

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

\* \* \* \* \*

ASO TN E5 Clifton, TN [REMOVE]

\* \* \* \* \*

Issued in College Park, Georgia, on September 19, 2003.

**Walter P. Cochran,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 03–24431 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–M

---

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 9073]

RIN 1545–BB17

**Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains corrections to temporary regulations that was published in the **Federal Register** on Thursday, July 10, 2003 (68 FR 41073), relating to the disclosure of return information pursuant to section 6103(k)(6) of the Internal Revenue Code.

**DATES:** These corrections are effective July 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Helene R. Newsome, (202) 622–4570 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations that are the subject of these corrections are under section 6103(k)(6) of the Internal Revenue Code.

**Need for Correction**

As published, the temporary regulations contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of temporary regulations (TD 9073), that was the subject of FR Doc. 03–17384, is corrected as follows:

**§ 301.6103(k)(6)–1T [Corrected]**

1. On page 41076, column 1, § 301.6103(k)(6)–1T(a)(1)(v), line 7, the language, “paragraph (a)(1)(iii) of this section skills” is corrected to read “paragraph (a)(1)(iii) of this section or skills”.

2. On page 41076, column 3, § 301.6103(k)(6)–1T(c)(1), line 16 from the top of the column, the language, “not limit or prescribe IRS or TIGTA” is corrected to read “not limit or proscribe IRS or TIGTA”.

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 03–24416 Filed 9–25–03; 8:45 am]

BILLING CODE 4830–01–P

---

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 126**

[USCG–1998–4302]

RIN 1625–AA07 (Formerly RIN 2115–AE22)

**Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is updating the regulations relating to the handling of packaged and bulk-solid dangerous cargo at waterfront facilities. These updated regulations reflect improved safety procedures and modern transportation methods, such as the use of containers. This rule also updates the requirements for handling these dangerous cargoes and incorporates industry standards.

**DATES:** This regulation is effective October 27, 2003, except for § 126.15(a)(3), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the effective date of that paragraph. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003, except for the incorporation by reference in § 126.15(a)(3), which will be approved as of the effective date announced in the **Federal Register**.

**ADDRESSES:** Comments and material(s) received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [USCG–1998–4302] and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Brian Robinson, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–3), room 1218, telephone 202–267–0018, e-mail [brobins@comdt.uscg.mil](mailto:brobins@comdt.uscg.mil). If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On October 29, 1998, we published a notice of proposed rulemaking entitled “Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes within or Contiguous to Waterfront Facilities” 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). We received eight letters commenting on the proposed rule. No public hearing was requested, and none was held.

**Background and Purpose**

The regulations in 33 CFR part 126 prescribing requirements for designated waterfront facilities that handle, store, and transfer hazardous materials to and from vessels were written in the 1950s and have never been significantly updated.

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.

*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.

### *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).

### Collection of Information

This rule calls for a new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection-of-information consists of posting warning signs at all designated waterfront facilities as required in § 126.15(a)(3). These signs must meet the requirements of the National Fire Protection Association (NFPA) 307.

No comments were received regarding the collection-of-information requirement.

This rule amends an existing Office of Management and Budget (OMB) approved collection, OMB control number 1625–0016 (formerly 2115–0054), that expires on November 30, 2004. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection-of-information. OMB has not yet completed its review of, or approved, the changes to this collection. Therefore, § 126.15(a)(3) in the final rule will not become effective until approved by OMB. We will publish a document in the **Federal Register** announcing OMB's approval and the effective date of that section.

You are not required to respond to a collection-of-information unless it displays a currently valid OMB control number.

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial, direct effect on State or local governments and would either preempt State law or impose a substantial, direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that it does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one-year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or, otherwise, have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial, direct effect on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant, adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule concerns handling and storage procedures and will contribute to a higher level of marine safety at waterfront facilities. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 126

Explosives, Harbors, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 126 as follows:

### PART 126—HANDLING OF DANGEROUS CARGO AT WATERFRONT FACILITIES

■ 1. The authority citation for part 126 continues to read as follows:

**Authority:** 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.

■ 2. Revise the part heading to read as set forth above.

### §§ 126.01, 126.05, 126.07, 126.09 and 126.10 [Removed]

■ 3. Remove §§ 126.01, 126.05, 126.07, 126.09 and 126.10.

