integration of AIS information on them will be the subject of a separate rulemaking.

9. Implementation Date

We also propose an implementation date, for those vessels covered by this rulemaking, but not currently required to have AIS, of no later than 7 months after publication of the final rule. We consider this a reasonable length of time for owners to plan to purchase and install AIS.

10. Location of AIS Pilot Port

In proposed § 164.46(g), we clarify the previous requirement that the AIS Pilot Port be located "near" an alternating current (AC) outlet to a maximum length--no more than 3 feet from each other.

11. Requests for Deviation

The following vessels may request a yearly deviation from AIS requirements.

Vessels that operate--

Solely within a very confined area (e.g., less than a one nautical mile radius, shipyard, fleeting area);

On short and fixed scheduled routes (e.g., a bank-to-bank river ferry service); or

In a manner that makes it unlikely they will encounter other AIS users.

12. Removal of Expired Requirements

We propose to remove § 164.43 and its separate and expired Prince William Sound AIS requirement. Also, in § 165.1704, we propose to remove paragraph (c)(6) because it refers to expired requirements for having Automatic Identification System Shipborne Equipment in the Prince William Sound regulated navigation area.

C. Incorporation by Reference

Material proposed for incorporation by reference appears in 33 CFR 164.03. You may inspect this material at U.S. Coast Guard Headquarters where indicated under ADDRESSES. Copies of the material are available from the sources listed in § 164.03.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VI. Regulatory Analysis

We developed this proposed rule after considering numerous statutes and

executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

Section 3(f) of Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993) requires a determination whether a regulatory action is “significant” and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rulemaking has been identified as significant under Executive Order 12866. A combined Regulatory Analysis and an Initial Regulatory Flexibility Analysis is available in the docket as indicated under the “Public Participation and Request for Comments” section of this preamble. A summary of the analysis follows.

This proposed rule would expand the applicability for NOAD and AIS requirements.

The regulatory analysis (RA) presents the scope and magnitude of costs incurred by industry (vessel owners) and benefits derived from an anticipated reduction in marine casualty cases, and we include a cost-effectiveness analysis for both segments of this rulemaking. We also present the overarching assumptions that provided the foundation for both our cost and benefit analyses and make this information available to the public for comment.

The NOAD portion of this proposed rule would significantly expand the applicability to include all commercial foreign-flag vessels regardless of tonnage down to zero gross tons that make port calls to the United States. The expanded NOAD applicability also includes all U.S. commercial vessels 300 gross tons or less coming

from a foreign port. It would also require that a notice of departure be submitted for all vessels that are required to submit a notice of arrival. The proposed rule would also mandate electronic submission of NOAD notices to NVMC.

Section 102 of the MTSA mandates that AIS be installed on all--foreign or domestic--commercial self-propelled vessels equal to or greater than 65 feet in length (including fishing vessels) in U.S. navigable waters, including those outside already-regulated VTS areas. This includes towing vessels equal to or greater than 26 feet in length and 600 horsepower and, as determined by the Secretary under authority of the MTSA, passenger vessels carrying at least 50 passengers, certain high-speed passenger craft, certain dredges or floating plants, and vessels carrying or moving CDCs. These expanded requirements would allow the Coast Guard to better correlate vessel AIS data with NOAD data, enhance our ability to identify anomalies, and expand our overall MDA.

We could not, with a great degree of certainty, estimate how many vessels transit outside of VTS coverage areas. With this in mind, we estimated the numbers of vessels affected by this rulemaking by using the population figures presented in the AIS final rule (included in the MTSA suite of rulemakings) under docket number, USCG-2003-14757. The Coast Guard published the final rule for AIS in the Federal Register on October 22, 2003, at 68 FR 60559. We estimate that both segments of the proposed rule would affect approximately 42,607 vessels. The total number of domestic vessels affected is approximately 17,323 and the total number of foreign vessels affected is approximately 25,284.

We estimate that the NOAD portion of the proposed rule would affect

approximately 5,566 domestic vessels and approximately 25,284 foreign vessels. Of the 5,566 domestic vessels, approximately 4,566 would be required to install AIS and submit NOADs and about 1,000 of the remaining vessels would be required to submit NOADs only. The total number of vessels affected by the NOAD portion of the proposed rule is approximately 30,850.

We estimate that the AIS portion of the proposed rule would affect approximately 16,323 domestic vessels and approximately 1,119 foreign vessels. The total number of vessels affected by the AIS portion of this proposed rule is approximately 17,442.

Table 4 below summarizes the vessel population affected by the proposed rule.

Table 4--Summary of U.S. and Foreign Vessel Populations

	NOAD	AIS	Total Vessels Affected*		
			U.S.	Foreign	Total
U.S. Vessels	5,566**	16,323			
Foreign Vessels	25,284	1,119***	17,323	25,284	42,607
Total Vessels by Portion of Rule	30,850	17,442			

*Totals do not add up to sum of portions of the proposed rule since some vessels required to install AIS would also be required to submit NOADs. Consequently, adding both would double count most of the “AIS affected” vessels.

**Of the approximately 5,566 U.S. vessels required to submit NOADs, about 1,000 would submit NOADs only; the remainder of about 4,566 would be required to both install AIS and submit NOADs.

