

## SUBCHAPTER NN—DEEPWATER PORTS

### PART 148—DEEPWATER PORTS: GENERAL

#### Subpart A—General

Sec.

- 148.1 What is the purpose of this subchapter?
- 148.2 Who is responsible for implementing this subchapter?
- 148.3 What Federal agencies are responsible for implementing the Deepwater Port Act?
- 148.5 How are terms used in this subchapter defined?
- 148.8 How are certifying entities designated and used for purposes of this subchapter?

#### Subpart B—Application for a License

- 148.100 What is the purpose of this subpart?
- 148.105 What must I include in my application?
- 148.107 What additional information may be required?
- 148.108 What if a Federal or State agency or other interested party requests additional information?
- 148.110 How do I prepare my application?
- 148.115 How many copies of the application must I send and where must I send them?
- 148.125 What are the application fees?

#### Subpart C—Processing Applications

##### GENERAL

- 148.200 What is the purpose of this subpart?
- 148.205 How are documents related to the application maintained?
- 148.207 How and where may I view docketed documents?
- 148.209 How is the application processed?
- 148.211 What must I do if I need to change my application?
- 148.213 How do I withdraw my application?
- 148.215 What if a port has plans for a deep draft channel and harbor?
- 148.217 How can a State be designated as an adjacent coastal State?
- 148.221 How do I claim, or object to a claim, that required information is privileged?

##### PUBLIC HEARINGS OR MEETINGS

- 148.222 When must public hearings or meetings be held?
- 148.227 How is a public hearing or meeting reported?

##### FORMAL HEARINGS

- 148.228 What if a formal evidentiary hearing is necessary?

- 148.230 How is notice of a formal hearing given?
- 148.232 What are the rules for a formal hearing?
- 148.234 What are the limits of an Administrative Law Judge (ALJ)'s jurisdiction?
- 148.236 What authority does an Administrative Law Judge (ALJ) have?
- 148.238 Who are the parties to a formal hearing?
- 148.240 How does a State or a person intervene in a formal hearing?
- 148.242 How does a person who is not a party to a formal hearing present evidence at the hearing?
- 148.244 Who must represent the parties at a formal hearing?
- 148.246 When is a document considered filed and where should I file it?
- 148.248 What happens when a document does not contain all necessary information?
- 148.250 Who must be served before a document is filed?
- 148.252 What is the procedure for serving a subpoena?
- 148.254 How is a hearing transcript prepared?
- 148.256 What happens at the conclusion of a formal hearing?

##### APPROVAL OR DENIAL OF THE APPLICATION

- 148.276 When must the application be approved or denied?
- 148.277 How may Federal agencies and States participate in the application process?
- 148.279 What are the criteria for approval or denial of an application?
- 148.281 What happens when more than one application is submitted for a deepwater port in the same application area?
- 148.283 When is the application process stopped before the application is approved or denied?

#### Subpart D—Licenses

- 148.300 What does this subpart concern?
- 148.305 What is included in a deepwater port license?
- 148.307 Who may consult with the Commandant (G-P) and the MARAD Administrator on developing the proposed conditions of a license?
- 148.310 How long does a license last?
- 148.315 How is a license amended, transferred, or reinstated?
- 148.320 How is a license enforced, suspended, or revoked?
- 148.325 How soon after port decommissioning must the licensee initiate removal?

## Coast Guard, DHS

## § 148.3

### Subpart E—Site Evaluation and Pre-Construction Testing

- 148.400 What does this subpart do?
- 148.405 What are the procedures for notifying the Commandant (G-P) of proposed site evaluation and pre-construction testing?
- 148.410 What are the conditions for conducting site evaluation and pre-construction testing?
- 148.415 When conducting site evaluation and pre-construction testing, what must be reported?
- 148.420 When may the Commandant (G-P) suspend or prohibit site evaluation or pre-construction testing?

### Subpart F—Exemption From or Adjustments to Requirements in This Subchapter

- 148.500 What does this subpart do?
- 148.505 How do I apply for an exemption?
- 148.510 What happens when a petition for exemption involves the interests of an adjacent coastal State?
- 148.515 When is an exemption allowed?
- 148.600 What is the limit of financial liability?
- 148.605 How is the limit of liability determined?

