

*Warning signs (§ 126.15(e))*

1. One comment requested clarification as to who, at each facility, is responsible for enforcing the regulations required by this section that are posted on the warning signs. This comment asked if we will cite a terminal owner if we find an individual smoking in a "No Smoking" area.

Generally, our enforcement actions will target the party subject to these regulations who can most effectively bring about compliance or a remedy for the deficiencies or alleged violations. The COTP is still responsible for identifying who is responsible for a violation and initiating appropriate enforcement actions.

*International shore connection (§ 126.15(g))*

1. One comment recommended that a designated waterfront facility, that conducts cargo operations with foreign-flag vessels, should be allowed to use an international shore connection provided by the local fire department rather than provide its own connection at that facility.

We conditionally agree with this comment. As stated in the NPRM, the international shore connection makes it possible to connect dissimilar U.S. facilities and fire main connections for foreign vessels in the event of an emergency. You must make available an international shore connection that meets ASTM F-1121 by providing it yourself or through your local emergency response department.

*Railroad or highway vehicles (§ 126.27(b))*

1. One comment asked if the COTP must be notified when containers with dangerous cargo in railroad or highway vehicles are being transported across or on the facility solely for transfer to or from a ferry.

We have clarified this paragraph by adding the words "transport units" to the exceptions listed in § 126.27(b). Transport units and railroad or highway vehicles carrying containers loaded with dangerous cargo across or on the facility solely for transfer to a ferry are not subject to these reporting requirements.

*Net explosive quantity (§ 126.27(b)(1))*

1. Three comments recommended that the quantity of explosives triggering a notification to the COTP under § 126.27(b)(1) should be revised to specify that the net explosive quantity is used. The net explosive quantity is the most commonly used indicator in the industry of the actual amount of explosives present.

We agree with this comment and have revised this paragraph.

*Flammable Gases (§ 126.27)*

1. Two comments recommended that the proposed amendments to § 126.27(b)(2) concerning the provisions for notification to the COTP for shipments of Class 2, Division 2.1 (Flammable Gas), apply to bulk packaging of this product.

We agree with these comments and have revised this paragraph. For the purposes of this section, the definition of "bulk packaging" is the same as that found in 49 CFR 171.8.

*Segregation (§ 126.27)*

1. Two comments recommended that we allow the same exception from the segregation requirements for break-bulk dangerous cargo in limited quantity packaging in §§ 126.27(d) to 126.27(e) for limited quantity packaging in transport units. This was suggested for consistency with the International Maritime Dangerous Goods Code. One of these comments also suggested that we clarify the regulations regarding segregating transport units at a facility according to 49 CFR 176.83(f). The same requirements should apply for "on-deck" horizontal stowage.

We agree with these comments and have revised this paragraph accordingly.

2. Two comments objected to the proposed requirement that containers loaded with dangerous cargoes must be segregated according to 49 CFR 176.83. These comments described a local practice where containers loaded with dangerous cargo are required to be stored on a chassis rather than in grounded storage. These comments stated that, by removing the containers with dangerous cargo from grounded storage, the port would provide a safer environment by enabling easier access and identification in the event of an emergency. This, among other benefits, would reduce handling and provide greater accessibility for monitoring.

As stated in the preamble to the proposed rule, these rules will establish minimum safety standards for the operation of designated waterfront facilities. With approximately 485 facilities being subject to these regulations, we recognize that there are situations where the application of these regulations is not practical. This might arise because of local conditions or because the local port authorities or facility owners or operators have developed programs or operational practices to ensure safety, such as the one described by these comments. Existing § 126.11 allows the COTP to grant waivers of compliance; new

§ 126.12 allows the COTP to examine alternative methods of compliance. Both of these sections allow the minimum safety standards to be tailored to meet unique, local conditions and to provide for the development and implementation of alternative methods of ensuring safety. Facility owners and operators, who have developed alternative methods of ensuring safety, such as the one described in these comments, may request a waiver or alternative from the COTP under §§ 126.11 or 126.12.

*Water soluble oxidizers (§ 126.27(h))*

1. One comment requested clarification of the requirements in § 126.27(h). This requires you to store water-soluble oxidizers (Division 5.1) in a manner that prevents them from coming into contact with water. This comment stated that industry takes every precaution to ensure these materials are kept dry but does not plan for abnormal situations, such as the vessel sinking or hurricanes.

This section applies to the storage of dangerous cargoes at designated waterfront facilities and not while they are on a vessel or in another mode of transportation. Therefore, we retain our proposed language.

*Liquid oxidizers (§ 126.27(i))*

1. One comment objected to the provisions in proposed § 126.27(i) that requires liquid oxidizers (Division 5.1) materials to be stored so that, in the event of a leak from their packaging, they would not come in contact with organic materials. This comment stated that industry was unaware of any incidents resulting from a leak of a liquid oxidizer coming in contact with organic material. It added that the current segregation standards under International Maritime Organization (IMO) and Research and Special Programs Administration (RSPA) for the transportation of dangerous goods are adequate.

We do not agree with this comment. While we agree that the IMO and RSPA segregation standards are adequate for transportation purposes, the requirements of this section apply to the storage of dangerous cargoes at designated waterfront facilities. We recognize that, although there are possible combinations of Division 5.1 products and organic materials that would not result in a hazardous reaction, there are many other possible combinations of these materials that could produce a dangerous chemical reaction. Therefore, we retain our proposed language.