***All of the approximately 1,119 foreign-flag vessels required to install AIS would also be required to submit NOADs.

Our NOAD vessel populations include vessels greater than 300 gross tons (approximately 3,099), although these vessels are currently required to submit NOAs for a distinct voyage or port call to the U.S. The proposed rule would mandate that all commercial vessels would be required to submit NODs as well as NOAs; therefore, we based our analysis on this difference in applicability. The proposed rule would also mandate that all commercial vessels must submit NOADs electronically (eNOAD).

The eNOAD system would allow the Coast Guard to meet its notification of arrival requirements and provide synergy with the CBP requirements that would

eliminate duplicative reporting. We anticipate that submitting NOADs by this format should reduce the burden hours imposed on industry whereas under a temporary final rule (69 FR 51176, Aug. 18, 2004) and a subsequent interim rule (70 FR 74663, Dec. 16, 2005), two new methods of electronic submission were added and made optional. All vessels would be required to submit NOADs by a computer, which would require the purchase of this item.

We assess the costs and benefits of the proposed rule over the 10-year period, 2008-2017, and present costs in 2006 dollars. We discount costs to their present value (PV) at three and seven percent discount rates over the period of analysis. Cost estimates include capital costs such as the purchase of a computer, and transmission, annual maintenance, and replacement costs for the NOAD portion of this rulemaking. Cost estimates for the AIS portion of this rulemaking include the AIS unit itself and installation, training, annual maintenance, and replacement costs. Quantified, monetized benefit estimates for the AIS portion of this rulemaking include avoided injuries, fatalities, and pollution as a result of the proposed rule. Non-quantified benefits for AIS include enhanced MDA, improved information sharing with NOAD, and improved overall communications. We expect that non-quantified benefits exist for the NOAD portion of this rulemaking such as an efficient and timesaving method of notification thereby reducing the hour burden on industry and Coast Guard resources.

Considering domestic commercial vessels less than or equal to 300 gross tons coming from a foreign port, for example, we propose a 60-minute notice time for vessels on voyages of less than 24 hours. We believe that this population of vessels would originate mostly from Caribbean or Canadian ports and many vessels in this population

potentially could be charter vessels such as fishing vessels or smaller ferries that would not have passenger information until a few minutes before departure. To the extent that many vessels in this population are charter vessels, a 60-minute notice time would greatly benefit these small vessel owners since they would not be idle in port waiting for the charter to reach its capacity. In contrast, if we expand the notice time, for example, to 24 hours for this vessel population, these vessel owners potentially would lose customers and revenues since they rely on walk-up business as they wait in port in order to satisfy a longer notice time. It may be likely that a longer notice time would force some of these small business owners to leave the industry as they realize lower revenues and reduced economic profits as a result.

Our proposed 60-minute notice time provides flexibility for the smaller vessel owner since these businesses would continue to be able to operate efficiently as charter businesses due to the spontaneous nature of their business. This requirement also aligns with the Customs and Border Patrol (CBP) proposed requirement, which would alleviate confusion within the industry and provide consistency for the public. The Coast Guard requests comments from the public on how a shorter notice time benefits your business with increased flexibility as opposed to a longer notice time. We would also like comments on how much this provision would save your business annually.

We estimate the total initial cost of the proposed rule to U.S. vessel owners and operators to comply with the NOAD portion of this rulemaking is between \$3.4 and \$4.3 million (non-discounted, with a 2008 implementation date), which covers the preparation of NOADs, the capital cost of purchasing a computer [we used \$500 for the cost of a computer which is consistent with the CBP's APIS rulemaking (70 FR 17820, Apr. 7,

2005)]. The total initial year cost to U.S. vessel owners and operators to comply with the AIS portion of this rulemaking is approximately \$69.0 million (non-discounted, with a 2008 implementation date), which includes the capital cost of an AIS unit, installation, and training costs. Due to economies of scale, we estimate the cost of an AIS unit to be approximately \$3,000. The annual recurring cost for the NOAD portion of the proposed rule would be approximately between \$4.1 million (using median number of trips made per vessel) and \$6.7 million (using mean number of trips made per vessel) (non-discounted). The annual recurring cost of the AIS portion of the proposed rule would be approximately \$4.4 million (non-discounted).

We estimate that the 10-year total present discounted value or cost of the proposed rule to U.S. vessel owners is between \$132.2 and \$163.7 million (seven and three percent discount rates, respectively, 2006 dollars) over the period of analysis, 2008-2017. We estimate the 10-year present discounted value or cost of the NOAD portion of the proposed rule using both a high and a low median number of trips to account for the variability in the number of trips made. The 10-year total present discounted value or cost to U.S. vessel owners for the NOAD portion of the proposed rule is between \$10.4 and \$20.1 million at seven and three percent discount rates, respectively. Using the median and mean number of trips made by U.S.-flag vessels, we estimate the annualized NOAD costs to U.S.-flag vessel owners and operators to be approximately \$1.5 and \$2.4 million, respectively.

The 10-year total present discounted value or cost to U.S. vessels owners for the AIS portion of the proposed rule is between \$121.8 and \$143.5 million at seven and three percent discount rates, respectively. The AIS portion of the proposed rule is the most

costly element representing about 87 percent of the 10-year total present discounted value or cost at both seven and three percent discount rates. The initial cost (non-discounted) for the AIS portion represents nearly 94 percent of the total initial cost (non-discounted) of the proposed rule. We estimate annualized AIS costs to U.S. vessel owners and operators to be approximately between \$17.3 and \$16.8 million at seven and three percent discount rates, respectively.