### Subpart G—Environmental Review Criteria for Deepwater Ports

- 148.700 How does the Deepwater Port Act interact with other Federal and State laws?
- 148.702 How were the environmental review criteria developed?
- 148.705 What is determined by the environmental evaluation?
- 148.707 What type of criteria will be used in an environmental review, and how will they be applied?
- 148.708 Must the applicant's proposal reflect potential regulations?
- 148.709 How are these criteria reviewed and revised?
- 148.710 What environmental conditions must be satisfied?
- 148.715 How is an environmental review conducted?
- 148.720 What are the siting criteria?
- 148.722 Should the construction plan incorporate best available technology and recommended industry practices?
- 148.725 What are the design, construction and operational criteria?
- 148.730 What are the land use and coastal zone management criteria?
- 148.735 What are other critical criteria that must be evaluated?
- 148.737 What environmental statutes must an applicant follow?

AUTHORITY: 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

SOURCE: 71 FR 57651, Sept. 29, 2006, unless otherwise noted.

### Subpart A—General

#### § 148.1 What is the purpose of this subchapter?

This subchapter prescribes regulations for the licensing, construction, design, equipment, and operation of deepwater ports under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524) (the Act).

#### § 148.2 Who is responsible for implementing this subchapter?

Unless otherwise specified, the owner of a deepwater port must ensure that the requirements of this subchapter are carried out at that port.

#### § 148.3 What Federal agencies are responsible for implementing the Deepwater Port Act?

(a) Under delegations from the Secretary of Homeland Security and the Secretary of Transportation, the Coast Guard and the Maritime Administration (MARAD) coordinate with each other in processing applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port.

(b) MARAD is responsible for issuing the Record of Decision to announce whether a license application is approved, approved with conditions, or denied, and for issuing, revoking, and reinstating deepwater port licenses. MARAD also has authority over the approval of fees charged by adjacent coastal States, and certain matters relating to international policy, civil actions, and suspension or termination of licenses.

(c) The Secretary of Transportation has delegated authority over pipeline matters to the Pipeline Hazardous Materials and Safety Administration.

(d) The Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Minerals Management Service (MMS) in the Department of Interior, and other Federal agencies are designated as cooperating agencies and support the Coast Guard and MARAD

in the review and evaluation of deepwater port license applications. You can view the interagency memorandum of understanding (MOU) outlining the relative roles and responsibilities of these and other Federal agencies at: [http://www.uscg.mil/hq/G-P/mso/docs/dwp\\_white\\_house\\_task\\_force\\_energy\\_streamlining.pdf](http://www.uscg.mil/hq/G-P/mso/docs/dwp_white_house_task_force_energy_streamlining.pdf).

**§ 148.5 How are terms used in this subchapter defined?**

As used in this subchapter:

*Act* means the Deepwater Port Act of 1974, 33 U.S.C. 1501 et seq., as amended.

*Adjacent coastal State* means any coastal State which:

(1) Would be directly connected by pipeline to a deepwater port, as proposed in an application;

(2) Would be located within 15 miles of any such proposed deepwater port; or

(3) Is designated as an adjacent coastal State by the Administrator of the Maritime Administration under 33 U.S.C. 1508(a)(2).

*Affiliate* means a person:

(1) That has a direct or indirect ownership interest of more than 3 percent in an applicant;

(2) That offers to finance, manage, construct, or operate the applicant's deepwater port to any significant degree;

(3) That owns or controls an applicant or an entity under paragraphs (1) or (2) of this definition; or

(4) That is owned or controlled by, or under common ownership with, an applicant or an entity under paragraphs (1), (2), or (3) of this definition.

*Applicant* means a person that is the owner of a proposed deepwater port and is applying for a license under this part for that port.

*Application* means an application submitted under this part for a license to own, construct, and operate a deepwater port.

*Approval series* means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of 46 CFR chapter I, subchapter Q, the approval series corresponds to the number of the subpart. A list of approved equipment, including all of the ap-

proval series, is available at: <http://cgmix.uscg.mil/Equipment>.

