

Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES**. A summary of comments on the assessment, our responses, and a summary of the assessment follow.

Five commenters stated that our cost estimates understate the cost for international ships calling on U.S. ports. Three commenters noted that the same parameters used to develop the costs for the U.S. SOLAS ships should be extrapolated and applied to international ships, adjusted for the time these ships spend in U.S. waters. One commenter asked us to explain why only 70 foreign flag vessels were included in our analysis of the cost of the temporary interim rule.

We disagree with the commenters' assertion that our estimate understates the cost for international ships calling on U.S. ports. We developed our estimate assuming that foreign flag vessels subject to SOLAS would be required by their flag state, as signatories to SOLAS, to implement SOLAS and the ISPS Code. The flag administrations of foreign flag SOLAS vessels will account, therefore, for the costs of complying with SOLAS and the ISPS Code. Our analysis accounts for the costs of this rule to U.S. flag vessels subject to SOLAS. Additionally, we estimate costs for the approximately 70 foreign flag vessels that are not subject to SOLAS that would not need to comply with either SOLAS or the ISPS Code. These vessels must comply with the requirements in 33 CFR part 104 if they wish to continue operating in U.S. ports after July 1, 2004, and we therefore estimate the costs to these vessels.

One commenter suggested that cost assessments for auditing the Vessel Security Assessment and Vessel Security Plan be revisited, stating that the present 15-minute cost estimate to update the Vessel Security Plan did not account for the expense of an annual review and audit.

The estimated average incremental cost for the 15-minute update of the Vessel Security Plan accounts for the time a Company Security Officer or Vessel Security Officer spends making minor changes. The cost of an annual review and audit cost is incurred at the company, not the vessel, level. We have accounted for this cost for both large and small companies. We also assumed

that, for large companies operating vessels subject to SOLAS, the cost would be incremental to existing expenses for annual audits already required under the International Safety Management Code and other international instruments. For further detail on the cost calculations, see the Cost Assessment and Final Regulatory Flexibility Act analysis in the docket for this rule.

One commenter suggested taking into greater account the risk factors of the facility and vessel as a whole, rather than simply relying on one factor, such as the capacity of a vessel as well as the cost-benefit of facility security to all of the business entities that make up a facility.

The Coast Guard considered an extensive list of risk factors when developing these regulations including, but not limited to, vessel and facility type, the nature of the commerce in which the entity is engaged, potential trade routes, accessibility of facilities, gross tonnage, and passenger capacity. Our Cost Assessments and Regulatory Flexibility Act Analyses for both the temporary interim rules and the final rules are available in the docket, and they account for companies as whole business entities, not individual vessels or facilities.

Cost Assessment

For the purposes of good business practice or pursuant to 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 assessment do not include the security measures these companies have already taken to enhance security. Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39298) (part 104), the costs remain unchanged.

We realize that every company engaged in maritime commerce would not implement the final rule 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 rule based on the type of vessels or facilities it owns or operates and whether it engages in international or domestic trade.

This assessment presents the estimated cost if vessels are operating at MARSEC Level 1, the current level of operations since the events of September 11, 2001. We also estimated

the costs for operating for a brief period at MARSEC Level 2, an elevated level of security.

We do not anticipate that implementing the final rule will require additional manning on board vessels; existing personnel can assume the duties envisioned.

The final rule will affect about 10,300 U.S. flag SOLAS and domestic (non-SOLAS) vessels, and about 70 foreign non-SOLAS vessels.

The estimated cost of complying with the final rule is present value \$1.368 billion (2003–2012, 7 percent discount rate). Approximately present value \$248 million of this total is attributable to U.S. flag SOLAS vessels. Approximately present value \$1.110 billion is attributable to domestic vessels (non-SOLAS), and present value \$10 million is attributable to foreign non-SOLAS vessels. In the first year of compliance, the cost of purchasing equipment, hiring security officers, and preparing paperwork is an estimated \$218 million (non-discounted, \$42 million for the U.S. flag SOLAS fleet, \$175 million for the domestic fleet, \$1 million for the foreign non-SOLAS fleet). Following initial implementation, the annual cost of compliance is an estimated \$176 million (non-discounted, \$32 million for the U.S. flag SOLAS fleet, \$143 million for the domestic fleet, \$1 million for the foreign non-SOLAS fleet).

For the U.S. flag SOLAS fleet, approximately 52 percent of the initial cost is for hiring Company Security Officers and training personnel, 29 percent is for vessel equipment, 12 percent is for assigning Vessel Security Officers to vessels, and 7 percent is associated with paperwork (Vessel Security Assessment and Vessel Security Plan). Following the first year, approximately 72 percent of the cost is for Company Security Officers and personnel training, 3 percent is for vessel equipment, 10 percent is for drilling, 15 percent is for Vessel Security Officers, and less than 1 percent is associated with paperwork. Company Security Officers and training are the primary cost drivers for U.S. flag SOLAS vessels.

For the domestic fleet, approximately 51 percent of the initial cost is for hiring Company Security Officers and training personnel, 29 percent is for vessel equipment, 14 percent is for assigning Vessel Security Officers to vessels, and 6 percent is associated with paperwork (Vessel Security Assessments and Vessel Security Plans). Following the first year, approximately 61 percent of the cost is for Company Security Officers and training, 6 percent is for vessel equipment, 11 percent is for