We estimate that the 10-year total present discounted value or cost for foreign-flag vessels to comply with the NOAD portion of the proposed rule is between \$40.9 and \$62.4 million at seven and three percent discount rates, respectively. Using the mean and median number of trips made by foreign-flag vessels, we estimate the annualized NOAD costs to foreign-flag vessel owners and operators to be approximately \$7.3 and \$4.8 million, respectively. We estimate the total present discounted value or cost for foreign-flag vessel owners to comply with the AIS portion of the proposed rule is between \$8.3 and \$9.8 million at seven and three percent discount rates, respectively. We estimate annualized AIS costs to foreign-flag vessel owners and operators to be approximately \$1.2 million. We estimate that the total present discounted value or cost of the proposed rule for both U.S. and foreign-flag vessel owners is between \$181.4 and \$235.9 million at seven and three percent discount rates, respectively, over the 10-year period of analysis.

Table 5 below summarizes the total annualized costs of the proposed rule for both U.S. and foreign-flag vessel owners and operators.

Table 5--Summary of Total Annualized Costs of Proposed Rule to U.S. and Foreign-Flag Vessel Owners (\$Millions)

	NOAD* (median trips made)	AIS	Totals* (median trips made)
U.S.-Flag Vessels	\$2.4 (\$1.5)	\$16.8-\$17.3	\$20.2 (\$19.2)
Foreign-Flag Vessels	\$7.3 (\$4.8)	\$1.2	\$8.5 (\$7.0)

* Mean number of trips made.

In the interest of national security and maritime domain awareness, the Coast Guard believes that this proposed rule, through a combination of NOAD and AIS, would strengthen and enhance not only maritime security but also the national security of this country. We believe that expanding NOA applicability, specifically to foreign commercial vessels under 300 gross tons and to all U.S. commercial vessels coming from foreign ports or places, and requiring them to also submit NODs--in conjunction with AIS--would accomplish this goal. The combination of NOAD and AIS would create a synergistic effect between the two requirements and would include a significant number of smaller vessels not currently covered under the current regulations. This is the primary benefit of the proposed rule.

Ancillary or secondary benefits exist in the form of avoided injuries, fatalities, and barrels of oil not spilled into the marine environment. We estimate that the total discounted benefit (injuries and fatalities) derived from 68 marine casualty cases analyzed over an 8-year data period from 1996-2003 for the AIS portion of the proposed rule is between \$24.7 and \$30.6 million using \$6.3 million for the value of statistical life (VSL) at seven and three percent discount rates, respectively. Just based on barrels of oil not spilled, we expect the AIS portion of the proposed rule to prevent 22 barrels of oil from being spilled annually.

The 68 casualty cases over the 8-year data period yielded about \$3.2 million in property damage or about \$400,000 per year.

Table 6 below summarizes our findings.

Table 6--Summary of Total Discounted Cost and Benefit of Proposed Rule for
U.S. and
Foreign-Flag Vessels (2008-2017, 7 and 3 Percent Discount Rates, 2006 Dollars)
(\$Millions)

	NOAD	AIS	10-Year Total Cost of Proposed Rule
7 Percent Discount Rates:			
U.S. Vessels*	\$10.4-\$16.9	\$121.8	\$132.2-\$138.6
Foreign Vessels**	\$40.9-\$52.6	\$8.3	\$49.2-\$61.0
Total Cost	\$51.3-\$69.5	\$130.1	\$181.4-\$199.6
3 Percent Discount Rate:			
U.S. Vessels*	\$12.3-\$20.1	\$143.5	\$155.8-\$163.7
Foreign Vessels**	\$48.1-\$62.4	\$9.8	\$58.0-\$72.2
Total Cost	\$60.4-\$82.5	\$153.4	\$213.8-\$235.9
AIS Benefits			
Injuries and Fatalities Avoided:	-		
7 Percent Discount Rate (\$6.3M VSL)		\$24.7	
3 Percent Discount Rate (\$6.3M VSL)		\$30.6	
Pollution Avoided (bbls)***:	-		
7 Percent Discount Rate		136	
3 Percent Discount Rate		169	

Totals may not sum due to independent rounding.

*Using three (and four for vessels ≤ 300 GT) and eight (and nine for vessels ≤ 300 GT) median and mean number of trips, respectively.

**Using two (and three for vessels ≤ 300 GT) and four (and five for vessels ≤ 300 GT) median and mean number of trips, respectively.

***We did not find cases involving oil spills from foreign-flag vessels.

We do not expect quantifiable benefits for the NOAD portion of this proposed rule and benefits in this case are non-probabilistic (i.e., not based on historical probabilities). We believe, however, that there are considerable inherent qualitative benefits resulting from the NOAD requirement.

The Coast Guard Intelligence Coordination Center provided an intelligence analysis to other internal Coast Guard offices and to the Department of Homeland Security (DHS) indicating terrorist organizations have the capability and the intention to conduct attacks on the U.S. using vessels as a delivery method for direct attacks on waterborne primary targets and as a delivery method for personnel and weapons in

support of attacks on secondary targets. Vessels not currently covered under the applicability of NOAD and AIS regulations could pose a security risk to the maritime transportation system that terrorist organizations could exploit. Expanding the applicability of NOAD and AIS will enhance maritime domain awareness by lowering the potential security risks. We believe that having this proposed rule in place could prevent terrorist attacks in the future that might otherwise have occurred without the rule.