■ 4. Add § 126.1 to read as follows:

#### § 126.1 What does this part apply to?

This part applies to waterfront facilities handling packaged and bulk-solid dangerous cargo and to vessels at those facilities.

■ 5. Add § 126.3 to read as follows:

#### § 126.3 Definitions.

As used in this part—

*Break-bulk* means packages that are handled individually, palletized, or unitized for purposes of transportation, as opposed to materials in bulk and containerized freight.

*Bulk* means without mark or count and directly loaded or unloaded to or from a hold or tank on a vessel without the use of containers or break-bulk packaging.

*Captain of the port* or *COTP* means the officer of the Coast Guard, under the command of a District Commander, is designated by the Commandant for the purpose of giving immediate direction to Coast Guard law enforcement activities within an assigned area.

*Cargo of particular hazard* means any of the following:

(1) Division 1.1 and 1.2 explosives, as defined in 49 CFR 173.50, for which a permit is required under 33 CFR 126.17.

(2) Ammonium nitrate products, division 5.1 (oxidizing) materials listed in 49 CFR 176.410, for which a permit is required under 49 CFR 176.415.

(3) Division 4.3 dangerous when wet products as defined in 49 CFR 173.124, in excess of 60 mt.

(4) Division 2.3 and 6.1 poison inhalation hazard products as defined in 49 CFR 173.115 and 173.132, respectively.

(5) Class 7 highway route controlled quantity radioactive material or fissile material, controlled shipment, as defined in 49 CER 173.403.

*Commandant* means the Commandant of the United States Coast Guard.

*Container* means a reusable container that has a volume of 1.81 cubic meters (64 cubic feet) or more, is designed and constructed to permit being lifted with its contents intact, and is intended primarily for containment of packages (in unit form) during transportation.

*Dangerous cargo* means all hazardous materials listed in 49 CFR parts 170 through 179, except those materials preceded by an "A" in the Hazardous Materials Table in 49 CFR 172.101 and all cargo listed in 46 CFR part 148.

*Designated dangerous cargo* means Division 1.1 and 1.2 explosives as defined in 49 CFR 173.50.

*Designated waterfront facility* means a waterfront facility designated under § 126.13 for the handling, storing, loading, and discharging of any hazardous material(s) subject to the Dangerous Cargoes Regulations (49 CFR parts 170 through 179), except for those materials preceded by an "A" in the Hazardous Materials Table in 49 CFR 172.101 and for those materials carried as bulk liquids.

*Facility of particular hazard* means a designated waterfront facility that is authorized to handle a cargo of particular hazard.

*Facility operator* means the person or company who owns, operates, or is responsible for the operation of a waterfront facility.

*Net tons* means net weight in tons.

*Net weight*, in reference to material in a package, tank, or container, means the weight of the contents of a package, tank, or container and does not include the weight of any packaging material or containing devices.

*Transport unit* means a transport vehicle or a container.

*Waterfront facility* means all piers, wharves, and similar structures to which a vessel may be secured; areas of land, water, or land and water under and in the immediate proximity to these structures; buildings on or contiguous to these structures; and the equipment and materials on or in these structures or buildings. The term does not include facilities directly operated by the Department of Defense.

■ 6. Add § 126.5 to read as follows:

**§ 126.5 Incorporation by reference: Where can I get a copy of the publications mentioned in this part?**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal

Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, we must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Vessel and Facility Operating Standards Division (G–MSO–2), room 1210, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part, and the sections affected, are as follows:

<i>American Society for Testing and Materials (ASTM)</i> , 100 Barr Harbor Drive, PO Box C700 West CONSHOCKEN, PA 19428–2959:	
ASTM F–1121, Standard Specification for International Shore Connections for Marine Fire Applications, 1987 Edition .....	126.15
<i>National Fire Protection Association (NFPA)</i> , One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101:	
NFPA 10, Standard for Portable Fire Extinguishers, 1998 Edition .....	126.15
NFPA 13, Standard for the Installation of Sprinkler Systems, 1996 Edition .....	126.15
NFPA 14, Standard for the Installation of Standpipe and Hose Systems, 1996 Edition ....	126.15
NFPA 30, Flammable and Combustible Liquids Code, 1996 ....	126.15
NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994 Edition .....	126.30
NFPA 70, National Electrical Code, 1996 .....	126.15
NFPA 307, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves, 1995 Edition .....	126.15

■ 7. Add § 126.12 to read as follows:

**§ 126.12 How do I request the use of an alternative method of complying with a requirement in this part?**

(a) An owner or operator of a waterfront facility may request that the COTP allow the use of an alternative method of complying with a requirement in this part.

