

Storage (§ 126.27(j))

1. One comment expressed concern that proposed § 126.27(j), which would require that dangerous cargo on the facility be stored in a manner that retards the spread of fire, could be interpreted to mean that explosives stored within an explosive storage magazine would have to be interspersed with fire-retardant material. This comment requested that we clarify this section by indicating that this does not apply to packages within an explosive storage magazine.

This section applies to the storage of dangerous cargo at a designated waterfront facility. If a designated waterfront facility has the capability to store explosive materials within an explosive storage magazine, this type of storage is already adequately addressed under other existing Federal, State, and local regulations and, therefore, would not be subject to this requirement.

Hotwork (§ 126.30)

1. One comment noted that the facility operator is responsible for welding or hotwork conducted at a facility. The comment also requested clarification regarding the definition of a "facility operator." This comment asked if we would recognize a contractual delegation if a facility operator contractually makes another company, such as a vendor, responsible for compliance with these requirements.

We have noted this comment and have added a definition of "facility operator" to these regulations to help clarify their role. It is the responsibility of the facility owner or operator to ensure safety at their facility. The actions of any vendors or other contracted parties at a facility are subject to the control and oversight of the owner or operator while on the facility. Therefore, the owner or operator retains the ultimate responsibility for compliance with these regulations.

2. One comment requested that we change § 126.30(a) to allow welding or hotwork to be performed on a vessel when dangerous cargo is within the specified distances but stowed inside a container and the COTP is notified of the work before it begins.

We agree with this comment and have revised this paragraph.

Clarity of the final rule

1. You may notice some changes in the final rule that are not discussed in this section of the preamble. These are non-substantive changes intended simply to improve the clarity of our regulations.

Future rulemaking

1. Two comments addressed issues that are beyond the scope of this current rulemaking. They requested that we initiate a separate rulemaking to address concerns over the loading and unloading of Class 1 (Explosive) materials at waterfront facilities according to these regulations and Coast Guard policies.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 126.5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 126.5.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). A summary of the Regulatory Evaluation follows:

This rule amends 33 CFR part 126 to better address the hazards and precautions necessary for packaged dangerous cargo, which have changed significantly with the advent of containerization. As amended, part 126 applies only to waterfront facilities handling packaged and bulk-solid dangerous cargo. This rule incorporates up-to-date industry standards.

According to the Marine Safety Management System, there are 485 waterfront facilities that handle, store, and transfer dangerous cargo to and from vessels. We estimate that the maximum implementation cost of the rule is \$304 per affected facility. This cost includes 4 warning signs per facility at \$50 per sign, 1 international shore connection at \$100 per international shore connection, and \$4 for posting warning signs per entity. Some facilities, however, may already meet the requirements, and will not incur additional cost. The present value of the total cost of this rule during 2002 through 2012 is \$111,425. The cost calculation is based on the assumption that half of the facilities would already have warning signs and international shore connections. No documented marine casualties were found in our databases that could have been prevented by the regulations; however, the rule will contribute to a higher level of marine safety at waterfront facilities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) and Executive Order 13272, Proposed Consideration of Small Entities, we 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.

There are 485 waterfront facilities that will be affected by this rule. We estimate that some facilities will not incur additional cost, while others will incur minimal cost. The maximum cost per facility is approximately \$300.

Because this cost is minimal, even for a small entity, the Coast Guard certifies, under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided opportunity for public comment in the notice of proposed rulemaking (NPRM) entitled "Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes within or Contiguous to Waterfront Facilities" published on October 29, 1998, in the **Federal Register** (63 FR 57964). On January 12, 1999, we published a notice in the **Federal Register** reopening the comment period for this rulemaking (64 FR 1770). Additionally, the NPRM provided small businesses, organizations, or governmental jurisdictions a Coast Guard contact to ask questions concerning this rule's provisions.

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).