Since the security benefits noted above are difficult to quantify, we conducted a break-even analysis to determine what change in the reduction of risk would be necessary in order for the benefits of the rule to exceed the costs. Because the types of events that would be prevented by this regulation vary greatly, we calculate potential break-even results using a range of generic events that result in loss of life or casualties. We do expect that most events would also involve asset destruction or other capital loss. Events involving loss of capital in addition to casualties would cause the change in risk reduction to be smaller for costs to equal benefits.

We use \$6.3 million as an estimate of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality involving maritime transportation and calculate annualized benefits. Our VSL estimate is based on the 2008 report "Valuing Mortality Risk Reductions in Homeland Security Regulatory Analyses" prepared for the U.S. Customs and Border Protection. This report is available on the docket as detailed under ADDRESSES.

We subtract the annualized benefits of the NOAD and AIS portions of the proposed rule (7 percent discount rate over 10 years) from the annualized costs and divide these net costs by the value of casualties avoided to calculate an annual risk

reduction range that would be required for the benefits of both portions of the rule to at least equal the costs.

The annual risk reductions required for the rule to breakeven are presented below for a range of casualties. As shown, depending on the casualties avoided, risk would have to be reduced 0.1 (1,000 casualties avoided) to 1.2 percent (100 casualties avoided) in order for the NOAD portion of the proposed rule to breakeven. For the AIS portion of the proposed rule, risk would have to be reduced 0.3 (1,000 casualties avoided) to 2.9 percent (100 casualties avoided) in order for the AIS requirements of the proposed rule to breakeven. These small changes in risk reduction suggest the potential benefits of the proposed rule justify the costs.

Annual Percent Risk Reduction Required
for Costs to Equal Benefits
(Annualized at 7 percent over 10 years)

Casualties Avoided	NOAD	AIS
100	1.2%	2.9%
250	0.5%	1.2%
500	0.2%	0.6%
750	0.2%	0.4%
1,000	0.1%	0.3%

See the “Regulatory Analysis” in Docket No. USCG-2005-21869 at <http://www.regulations.gov> for details of these calculations

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of

small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An Initial Regulatory Flexibility Analysis is available in the docket as indicated under the "Public Participation and Request for Comments" section of this preamble.

We have reviewed this proposed rule for potential economic impacts on small entities. From our analysis, we conclude that this proposed rule may affect a substantial number of small entities, as defined by the Small Business Administration (SBA). Small entities affected by this rulemaking are vessel owners and operators.

Due to the large number of vessels and vessel owners and operators potentially affected, we took a random sample of the total number of companies that could be affected by this rulemaking. We found that this rulemaking may affect as many as 14,506 U.S. companies that own and operate the 17,323 domestic vessels. Using 95 percent as our confidence level, we took a random sample of 375 small businesses. We researched approximately 3,300 companies in order to achieve our sample size of 375 small businesses, or about a 9 to 1 ratio. We found that some of the companies that we researched lacked company data such as revenues and employee size, which precluded us from using those companies in our analysis based on SBAs criteria for small companies. Based on the industry classification codes from the North American Industry Classification System (NAICS), we found that about 12 percent of the small businesses analyzed are classified under the NAICS code for "navigational services to shipping" companies. About 11 percent of the small businesses analyzed are classified under the NAICS code for "scenic and sightseeing transportation" companies. The remaining 77

percent of the small businesses analyzed represent a variety of different industry classification codes, each representing a small portion of the small businesses analyzed (for more details, see the Initial Regulatory Flexibility Act analysis available in the docket).

To estimate the impact on small businesses in the initial year, we multiplied the first year costs for implementing NOAD (includes capital, installation, and submission costs) and installing AIS (includes capital, installation, and training costs) by the number of vessels that each small business owns. We divided this cost by the average annual revenues for each small business to obtain a proportion of the initial cost to annual revenues. This allows us to determine the initial cost impact of this proposed rule on small businesses. We also estimated the annual cost impact on small businesses using the same methodology explained above. Again, we multiplied the annual costs that each small business would incur for implementing NOAD (includes operation and maintenance and submission costs) and installing AIS (includes operation and maintenance costs) by the number of vessels that each small business owns. We divided this cost by the average annual revenues for each small business to obtain a proportion of the annual costs to annual revenues.

Table 7 presents the initial and annual revenue impacts for the sample of 375 small companies that we researched with known average annual revenues.

Table 7--Estimated Revenue Impact of the Proposed Rule for Small Businesses That Own U.S.-Flag SOLAS and Non-SOLAS Vessels

	Initial		Annual	
Percent impact on annual revenue	Number of small entities with known revenue data	Percent of small entities with known revenue data	Number of small entities with known revenue data	Percent of small entities with known revenue data

0-3%	357	95%	375	100%
>3-5%	10	3%	0	0%
>5-10%	7	2%	0	0%
>10-20%	1	0%	0	0%
>20%	0	0%	0	0%
Total	375	100%	375	100%

As shown, the proposed rule would have a 3 percent or less impact on 95 percent of the small businesses that own vessels that would have to comply with both the NOAD and AIS portions of this proposed rule during the first year the rule is in effect. The proposed rule would have a 3 percent or less impact on 100 percent of the small businesses annually that we sampled. The data suggest this proposed rule would not have a significant impact on a substantial number of small entities and we request comments from the public on whether they believe this finding is correct. For more information on small entities, refer to the Regulatory Flexibility Analysis (RFA) portion of the regulatory analysis in the docket under docket number USCG-2005-21869.