*Approved* means approved by the Commandant (G-P).

*Area to be avoided* or *ATBA* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and should be avoided by all ships or certain classes of vessels. An ATBA may be either recommended ("recommendatory") or mandatory. An ATBA is recommendatory when ships are advised to navigate with caution in light of specially hazardous conditions. An ATBA is mandatory when navigation is prohibited or subject to a competent authority's conditions. ATBAs for deepwater ports are recommendatory.

*Barrel* means 42 U.S. gallons (approximately 159 liters) at atmospheric pressure and 60 °F (approximately 15.56 °C).

*Captain of the Port* or *COTP* means a Coast Guard officer who commands a Captain of the Port zone described in part 3 of this chapter and who is immediately responsible for enforcing port safety and security and marine environmental protection regulations within that area.

*Certified industrial hygienist* means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

*Certified marine chemist* means a marine chemist who is certified by the National Fire Protection Association.

*Certifying entity* or *CE* means any individual or organization, other than the operator, permitted by the Commandant (G-PSO) to act on behalf of the Coast Guard pursuant to section 148.8 of this subpart. The activities may include reviewing plans and calculations for construction of deepwater ports, conducting inspections, witnessing tests, and certifying systems and/or components associated with deepwater ports as safe and suitable for their intended purpose.

*Citizen of the United States* means:

(1) Any person who is a United States citizen by law, birth, or naturalization;

(2) Any State, State agency, or group of States; or

(3) Any corporation, partnership, or other association:

(i) That is organized under the laws of any State;

(ii) Whose president, chairman of the board of directors, and general partners or their equivalents, are persons described in paragraph (1) of this definition; and

(iii) That has no more of its directors who are not persons described in paragraph (1) of this definition than constitute a minority of the number required for a quorum to conduct the business of the board of directors.

*Coastal environment* means the coastal waters including the lands in and under those waters, internal waters, and the adjacent shorelines including waters in and under those shorelines. The term includes, but is not limited to:

(1) Transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches;

(2) Fish, wildlife, and other living resources of those waters and lands; and

(3) The recreational and scenic values of those lands, waters, and resources.

*Coastal State* means a State of the United States in or bordering the Atlantic, Pacific, or Arctic Oceans or the Gulf of Mexico.

*Commandant (G-P)* means the Assistant Commandant for Prevention, or that individual's authorized representative, at Commandant (G-P), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

*Confined space* means a space that may contain a dangerous atmosphere, including a space that:

(1) Has poor natural ventilation, such as a space with limited openings, for example a cofferdam or double bottom tank; or

(2) Is not designed for continuous occupancy by personnel.

*Construction* means supervising, inspecting, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components. The term includes, but is not limited to, fabrication, laying of pipe, pile driving, bulk heading, alterations, modifications, and additions to the deepwater port.

*Control* means the direct or indirect power to determine the policy, business practices, or decisionmaking process of

another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise.

*Crude oil* means a mixture of hydrocarbons that exists in the liquid phase in natural underground reservoirs, and remains liquid at atmospheric pressure after passing through surface separating facilities, and includes:

(1) Liquids technically defined as crude oil;

(2) Small amounts of hydrocarbons that exist in the gaseous phase in natural underground reservoirs but are liquid at atmospheric pressure after being recovered from oil well (casing head) gas in lease separators; and

(3) Small amounts of non-hydrocarbons produced with the oil.

*Dangerous atmosphere* means an atmosphere that:

(1) May expose personnel to the risk of death, incapacitation, injury, or acute illness; or

(2) May impair ability to escape from the atmosphere unaided.

*Deepwater port:*

(1) Means any fixed or floating man-made structures other than a vessel, or any group of structures, located beyond State seaward boundaries that are used or are intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in the Deepwater Port Act of 1974, as amended, and for other uses not inconsistent with the purposes of the Deepwater Ports Act, including transportation of oil or natural gas from the United States' OCS;

(2) Includes all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities, to the extent that they are located seaward of the high water mark;

(3) Includes, in the case of natural gas, all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities which are proposed and/or approved for construction and operation as part of the deepwater port, to the

extent that they are located seaward of the high water mark and do not include interconnecting facilities; and

(4) Shall be considered a “new source” for purposes of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, as amended.