(b) The request must establish, to the COTP's satisfaction—

(1) That compliance with the requirement is economically or physically impractical; and

(2) That the alternative requested provides an equivalent or greater level of safety.

(c) The COTP examines the request and provides an answer, in writing, within 30 days of receipt of the request.

■ 8. Revise § 126.15 to read as follows:

**§ 126.15 What conditions must a designated waterfront facility meet?**

(a) All designated waterfront facilities must meet the following:

(1) *Fire extinguishing equipment*. Fire extinguishing equipment, such as automatic sprinklers, hydrants, hose connections, and firefighting water supplies must be available and maintained in adequate quantities and locations. Fire extinguishing equipment must meet State and local laws. In the absence of applicable State and local laws, fire extinguishing equipment must meet NFPA 10, 13, 14, and 307. (Incorporated by reference, see § 126.5.)

(2) *Fire appliances*. The location of all fire appliances, such as hydrants, standpipes, hose stations, fire extinguishers, and fire alarm boxes must be conspicuously marked and readily accessible according to NFPA 10, 13, 14, and 307.

(3) *Warning signs*. Warning signs must be constructed and installed according to NFPA 307, chapter 7–8.7.

(4) *Lighting*. If the facility transfers dangerous cargo between sunset and sunrise, it must have outdoor lighting that adequately illuminates the transfer work area. The lighting must be installed and maintained according to NFPA 70 (Incorporated by reference, see § 126.5.) and must be located or shielded so that it cannot be mistaken for an aid to navigation and does not interfere with navigation on waterways.

(5) *International shore connection*. If the facility conducts cargo operations involving foreign-flag vessels, the facility must have an international shore connection meeting ASTM F–1121. (Incorporated by reference, see § 126.5.)

(6) *Access to the facility*. Whenever dangerous cargo is transferred or stored on the facility, access to the facility must be limited to—

(i) Personnel working on the facility or vessel;

(ii) Delivery and service personnel authorized to conduct their business;

(iii) Coast Guard and other Federal, State, and local officials;

(iv) Local emergency personnel, such as police officers and firemen; and

(v) Other persons authorized by the owner or operator of the facility.

(7) *Security measures*. Guards must be stationed, or equivalent controls acceptable to the COTP must be used, to deter and detect unlawful entrance; to

detect and report fire hazards, fires, and releases of dangerous cargoes and hazardous materials; to check the readiness of protective equipment; and to report other emergency situations at the facility.

(8) *Coast Guard personnel.* At any time, Coast Guard personnel must be allowed to enter the facility to conduct inspections or board vessels moored at the facility.

(9) *Material handling equipment, trucks, and other motor vehicles.* When dangerous cargo is being transferred or stored on the facility, material handling equipment, trucks, and other motor vehicles operated by internal combustion engines must meet the requirements of NFPA 307, chapter 9.

(10) *Smoking.* Smoking is allowed on the facility where permitted under State or local law. Signs must be posted marking authorized smoking areas. "No Smoking" signs must be conspicuously posted elsewhere on the facility.

(11) *Rubbish and waste material.* All rubbish, debris, and waste materials must be placed in adequate receptacles.

(12) *Adequacy of equipment, materials, and standards.* The COTP may determine that any equipment, material, or standard is not reasonably adequate under the circumstances. If so, the COTP informs the owner or operator in writing and provides an opportunity for the owner or operator to have the deficiency corrected.

(b) All designated waterfront facilities that handle dangerous cargo, not in transport units, must also meet the following:

(1) *Arrangement of cargo, freight, merchandise, or material.* Cargo, freight, merchandise, and other items or material on the facility must be arranged to provide access for firefighting and clearance for fire prevention according to NFPA 307, chapter 8–5.