The Coast Guard is interested in the impact of this rulemaking on small entities. If you are a small entity, we specifically request comments regarding the economic impact of this proposed rule on you.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rulemaking so that they can better evaluate its effects on them and participate in the rulemaking. If you think that this proposed 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 proposed rule.

Note, the Coast Guard 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 proposed rule calls for the 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 proposed rule modifies two existing OMB-approved collections, 1625-0100 (formerly 2115-0557), and 1625-0112. The request for approval of these Collections of Information are available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

The summary of the revised 1625-0100 collection follows:

TITLE: Advance Notice of Vessel Arrival and Departure.

OMB CONTROL NUMBER: 1625-0100.

SUMMARY OF THE COLLECTION OF INFORMATION: The Coast Guard requires pre-arrival notices from certain vessels entering a port or place in the United States. This proposed rule would increase the number of vessels required to submit a NOA and establishes a NOD requirement.

NEED FOR INFORMATION: To ensure port safety and security and to ensure the uninterrupted flow of commerce. To this end, the Coast Guard must modify its 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 9,206. This proposed rule would increase that number by 21,644. The total number of respondents would be 30,850.

FREQUENCY OF RESPONSE: The existing OMB-approved number of responses is 78,538. This proposed rule would increase that number by 78,584. The total number of responses would be 157,122.

BURDEN OF RESPONSE: The existing OMB-approved burden of response is approximately 2.5 hours. This proposed rule would decrease that number by 60 percent, due to the mandated use of electronic reporting. The estimated burden of response is now 1 hour.

ESTIMATE OF TOTAL ANNUAL BURDEN: The existing OMB-approved total annual burden is 200,039 hours. This proposed rule would decrease that number by 42,917, due to the mandated use of electronic reporting. The estimated total annual burden would be 157,122 hours.

The summary of the 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: The Coast Guard plans to collect, store, and analyze data transmitted by AIS to enhance maritime domain awareness (MDA). Awareness and threat knowledge are critical for securing 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.

NEED FOR INFORMATION: To ensure port safety and security and to ensure the uninterrupted flow of commerce. To this end, the Coast Guard must establish this new collection.

PROPOSED USE OF INFORMATION: This information collection, storage, and analysis would greatly expand the breadth and depth of the Coast Guard's MDA. This enhanced MDA would enable quicker, more efficient responses to marine casualties and improve the Coast Guard's ability to prevent and respond to potential terrorist threats. It would also contribute an essential aspect to the Coast Guard's COP. The COP is the Coast Guard's system for sharing operational data among those who need it to

perform their missions.

DESCRIPTION OF THE RESPONDENTS: Respondents are the operator or person in charge of a vessel that must carry AIS as mandated by the MTSA. The MTSA requires the following vessels carry AIS:

- A self-propelled commercial vessel of at least 65-feet in overall length.
- Vessels carrying more than a number of passengers for hire determined by the Secretary [herein, 50 or more passengers, or more than 12 for hire at speeds in excess of 30 knots].
- A towing vessel of more than 26 feet overall in length and 600 horsepower.
- Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel [herein, certain dredges or floating plants or engaged in moving certain dangerous cargoes].

NUMBER OF RESPONDENTS: The existing OMB-approved number of respondents is 450. This proposed rule would increase that number by 17,442. The total number of respondents would be 17,892.

FREQUENCY OF RESPONSE: The existing OMB-approved number of responses is 450. This proposed rule would increase that number by 169,944. The total number of responses would be 170,394.

BURDEN OF RESPONSE: The estimated annual AIS-related burden of response is 1-1/2 hour.

ESTIMATE OF TOTAL ANNUAL BURDEN: The existing OMB-approved

total annual burden is 150 hours. This proposed rule would increase that number by 18,522. The estimated total annual burden would be 18,672.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES, by the date under DATES.

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

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined, that to the extent States have a current requirement in effect for notices of vessel arrivals or departures to a State agency—for example, notices to pilot authorities for pilot services--we do not intend to

preempt those requirements with this 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 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 NOAD portion of this proposed rule, the Coast Guard can preempt conflicting or similar State requirements on vessel operation. The Court held also that Congress had preempted the field of marine casualty reporting. Accordingly, based on the Supreme Court's holding in the *Locke* case, we believe that any prospective State requirement for a NOA or information gathering requirement directed at vessel owners or operators that is similar to that contained in this rule is inconsistent with the Federalism principles enunciated in that case and is preempted.

Regarding the AIS portion of this proposed 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. In addition, under the authority of Title I of the PWSA (specifically 33 U.S.C. 1223) and the MTSA, this regulation will preempt any State action on the subject of AIS carriage requirements. (See *Locke*.) Our proposed AIS carriage requirements fall into the category of equipping of vessels. Because the States may not regulate within this

category, preemption under Executive Order 13132 is not an issue for the AIS portion of this proposed rule.