*District commander* means an officer who commands a Coast Guard district described in part 3 of this chapter, or that individual’s authorized representative.

*Emergency medical technician* means a person trained and certified to appraise and initiate the administration of emergency care for victims of trauma or acute illness before or during transportation of the victims to a health care facility via ambulance, aircraft or vessel.

*Engineering hydrographic survey* means a detailed geological analysis of seabed soil samples performed to determine the physical composition, for example the mineral content, and structural integrity for the installation of offshore components and structures.

*Governor* means the governor of a State or the person designated by State law to exercise the powers granted to the governor under the Act.

*Gross under keel clearance* means the distance between the keel of a tanker and the ocean bottom when the tanker is moored or anchored in calm water free of wind, current, or tide conditions that would cause the tanker to move.

*Hose string* means the part of a single point mooring connection for oil or natural gas transfer made out of flexible hose of the floating or float/sink type that connects the tanker’s manifold to the single point mooring.

*Hot work* means work that produces heat or fire, such as riveting, welding, burning, or other fire-or spark-producing operations.

*Lease block* means an area established either by the Secretary of the Interior under section 5 of the OCS Lands Act, 43 U.S.C. 1334, or by a State under section 3 of the Submerged Lands Act, 43 U.S.C. 1311.

*License* means a license issued under this part to own, construct, and operate a deepwater port.

*Licensee* means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed under this subchapter.

*Marine environment* includes:

(1) The coastal environment, waters of the contiguous zone, the Exclusive Economic Zone, and the high seas;

(2) Fish, wildlife, and other living resources of those waters; and

(3) The recreational and scenic values of those waters and resources.

*Marine site* means the area in which the deepwater port is located, including the safety zone and all areas seaward of the high water mark in which associated components and equipment of the deepwater port are located.

*Maritime Administration* or *MARAD* means the Administrator of the Maritime Administration or that person’s designees, and includes the Associate Administrator, Port, Intermodal and Environmental Activities, Maritime Administration, or that individual’s authorized representative, at 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-4721.

*Metering platform* means a manned or unmanned platform consisting of either a fixed or floating structure that serves as an interchange site for measuring the rate of transfer of natural gas from vessel to pipeline.

*Natural gas* means either natural gas, unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas.

*Natural gas liquids* means liquid hydrocarbons associated with or extracted from natural gas, for example ethane, propane and butane extracted from natural gas.

*Net under keel clearance* means the distance between the keel of a tanker and the ocean bottom when the tanker is underway, anchored, or moored, and subject to actual wind, waves, current, and tide motion.

*No anchoring area* or *NAA* means a routing measure comprising an area within defined limits where anchoring is hazardous or could result in unacceptable damage to the marine environment. Anchoring in a no anchoring area should be avoided by all vessels or certain classes of vessels, except in

case of immediate danger to the vessel or the person on board.

*Officer in Charge of Marine Inspection* or *OCMI* means an individual who commands a marine inspection zone described in part 3 of this chapter, and who is immediately responsible for the performance of duties with respect to inspections, enforcement, and administration of regulations governing a deepwater port.

*Offshore competent person* means an individual trained and designated by his or her employer in matters relating to confined space pre-entry testing and certification at a deepwater port, prior to entry. An offshore competent person should demonstrate proficiency in the following criteria:

- (1) Hazard description and recognition;
- (2) Hazard evaluation and measurement;
- (3) Hazard prevention;
- (4) Control and elimination; and
- (5) Practical application simulation.

*Oil* means petroleum, crude oil, and any substance refined from petroleum or crude oil.

*Operator* means the person who is licensed under 33 U.S.C. 1503 to own, construct, and operate a deepwater port, or that person's designee.

*Person* means an individual, a public or private corporation, a partnership or other association, or a government entity.