(2) *Portable fire extinguishers.* Each facility must have and maintain, in adequate quantities and locations, portable fire extinguishers that meet the requirements of NFPA 10. These extinguishers must be inspected and maintained in accordance with NFPA 10.

(3) *Electrical systems.* All new electrical equipment and wiring installed on the facility must be of the same type and installed as specified under NFPA 70. All defective or dangerous electrical equipment and wiring must be promptly repaired, replaced, or permanently disconnected.

(4) *Heating equipment and other sources of ignition.* Open fires and open-flame lamps are prohibited on the facility. Heating equipment must meet NFPA 307, chapter 9–4.

(5) *Maintenance stores and supplies.* Hazardous material(s) used in the operation or maintenance of the facility may be stored only in amounts necessary for normal operating conditions. These materials must be stored in compartments that are remote from combustible material; constructed to provide safe storage; and kept clean and free of scrap materials, empty containers, soiled wiping rags, waste, and other debris. Flammable liquids must be stored according to NFPA 30, chapter 4. (Incorporated by reference, see § 126.5.)

(c) All designated waterfront facilities that handle dangerous cargo in transport units must also meet the following:

(1) *Terminal yards.* Terminal yards must conform to the standards in NFPA 307, chapter 5.

(2) *Containers.* Containers packed with dangerous cargo that are vertically stacked must be stacked no more than four high.

■ 9. In § 126.27—

■ a. Revise paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3), and (b)(7);

■ b. Remove paragraph (b)(8);

■ c. Revise paragraphs (d) through (i); and

■ d. Add paragraphs (j) through (l) to read as follows:

**§ 126.27 General permit for handling dangerous cargo.**

\* \* \* \* \*

(b) You must notify the COTP before you handle, store, stow, load, discharge, or transport, in the net weight amounts specified, the following dangerous cargo, except when contained within transport units or railroad or highway vehicles being transported across or on the waterfront facility solely for transfer to or from a railroad-car ferry, highway-vehicle ferry, or carfloat:

(1) Class 1, Division 1.3 and Division 1.5 (Explosive) materials, with a net explosive quantity in excess of 36,400 kg (40 net tons) at any one time.

(2) Class 2, Division 2.1 (Flammable Gas) materials in bulk packaging; or Division 2.3 (Poison Gas) materials in excess of 72,800 kg (80 net tons) at any one time.

(3) A Class 7 (Radioactive) material in a highway route controlled quantity, as defined in 49 CFR 173.403.

\* \* \* \* \*

(7) A bulk shipment of a cargo of particular hazard.

\* \* \* \* \*

(d) Break-bulk dangerous cargo must be segregated according to 49 CFR 176.83(a) through (c). No separation is required for break-bulk dangerous cargo in limited-quantity packaging.

(e) Transport units and portable tanks containing dangerous cargo must be segregated according to 49 CFR 176.83(a), (b), and (f). The requirements for vertical segregation and for on-deck, horizontal segregation in 49 CFR 176.83(f) apply. No separation is required for transport units containing dangerous cargo only in limited quantity packaging.

(f) Break-bulk dangerous cargo must be segregated from transport units containing dangerous cargo according to 49 CFR 176.83(e).

(g) Solid dangerous bulk cargo must be separated to prevent the interaction of incompatible materials in the event of an accident. Cargo not required to be segregated, when in break-bulk form, is not required to be segregated, when in bulk form. Dangerous cargo in break-bulk form must be segregated from solid dangerous cargo in bulk according to 49 CFR 176.83.

(h) Materials that are dangerous when wet (Division 4.3), water-soluble oxidizers (Division 5.1), and corrosive solids (Class 8) must be stored in a manner that prevents them from coming into contact with water.

(i) Corrosive liquids (Class 8) and liquid oxidizers (Division 5.1) must be handled and stored so that, in the event of a leak from their packaging, they would not come in contact with organic materials.

(j) Dangerous cargo stored on the facility must be arranged in a manner that retards the spread of fire, such as by interspersing dangerous cargo with inert or fire retardant material.

(k) Dangerous cargo stored on the facility, but not intended for use on the facility, must be packaged, marked, and labeled according to 49 CFR parts 171 through 180, as if the cargo was in transportation.

(l) Class 7 (Radioactive) material must be stored as specified in 49 CFR 173.447.