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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not require a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We note that on March 20, 2006, a challenge to our existing AIS regulations was dismissed by the United States District Court for the District of Columbia, *MariTEL, Inc. v. Collins et al*, 422 F.Supp.2d 188 (D.D.C. 2006). In that case, *MariTEL, Inc.*, alleged, in part, that our 2003 AIS final rule constituted a taking of its property--radio frequencies it purchased at a Federal Communications Commission (FCC) auction. The court concluded that our AIS equipment requirements were authorized by the FCC and that because our existing AIS regulations did not specify frequency requirements, our AIS final rule did not constitute a taking.

H. Civil Justice Reform

This proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 proposed rule would require certain vessels to submit NOADs and to install and operate AIS. Some of these vessels may be owned by Indian tribes, but the proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order. Although it is a “significant regulatory action” under Executive Order 12866, this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action; therefore, it does not require a

Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, 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.

The Coast Guard will use the following new voluntary consensus standard from the International Electrotechnical Commission: IEC 62287-1, Maritime navigation and radiocommunication equipment and systems - Class B shipborne equipment of the automatic identification system (AIS) – Part 1: Carrier-sense time division multiple access (CSTDMA) techniques, dated February 9, 2006 in our type-approval process.

In addition, this proposed rule uses the following standards required to implement the AIS requirements of an international agreement, SOLAS:

1. IMO Resolution A.917(22), Guidelines for the Onboard Operational Use of Shipborne Automatic Identification System (AIS), dated January 25, 2002.
2. IMO SN/Circ.236, Guidance on the Application of AIS Binary Applications, dated May 20, 2004.
3. IMO SN/Circ.244, Guidance on the Use of the UN/LOCODE in the Destination Field in AIS Messages, dated December 15, 2004.

4. IMO SN/Circ.245, Amendments to the Guidelines for the Installation of a Shipborne Automatic Identification System (AIS)(SN/Circ.227), dated March 2, 2005.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

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

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.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 160, 161, 164, and 165 to read as follows:

PART 160—PORTS AND WATERWAYS SAFETY-GENERAL

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

1. The authority citation for part 160 is revised 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.

2. Revise the heading to subpart C to read as shown above.

§ 160.5 [Amended]

3. In § 160.5(d), remove the phrase “Commanding Officers, Vessel Traffic Services” and add, in its place, the term “Vessel Traffic Services Director”.

4. Revise § 160.201 to read as follows:

§ 160.201 General.

This subpart contains requirements and procedures for submitting a notice of arrival (NOA), a notice of departure (NOD), 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 a NOA and a NOD;

(c) Required updates to a NOA and a NOD;

(d) Methods and times for submission of a NOA and a NOD and updates to a NOA and a NOD;

(e) How to obtain a waiver; and

(f) Requirements for submission of the notice of hazardous condition.

§§ 160.202 through 160.204 [Redesignated]

5. Redesignate § 160.202 as § 160.203, § 160.203 as § 160.204, and § 160.204 as § 160.202, respectively.

6. In redesignated § 160.202, add definitions, in alphabetical order, for “commercial service”, “continental United States”, “disembark”, “embark”, “foreign vessel”, “offshore supply vessel”, “oil spill response vessel”, “passenger vessel”, “recreational vessel”, and “towing vessels”, and revise the introductory text 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--

* * * * *

Commercial service means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

Continental United States means the contiguous 48 states, Alaska, and the District of Columbia.

* * * * *

Disembark means when a crewmember or a person in addition to the crew is

detached from the vessel.

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

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

* * * * *

Offshore supply vessel means a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under 46 U.S.C. 14502, or an alternate tonnage measured under 46 U.S.C. 14302 as prescribed by the Secretary under 46 U.S.C. 14104 that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Oil spill response vessel means a vessel that is designated in its certificate of inspection as such a vessel, or that is adapted to respond to a discharge of oil or a hazardous material.

* * * * *

Passenger vessel means a vessel of at least 100 gross tons as measured under 46 U.S.C. 14502, or an alternate tonnage measured under 46 U.S.C. 14302 as prescribed by the Secretary under 46 U.S.C. 14104--

- (1) Carrying more than 12 passengers, including at least one passenger for hire;
- (2) That is chartered and carrying more than 12 passengers; or
- (3) That is a submersible vessel carrying at least one passenger for hire.

* * * * *

Recreational vessel means a vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure.

* * * * *

Towing vessel means a commercial vessel engaged in or intending to engage in pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

* * * * *

7. In redesignated § 160.203:

a. Revise paragraph (a);

b. Remove paragraph (b);

c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c); and

d. In redesignated paragraph (c), following the two places where the term "NOA" is used, add the phrase "or NOD".

The revision reads as follows:

§ 160.203 Applicability.

(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.

* * * * *

8. In redesignated § 160.204, lift the suspension of paragraphs (d) and (e), and revise § 160.204 to read as follows:

§ 160.204 Exemptions.

(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) A vessel required by 33 CFR 165.830 or 165.921 to report to the Inland River Vessel Movement Center (IRVMC).

(4) 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 continental United States.

(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.

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

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

9. Add § 160.205 to read as follow:

§ 160.205 Notices of arrival and departure.

