

assigned. There was also an impelling reason to use the Regulatory Measurement for implementing maritime security measures because there is a significant body of existing regulations that are constructed around this measurement system. Therefore, for application, the Regulatory Measurement tonnage (gross register tons) was primarily used unless a certain maritime security requirement was solely meant to reduce risk on vessels that engage in international voyages.

Based on the above, we believe that 100 gross register tons (and not 15 gross register tons) is a reasonable lower end for applicability for dry-cargo vessels. We are also regulating those vessels in the range of 100–500 gross register tons that are not covered by SOLAS and are therefore exempt from ISPS Code requirements.

AIS Threshold Determination

The applicability thresholds used for the implementation of AIS on certain vessels is a separate issue, for which we did not use the N–RAT. The MTSA clearly mandates AIS applicability in 46 U.S.C. 70114 and the installation dates are included in MTSA sec. 102(e). The thresholds for vessels: a self-propelled commercial vessel of at least 65 feet in overall length; or a passenger vessel, carrying more than a number of passengers for hire determined by the Secretary; or a towing vessel of more than 26 feet in overall length and 600 horsepower; as well as any other vessel for which the Secretary decides that an AIS is necessary for the safe navigation of the vessel, are related to both safety and security. Thus the thresholds are somewhat lower than those discussed above for vessels at a high risk of a transportation security incident.

Applicability Evaluation for Facilities

The N–RAT results indicate that the following facilities are at a high risk of a transportation security incident and therefore are required to meet specific security measures as laid out in part 105 of subchapter H:

- Facilities that handle cargo subject to 33 CFR parts 126, 127, or 154;
- Facilities that receive vessels certified to carry more than 150 passengers;
- Facilities that receive commercial vessels greater than 100 gross register tons on international voyages, including vessels solely navigating the Great Lakes; and
- Fleeting facilities/areas for barges carrying cargoes in bulk, regulated by 46 CFR subchapter D or O or carrying certain dangerous cargoes.

The N–RAT results indicate that the following facility types are at a lower risk of a transportation security incident and are therefore subject to parts 101 through 103 of subchapter H:

- Facilities adjacent to the navigable water that handle/store cargo that is hazardous or a pollutant;
- Facilities that receive only domestic bulk non-hazardous cargo;
- Facilities that service a vessel that carries fewer than 150 passengers;
- Fleeting facilities/areas that service barges subject only to 46 CFR subchapter I or barges that are certified to be gas-free that are certificated under subchapter D and O; and
- Oil and natural gas production, exploration, or development facilities regulated by 33 CFR part 154 that engage solely in the exploration, development, or production of oil and natural gas; and do not meet or exceed the operating conditions in § 106.105 of the Outer Continental Shelf (OCS) Facilities rulemaking published elsewhere in today's **Federal Register**;
- Facilities supporting the production, exploration, or development of oil and natural gas regulated by 33 CFR parts 126 or 154 that engage solely in the support of exploration, development, or production of oil and natural gas; and transport or store quantities of hazardous materials that do not meet and exceed those specified in 49 CFR 172.800(b)(1)–(6); or stores less than 42,000 gallons of cargo regulated by 33 CFR part 154;
- Mobile facilities regulated by 33 CFR part 154;
- Isolated facilities that receive materials regulated by 33 CFR parts 126 or 154 by vessels due to the lack of road access to the facilities and do not distribute the material through secondary marine transfers; and
- Other facilities not specifically addressed in part 105.

As mentioned in the above *Applicability for Vessels* discussion, the 150-passenger threshold will be reviewed for the maritime community when other agencies of DHS (e.g., TSA) have completed their assessment of the national transportation system as a whole and has provided guidance on intermodal thresholds that may refine the “significant loss of life” determination for the implementation of the MTSA. We are concerned about the gap that may be created by requiring only facilities that service larger passenger vessels to have plans, when some other facilities that service only smaller vessels may, at any point in time, have an aggregation of more than 150 passengers on a facility or pier

(such as commuters at small passenger vessel terminals). In addition, small passenger vessels that are not required by subchapter H to have vessel security plans may share the same facility as a larger passenger vessel for which a plan is required. This distinction may put the facility at a higher risk from the small passenger vessel and therefore is a potential “weak link” in the security system. Even though the Vessel Security interim rule found elsewhere in today's **Federal Register** does not directly regulate these types of small passenger vessels, the facility security plan must nevertheless address the risks presented by accommodating multiple vessel types, even if some of those vessels may not have individual security plans. Additionally, the AMS assessment may indicate that the COTP should impose security requirements on small passenger vessels through the use of orders or security zones to complement those measures being implemented by the facility. The AMS Plan will reflect what additional necessary measures may be imposed by the COTP on vessels and facilities not subject to parts 104 to 106 of subchapter H, and other activities within the port area, at the three Maritime Security (MARSEC) Levels.

It is important to note the N–RAT focused on the potential for certain vessels and facilities to be involved in a marine-related incident, and its results reflect that relative risk. The Coast Guard took this approach because of our longstanding familiarity with vessel and waterfront facilities, because it was a logical follow-on to the PS–RAT efforts of the COTPs, and because it allowed us to meet the initial mandates of the MTSA to promulgate these interim rules as soon as practicable. However, the MTSA is broader and permits direct regulation of any vessel and facility that may be involved in a transportation security incident, as that term is broadly defined. This could include those facilities and infrastructure not traditionally regulated by the Coast Guard, such as facilities that do not have accommodations for vessels but are nonetheless on or adjacent to waters subject to the jurisdiction of the U.S. The Coast Guard is currently working with other agencies of DHS (e.g., TSA) and other federal agencies to assess the security requirements of these other vessels and facilities located on or adjacent to waters subject to the jurisdiction of the U.S. Therefore, the interim rules published today, especially the applicability sections of parts 104, 105, and 106, do not exhaust the types of vessels and facilities that may be regulated under the MTSA. We