■ 10. Add § 126.30 to read as follows:

**§ 126.30 What are the conditions for conducting welding and hotwork?**

(a) The facility operator must ensure that all welding or hotwork conducted at the facility meets the requirements of this section. Each operator of a vessel moored to the facility must ensure that all welding or hotwork conducted on the vessel meets the requirements of this section.

(b) The COTP may require an operator of a facility or of a vessel moored at the facility to notify the COTP before conducting welding or hotwork. Regardless of whether or not the COTP required notice, the facility operator must notify the COTP before conducting

welding or hotwork on a vessel when containerized dangerous cargo is located within the distances listed in paragraph (f) of this section.

(c) Before conducting welding or hotwork, flammable vapors, liquids, or solids must be completely removed from any container, pipe, or transfer line being worked on.

(d) Before conducting welding or hotwork on tanks, tanks used for storage of flammable or combustible substances must be tested and certified gas free.

(e) All welding and hotwork must be conducted according to NFPA 51B. (Incorporated by reference, see § 126.5.)

(f) Welding or hotwork is prohibited during gas freeing operations within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, within 30.5 meters (100 feet) of explosives, or within 15.25 meters (50 feet) of other hazardous materials.

(g) If the welding or hotwork is on the boundary of a compartment (*i.e.*, bulkhead, wall, or deck), a fire watch, in addition to that called for in NFPA 51B, must be stationed in the adjoining compartment.

(h) Personnel on fire watch must have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(i) All safety precautions in relation to purging, inerting, or venting for all hotwork on containers must be followed.

(j) All local laws and ordinances must be followed.

(k) If a fire or other hazard occurs, all cutting, welding, or other hotwork equipment must be shut down.

Dated: September 8, 2003.

**T.H. Gilmour,**

*Assistant Commandant for Marine Safety, Security and Environmental Protection.*

[FR Doc. 03-23667 Filed 9-25-03; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 147

[CGD08-02-045]

RIN 1625-AG54 (Formerly RIN 2115-AG54)

#### Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Viasca Knoll 915 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this facility significantly reduces the threat of allisions, oil spills and releases of natural gas. This rule prevents all vessels from entering or remaining in the specified area around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

**DATES:** This final rule is effective October 27, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08-02-045] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589-6271.

#### **SUPPLEMENTARY INFORMATION:**

#### **Regulatory History**

On February 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915" in the **Federal Register** (68 FR 9611). We received two comments on the proposed rule. No public hearing was requested, and none was held.

#### **Background and Purpose**

The Coast Guard is establishing a safety zone around Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll 915 (VK 915), located at position 29°06'27.46" N, 87°56'37.14" W.

The safety zone established by this rule is in the deepwater area of the Gulf of Mexico. For the purposes of this rule the deepwater area is considered to include waters of 304.8 meters (1,000 feet) or greater in depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and up to a distance of 200 nautical miles from the baseline. Vessels navigating in the area of the

safety zone consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. An extensive system of navigational fairways is within the deepwater area. The fairways include the Gulf of Mexico East-West Fairway, the entrance/exit route of the Mississippi River, and the Mobile Bay approaches. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Chas R. Haven & Assoc., Inc., hereafter referred to as Haven Group requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the tension leg platform, Marlin owned by B.P. Amoco.

The request for the safety zone was made due to the high level of shipping activity around the facility and the safety concerns for both the personnel on board the facility and the environment. The Haven Group indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event. The Marlin is a high production oil and gas drilling facility producing approximately 41,000 barrels of oil per day, 310 million cubic feet of gas per day and is manned with a crew of approximately 80 people.

The Coast Guard reviewed Group Haven's concerns and agreed that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This rule significantly reduces the threat of allisions, oil spills and natural gas releases and increases the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

#### **Discussion of Comments and Changes**

We received two comments on the proposed rule. One comment was received requesting that the owner of Marlin TLP, B.P. Amoco, be included in the rule.

The second comment expressed concerns over the Coast Guard establishing "security zones" around offshore platforms and the potential economic impact this type of zone may have on recreational and commercial fishing industries. Over the past several years the Coast Guard has established thirteen offshore safety zones in the Gulf of Mexico. Each zone, as well as this one, was requested in accordance with 33 CFR 147. The purpose of this offshore safety zone is clearly stated in