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

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

§ 160.206 Information required in a 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) so as 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
<p>(1) Vessel Information:</p> <p>(i) Name;</p> <p>(ii) Name of the registered owner;</p> <p>(iii) Country of registry;</p> <p>(iv) Call sign;</p> <p>(v) International Maritime Organization (IMO) international number or, if vessel does not have an assigned IMO international number, substitute with official number;</p> <p>(vi) Name of the operator;</p> <p>(vii) Name of charterer;</p> <p>(viii) Name of classification society;</p> <p>(ix) Maritime Mobile Service Identity (MMSI) number, if applicable; and</p> <p>(x) Whether the vessel is 300 gross tons or less (yes or no).</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>
<p>(2) Voyage Information:</p> <p>(i) Names of last five foreign ports or places visited;</p> <p>(ii) Dates of arrival and departure for last five foreign ports or places visited;</p> <p>(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;</p> <p>(iv) For the port or place of the United States to be visited, the estimated date and time of arrival;</p> <p>(v) For the port or place in</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>

the United States to be visited, the estimated date and time of departure;		
(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 of Call;	X	X
(x) Dates of arrival and departure for last port or place visited; and	X	X
(xi) The estimated date and time of arrival to the entrance of the port, if applicable. List sea buoy, pilot station, or COLREGS demarcation line.	X	X
(3) Cargo Information:		
(i) A general description of cargo, other than CDC, onboard 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) Information for each Crewmember Onboard:		
(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) Passport country of issuance*; and	X	X

(vi) Passport date of expiration*.	X	X
(vii) Position or duties on the vessel; and	X	X
(viii) Where the crewmember embarked (list port or place and country).	X	X
(5) Information for each Person Onboard in Addition to Crew:		
(i) Full name;	X	X
(ii) Date of birth;	X	X
(iii) Nationality;	X	X
(iv) Passport number;*	X	X
(v) Passport country of issuance;*	X	X
(vi) Passport date of expiration;* and	X	X
(vii) Where the person embarked (list port or place and country).	X	X
(6) Operational condition of equipment required by 33 CFR part 164 of this chapter (see note to table):		
	X	X
(7) International Safety Management (ISM) Code Notice:		
(i) The date of issuance for the company's Document of Compliance certificate that covers the vessel;	X	X
(ii) The date of issuance 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) International Ship and Port Facility Security Code (ISPS) Notice:		
(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	X	X

approved ship security plan, if any, is being implemented;		
(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 does not serve as notice to the District Commander, Captain of the Port, or Vessel Traffic Center, under 33 CFR 164.53 that navigation equipment is not operating properly.

(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) through (vi), and (5) (iv) through (vi), need not be provided for that person.

11. Add § 160.207 to read as follows:

§ 160.207 Information required in a NOD.

(a) Information required. With the exceptions noted in paragraph (b) of this section, each NOD must contain all of the information items specified in Table 160.207. Vessel owners and operators should protect any personal information they gather in preparing notices for transmittal to the NVMC so as to prevent unauthorized disclosure of that information.

(iii) Amount of each CDC carried.		X
(4) Information for each Crewmember Onboard:		
(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) Passport country of issuance*;	X	X
(vi) Passport date of expiration*;	X	X
(vii) Position or duties on the vessel; and	X	X
(viii) Where the crewmember embarked (list port or place and country).	X	X
(5) Information for each Person Onboard in Addition to Crew:		
(i) Full name;	X	X
(ii) Date of birth;	X	X
(iii) Nationality;	X	X
(iv) Passport number;*	X	X
(v) Passport country of issuance;*	X	X
(vi) Passport date of expiration;* and	X	X
(vii) Where the person embarked (list port or place and country).	X	X

Note to Table 160.207. For items with an asterisk (*), see paragraph (b) of this section.

(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 160.207 by items (4)(iv) through (vi), and (5) (iv) through (vi), need not be provided for that person.

12. In § 160.208, revise the section heading and paragraphs (a) and (c) to read as

follows:

§ 160.208 Updates to a submitted NOA or NOD.

(a) Unless otherwise specified in this section, whenever events cause submitted NOA and NOD information to become inaccurate, vessels must submit an update within the times required in §§ 160.212 and 160.213.

* * * * *

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

13. In § 160.210, lift the suspensions on 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 a NOA or a NOD.

(a) National Vessel Movement Center (NVMC). Vessels must submit NOA and NOD information required by §§ 160.206 and 160.207 to the NVMC, by electronic Notice of Arrival and Departure (eNOAD) using methods specified at:

<http://www.nvmc.uscg.gov>.

(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 via eNOAD using methods specified at:

<http://www.nvmc.uscg.gov>.

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

§ 160.212 When to submit a NOA.

(a) Submission of a NOA. (1) Except as set out in paragraph (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 continental United States, must submit a 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 a NOA at least 60 minutes before departure from the foreign port or place.

(4) If your voyage time is-- Then you must submit a 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 a 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 continental United States, must submit updates to a 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 a 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 a 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 a 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.

15. Add § 160.213 to read as follows:

§ 160.213 When to submit a NOD.

(a) Submission of a NOD. All vessels must submit a NOD no later than 60 minutes before departure.

(b) Submission of updates to a NOD. Vessels must submit updates in NOD information as soon as practicable but no later than 12 hours after departure.

