

On September 4, 1990, the Coast Guard published a final rule (55 FR 36252) amending part 126 to exclude its application to bulk-liquid hazardous materials, other than certain liquefied gases. Moreover, on August 3, 1995, the Coast Guard published a final rule (60 FR 39788) further amending part 126 to exclude its application to the remaining liquefied gases and to transfer the requirements for the control of liquefied hazardous gas transfers from 33 CFR 126.15(o) to 33 CFR part 127. As amended, part 126 applies only to facilities handling packaged and dry-bulk hazardous materials.

On January 13, 1993, the Coast Guard published an advance notice of proposed rulemaking ((ANPRM)(58 FR 4127)) requesting comments on proposed changes to 33 CFR part 126. The Coast Guard received 11 comments in response to the ANPRM.

We are amending our regulations in 33 CFR part 126 concerning waterfront facilities handling certain dangerous cargo. These amendments are necessary to better address the hazards and precautions necessary for packaged cargo, which have changed significantly with the advent of containerization. We are also incorporating up-to-date industry standards and reorganizing the part for clarity.

All measurements in this rule are in Système International D'Unites (SI) units, with the English measurement following in parentheses. The Omnibus Trade and Competitive Act of 1988 (Pub. L. 100-418) designates the SI system as the preferred system of weights and measurements for United States trade and commerce. The American Society of Testing and Materials (ASTM) and the American Society of Mechanical Engineers (ASME) also support the conversion to metric standards.

Discussion of Comments and Changes

A discussion of the comments received and changes made to the proposed rule follow.

Section numbers

1. Sections numbered under the outmoded system for numbering sections (e.g., § 126.01) are renumbered using the current system (e.g., § 126.1).

Applicability (§ 126.1)

1. We added new § 126.1 to make it clear that this part has requirements not only for waterfront facilities but also for vessels at those facilities. For example, see new § 126.30 on welding and hotwork on facilities and vessels at those facilities.

Definitions (§ 126.01, and § 126.3)

1. One comment recommended that the definition of "container" be the same as in the Intermodal Safe Container Act (ISCA) and its implementing regulations at 49 CFR parts 450 through 453.

We do not agree. The ISCA and its regulations address the technical standards for the construction and structural integrity of containers. The proposed definition for "container" is the same as found in 49 CFR parts 170 through 176 for containers used in the transportation of hazardous materials.

2. We have added the definition of "facility operator" in this section. See the explanation for this under "hotwork" (§ 126.30) in this section of the preamble.

Conditions for designating waterfront facilities (§ 126.15)

1. One comment asked whether the proposed changes to § 126.15(a) would continue to apply to facilities handling dry, bulk-solid dangerous cargo.

As stated in the preamble to the NPRM, proposed § 126.15 differentiates between container terminals and other designated waterfront facilities. Proposed § 126.15(a) would apply to those facilities not handling dangerous cargo in transport units and proposed § 126.15(b) would apply to container terminals. Proposed §§ 126.15(c) through 126.15(n) would apply to all designated waterfront facilities. We reorganized § 126.15 to make this differentiation clearer. New paragraph (a) contains requirements for all waterfront facilities subject to this part; new paragraph (b) contains additional requirements for facilities that handle dangerous cargo not in transport units; and new paragraph (c) contains additional requirements for facilities that handle dangerous cargo in transport units.

Cargo spacing

1. Two comments requested clarification as to whether these updated regulations would eliminate all restrictions on the physical arrangement of dry, bulk-solid dangerous cargoes.

The existing regulations for cargo spacing were designed to permit firefighting access to storage areas. Though we are revising § 126.15 by removing most of the requirements for the arrangement of cargo, freight, merchandise, or material, including dry, bulk-solid materials, we still require at least one main aisle, as indicated in the National Fire Protection Association (NFPA) Code 307, chapter 8-5. The only exception to having at least one main

aisle is when cargo is transferred directly to or from railroad cars or vehicles. For that reason, it is unnecessary to use trucks within the structure. Therefore, an aisle must not be required. Additionally, you must segregate bulk-solid cargoes according to § 126.27(g) for product compatibility. We encourage facility owners and operators to coordinate with the Captain of the Port (COTP) and local fire-service officials to implement these new standards based on the structure of the facility and local fire-service practices.

Construction of piers, wharves, and terminal buildings

1. One comment requested that we incorporate the standards in NFPA 307, chapters 3 and 4, for the construction of piers, wharves, and terminal buildings into these regulations.

We do not agree with this comment. While we recognize that the requirements of NFPA 307 represent generally accepted building practices, the standards for the design and construction of designated waterfront facilities are best established by State or local authorities. Additionally, we determined that, in many ports, the construction aspects of NFPA 307 are already enforced, usually by the local fire department, in conjunction with other building codes.

Existing facilities

1. One comment noted that, by applying the NFPA standards to existing facilities, we would create a large financial burden on industry, particularly for facilities and terminals that were built many years ago.

Because NFPA 307 does not require refurbishment of existing facilities for this purpose, only those facilities that are rebuilding or remodeling existing structures and those building completely new structures will be affected. Paragraph 1-2 of NFPA 307 states: "Unless otherwise noted, it is not intended that the provisions of this document be applied to facilities, equipment, structures, or installations that were existing or approved for construction prior to the effective date of the document, except in those cases in which it is determined by the authority having jurisdiction that the existing situation involves a distinct hazard to life or property." Additionally, in many ports, the construction aspects of NFPA 307 are already enforced by local authorities. Accordingly, we will not require owners to refurbish existing facilities unless there is a distinct safety hazard.