*Person in Charge (PIC)* means an individual designated as a person in charge of transfer operations under §154.710 for oil facilities or §127.301 for liquefied natural gas (LNG) facilities. Within this subchapter, other references to person in charge, without the use of the acronym PIC, will mean a person in charge of an operation other than transfer operations.

*Personnel* means individuals who are employed by licensees, operators, contractors, or subcontractors, and who are on a deepwater port because of their employment.

*Pipeline end manifold* means the pipeline end manifold at a single point mooring.

*Platform* means a fixed or floating structure that rests on or is embedded in the seabed or moored in place and that has floors or decks where an activ-

ity or specific function may be carried out.

*Pumping platform complex* means a platform or a series of interconnected platforms, exclusive of a deepwater port, consisting of one or more single point moorings or submerged turret loading buoys that can pump oil or natural gas and that has one or more of the following features or capabilities:

- (1) Can handle the mooring and loading of small vessels;
- (2) Has berthing and messing facilities; and
- (3) Has a landing area for helicopters.

*Reconnaissance hydrographic survey* means a scientific study of fresh and saltwater bodies, currents and water content, cultural resources, seabed soils and subsea conditions, for example existing pipelines or subsea wells. A visual representation of the survey findings is normally depicted on a chart of the examined area.

*Routing systems* means any system of one or more vessel routes or routing measures aimed at reducing the risk of casualties. It includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas and deepwater routes.

*Safety zone* means a safety zone established around a deepwater port under part 150, subpart J, of this chapter. The safety zone may extend to a maximum distance of 500 meters (approximately 1,640 feet) around the facility, measured from each point on its outer edge or from its construction site, except as authorized by generally accepted international standards or as recommended by the International Maritime Organization. However, the zone may not interfere with the use of recognized sea lanes.

*Single point mooring* or *SPM* means an offshore berth that links an undersea pipeline to a moored tanker and allows for the transfer of oil or natural gas between the tanker and the pipeline.

*Single point mooring oil transfer system* or *SPM-OTS* means the part of the oil transfer system from the pipeline end manifold to the end of the hose string that connects to the tanker's manifold.

*Single (or multiple) point mooring natural gas transfer system* or *SPM-NGTS*

## § 148.8

## 33 CFR Ch. I (7–1–08 Edition)

(or MPM-NGTS) means the part of the natural gas transfer system from the pipeline end manifold to the end of the hose string that connects to the tanker's manifold.

*State* includes each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

*Support vessel* means a vessel working for a licensee at a deepwater port or cleared by a licensee to service a tanker calling at a deepwater port, and includes a:

- (1) Tug;
- (2) Line-handling boat;
- (3) Crew boat;
- (4) Supply vessel;
- (5) Bunkering vessel;
- (6) Barge; or
- (7) Other similar vessel.

*Survival craft* means a craft described in § 149.303 of this subchapter.

*Tanker* means a vessel that calls at a deepwater port to unload oil or natural gas.

*Vessel* means every description of watercraft, including non-displacement craft e.g., wing-in-ground (WIG) craft, seaplanes) capable of being used, as a means of transportation on or through the water.

### § 148.8 How are certifying entities designated and used for purposes of this subchapter?

(a) Applicants and licensees may nominate a certifying entity (CE) for the performance of tasks for which the Coast Guard is responsible under this subchapter.

(b) Nominations may be made at any time after the Maritime Administration issues a record of decision approving the application, and must include the following information for each nominee:

- (1) The specific functions or tasks to be performed by the nominee;
- (2) Name and address;
- (3) Size and type of organization or corporation;
- (4) Previous experience as a CE, certified verification agent, or similar third-party representative;
- (5) Experience in design, fabrication, or installation of fixed offshore oil and gas platforms, similar fixed, floating,

or gravity-based structures and project-related structures, systems, and equipment;

(6) Technical capabilities, including professional certifications and organizational memberships of the nominee or the primary staff to be associated with its duties for the specific project;

(7) In-house availability of, or access to, appropriate technology such as computer modeling programs and hardware or testing materials and equipment;

(8) Ability to perform and effectively manage the duties for which it is nominated considering current resource availability;

(9) Previous experience with regulatory requirements and procedures;

(10) A statement signed by the nominee's chief officer or that person's designee that the nominee:

(i) Is not owned or controlled by the designer, manufacturer, or supplier of any equipment, material, system, or subsystem that would be the subject of the nominee's duties, or by any manufacturer of similar equipment or material; and that

(ii) The nominee will allow access to an official representative of the Coast Guard, upon request, to facilities or records that relate to its duties; and

(11) A list of documents and certifications to be furnished to the Coast Guard by the nominee.

