

threat scenarios against various classes of targets within the MTS.

Two commenters questioned the accuracy of the estimated average fatalities from a transportation security incident for a large passenger vessel. One commenter reasoned that the “outstanding” safety record of the industry in recent history does not substantiate the estimated average fatalities for an accident and, therefore, puts into question our estimated average fatality for a transportation security incident. One commenter urged caution in interpreting figures between safety and security to determine what is a transportation security incident.

Our initial estimated number of fatalities on large passenger ships was based on major maritime accidents over the past century. We noted that historically, the worst maritime accidents (*e.g.*, Titanic, Lusitania, Empress of Ireland) produced fatality rates over 50 percent. However, the commenter is correct in asserting that portions of the large passenger vessel industry have experienced a significant period of time with few accident-related fatalities which can be attributed, in part, to innovations in safety and advances in accident survivability. Therefore, since the dataset used to compile the estimated number of fatalities per accident lacked recent events, we used the lower estimate of 32 percent, which is based on the actual fatality rate of accidents involving small passenger vessels. We acknowledge that small passenger vessels would likely use different safety and survivability measures than large passenger vessels. However, we disagree that that using the 32 percent for the estimated average accident-related fatality rate for large passenger vessels is incorrect—it illustrates a catastrophic failure. The estimated average fatality rate for a transportation security incident is higher than for a safety-related accident because a transportation security incident is perpetrated with the intent to inflict a high casualty rate. Safety measures, therefore, will have some, but not an equivalent level of effectiveness during a transportation security incident. We believe that the average transportation security incident-related fatality rate, in general for those directly regulated under subchapter H, and in particular for large passenger vessels, will result in a “significant loss of life” and, therefore, be a transportation security incident.

One commenter asked for clarification on whether the N-RAT results indicated a lower risk for facilities that do not receive vessels on international voyages, even if those voyages are by vessels

exceeding 100 gross tons and transiting international waters. The commenter also asked whether Guam and the Northern Marianas Islands are part of the U.S. and whether a domestic voyage may cross international waters.

The N-RAT indicated that vessels on international voyages may be involved in a transportation security incident. In § 101.105, the term “territory” includes the Commonwealth of Puerto Rico, all possessions of the U.S., and all lands held by the U.S. under a protectorate or mandate. This includes Guam and the Northern Marianas Islands. A domestic voyage includes a direct transit between two U.S. ports, regardless of whether the vessel transits international waters.

One commenter asked if there is any public benefit to building infrastructure and increasing staffing, stating that the ports have no way to pay for such upgrades.

Using the N-RAT, we determined that significant public benefit accrues if a transportation security incident is avoided or the effects of the transportation security incident can be reduced. These public benefits include human lives saved, pollution avoided, and “public” infrastructure, such as national landmarks and utilities, protected.

Three commenters stated that the cost/benefit assessment in the temporary interim rule (68 FR 39276) (part 101) is questionable. One commenter noted that we did not use the most recent industry data. Two commenters stated that cost estimates might be close to accurate but that the benefits were based on assumptions that are difficult to measure.

We used the most reliable economic data available to us from the U.S. Census Bureau among other government data sources. In the notice of public meeting (67 FR 78742, December 20, 2002), we presented a preliminary cost assessment and requested comments and data be submitted to assist us in drafting our estimates. We amended our cost estimates incorporating comments and input we received. While the assessment may or may not be useful to the reader, we must develop a regulatory assessment for all significant rules, as required by Executive Order 12866.

Cost Assessment Summary

The following summary presents the estimated costs of complying with the final rules on Area Maritime Security, Vessel Security, Facility Security, OCS Facility Security, and AIS, which are published elsewhere in today’s **Federal Register**. Because the changes in this final rule do not affect the original cost

estimates presented in the temporary interim rule (68 FR 39272) (part 101), the costs remain unchanged.

For the purposes of good business practice, or to comply with regulations promulgated by other Federal and State agencies, many companies already have spent a substantial amount of money and resources to upgrade and improve security. The costs shown in this summary do not include the security measures that these companies have already taken to enhance security.

We realize that every company engaged in maritime commerce would not implement the final rules exactly as presented in this assessment. Depending on each company’s choices, some companies could spend much less than what is estimated herein, while others could spend significantly more. In general, we assume that each company would implement the final rules based on the type of vessels or facilities it owns or operates, whether it engages in international or domestic trade, and the ports where it operates.

This assessment presents the estimated cost if vessels, facilities, OCS facilities, and areas are operating at MARSEC Level 1, the current level of operations since the events of September 11, 2001. We also estimate the costs for operating for a brief period at MARSEC Level 2, an elevated level of security. We also discuss the potential effects of operating at MARSEC Level 3, the highest level of threat.

We do not anticipate that implementing the final rules will require additional manning aboard vessels or OCS facilities; existing personnel can assume the duties envisioned. For facilities, we anticipate additional personnel in the form of security guards that can be hired through contracting with a private firm specializing in security.

Based on our assessment, the first-year cost of implementing the final rules is approximately \$1.5 billion.

Following initial implementation, the annual cost is approximately \$884 million, with costs of present value \$7.331 billion over the next 10 years (2003–2012, 7 percent discount rate). Estimated costs are as follows.

Vessel Security

Implementing the final rule will affect about 10,300 U.S. flag SOLAS, domestic (non-SOLAS), and foreign non-SOLAS vessels. The first-year cost of purchasing and installing equipment, hiring security officers, and preparing paperwork is approximately \$218 million. Following initial implementation, the annual cost is approximately \$176 million. Over the