§ 160.215 [Redesignated as § 160.216]

16. 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

17. 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.

18. In § 161.2, revise the term “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).

* * * * *

19. 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]

20. In § 161.12(d)(5), remove the section reference “§ 160.204” and add, in its place, the section reference “§ 160.202”.

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

§ 161.19 Sailing Plan

* * * * *

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

PART 164-NAVIGATION SAFETY REGULATIONS

22. 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; 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.

23. 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 vessels that:

* * * * *

24. 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 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: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. Also, it is available for inspection at the Coast Guard, Office of Navigation Systems (CG-5413), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources listed below.

(b) American Petroleum Institute (API), 1220 L Street NW., Washington DC 20005.

(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) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, PA, 19428-2959.

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

(2) [Reserved].

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

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

(2) [Reserved].

(e) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, U.K.

(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), March 2, 2005, 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/Circ.236, Guidance on the Application of AIS Binary Applications, May 20, 2004, IBR approved for § 164.46.

(f) Radio Technical Commission for Maritime Services (RTCM), 655 Fifteenth Street NW., Suite 300, Washington DC 20005.

(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 Maritime 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]

25. Remove § 164.43.

26. 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 (SOLAS), 1974 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) Safety of Navigation Circulars (SN/Circ.) 227, 236, 244, and 245, and Resolution A.917(22)(Incorporated by reference, see § 164.03).

(b) AIS carriage. The following vessels must have onboard a properly installed, operational, Coast Guard type-approved Automatic Identification System (AIS):

- (1) A self-propelled vessel of 65 feet or more in length, engaged in commercial service;
- (2) A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial towing;
- (3) A self-propelled vessel carrying 50 or more passengers, engaged in commercial service;
- (4) A vessel carrying more than 12 passengers for hire and capable of speeds in excess of 30 knots;
- (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
- (6) A self-propelled vessel carrying or engaged in the movement of certain dangerous cargoes as defined in § 160.202 of this subchapter.

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.

(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 500 gross tonnage or more;
- (2) A vessel of 300 gross tonnage or more, on an international voyage; and
- (3) 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 U.S.C. 2001 through 2073; 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 conditions which includes the:

- (i) Ability to reinitialize the AIS should the need arise (this could require access and knowledge of the AIS power source and password);
- (ii) Ability to access AIS information from the primary conning position of the vessel;
- (iii) Accurate broadcast of a properly assigned Maritime Mobile Service Identity (MMSI) number;
- (iv) Accurate input and upkeep of all AIS data and system updates; and
- (v) Continual operation of AIS, and its associated devices (e.g., GPS, gyro, converters), at all times the vessel is underway, at anchor, or moored in or near a commercial channel or shipping fairway in operations likely to restrict or affect

navigation of other vessels, except--

(A) When use of AIS would compromise the safety or security of the vessel or a security incident is imminent.

(B) The AIS should be returned to continuous operation as soon as the compromise has been mitigated or the security incident has passed. At that time, those vessels denoted in paragraph (b), must report to the nearest U.S. Captain of the Port or Vessel Traffic Center, and record in the ship's official log, the AIS operational interruption and the reason for the interruption.

(3) AIS messaging must be conducted in English and solely to exchange or communicate navigation safety information (for example, SECURITE). Although not prohibited, it should not be relied upon as the primary means for broadcasting distress or urgent communications (for example, MAYDAY or PAN PAN). (47 CFR 80.1109, Distress, urgency, and safety communications).

Note to paragraph (d): AIS devices must be able to broadcast vessel position, course, and speed, and may require the input of an external positioning device (e.g., DGPS) to do so. Although of great benefit, the integration of existing, or installation of, other external devices or displays (e.g., transmitting heading device, gyro, rate of turn indicator, ECDIS/ECS, and radar) is highly recommended but is not currently required except as denoted in § 164.46(c).

(e) Watchkeeping. AIS is primarily intended for use of the master or person in charge of the vessel, or 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 unit may be in operation at any one time.

(g) Pilot Port. The AIS Pilot Port, on any vessel subject to pilotage, must be readily available and easily accessible from the primary conning position of the vessel and within at least 3 feet of a 120-volt 50/60 Hz AC power receptacle.

(h) Exceptions. Only those vessels that operate solely within a very confined area (e.g., less than a one nautical-mile radius, shipyard, fleeting area), or on short and fixed schedules (e.g., a bank-to-bank river ferry service), or that otherwise are not likely to encounter another AIS equipped vessel, may request a yearly deviation from this section as set forth in § 164.55.

(i) Implementation date. Those vessels identified in paragraph (b) of this section that were not previously subject to AIS carriage must install AIS no later than [date of the first day of the seventh month after publication of the final rule to be inserted].

§ 164.53 [Amended]

27. In § 164.53(b), following the word “vessel’s”, add the phrase “automatic identification system (AIS),”.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.1704 [Amended]

29. In § 165.1704, in paragraph (c)(4), following the punctuation mark “;”, add the word “and”; in paragraph (c)(5), following the term “6 knots”, remove “; and” and add, in their place, the punctuation mark “.”; and remove paragraph (c)(6).

Dated: December 2, 2008.

Thad W. Allen

Admiral, U.S. Coast Guard

Commandant

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