

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 One commenter stated that AIS is an outdated technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

carriage requirements and technical specifications.

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

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

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

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

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

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

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