(c) The Commandant (G-P) may accept or reject the nomination of a CE and will provide guidance and oversight to each CE. The Commandant (G-P) may terminate the acceptance of a CE at any time.

### Subpart B—Application for a License

#### § 148.100 What is the purpose of this subpart?

This subpart describes how to apply for a license to own, construct, and operate a deepwater port.

#### § 148.105 What must I include in my application?

Your application must include the information required by this section.

(a) *General*. For each applicant, affiliate, and consultant:

(1) The name, address, telephone number, citizenship, and principal business activity of the applicant and its affiliates;

(2) The name, address, and principal business activity of each subsidiary, division of the applicant, or its affiliates that participated in the decision to apply for a license to build a deepwater port;

(3) A description of how each affiliate is associated with the applicant, and of the ownership interest each affiliate has in the applicant;

(4) A list of the applicant's corporate officers and directors, and each affiliate that participated in the decision to apply for a license;

(5) A statement for each applicant or affiliate, providing complete and detailed information on any civil or criminal legal proceeding during the preceding 5 years that relates to, or that could materially affect, information in the license application; and,

(6) A declaration by the applicant that neither the applicant nor its affiliate has engaged in any lobbying activities that are prohibited by 31 U.S.C. 1352 or any other applicable Federal anti-lobbying statute.

(b) *Experience in matters relating to deepwater ports.*

(1) A description of the applicant's, affiliate's, and consultant's experience in offshore operations, particularly operations involving the transfer and storage of liquid cargo, and the loading and unloading of vessels.

(2) For each affiliate that has a significant contract with the applicant for construction of the deepwater port, a description of that affiliate's experience in construction of marine terminal facilities, offshore structures, underwater pipelines, and seabed foundations; in addition to a description of other experiences that would bear on the affiliate's qualification to participate in the construction of a deepwater port.

(c) *Engineering firms.* For each engineering firm, if known, that will design the deepwater port or a portion of the port, the application must include the firm's:

- (1) Name;
- (2) Address;
- (3) Citizenship;

(4) Telephone number; and

(5) Qualifications.

(d) *Citizenship and operating authority.* For each applicant or group of applicants, provide:

(1) An affidavit that the applicant is a citizen of the United States;

(2) For State agency applicants, the law authorizing the applicant to undertake the operations detailed in the application;

(3) For private corporation applicants, the current charter or certificate of incorporation and current by-laws; and affidavits of U.S. or foreign citizenship from the president, chairman of the board, and each director or their equivalents; for limited liability companies, the equivalent organizational documents, and affidavits from the members of the Board of Managers, and members; and

(4) For partnerships, including limited liability partnerships, or associations not formed or owned solely by individual citizens of the United States, the certificate of formation; the partnership agreement or articles of association; the current by-laws; the minutes of the first board meeting; and affidavits of U.S. or foreign citizenship from the president and each director, or their equivalents.

(e) *Address for service of documents.* The name and address of one individual who may be served with documents if a formal hearing is held concerning the application, and the name and address of one individual who may receive other documents.

(f) *Location and use.* The proposed location and capacity of the deepwater port, a general description of the anticipated use of the port, and whether access will be open or closed.

(g) *Financial information.*

(1) For the applicant, each affiliate with an ownership interest in the applicant of greater than 3 percent, and affiliates which have a direct contractual relationship with the deepwater port:

(i) Annual financial statements, audited by an independent certified public accountant, for the previous 3 years, including, but not limited to, an income statement, balance sheet, and cash flow statement with footnote disclosures prepared according to U.S.

Generally Accepted Accounting Principles; provided, however, that the Commandant (G-P), in concurrence with MARAD, may waive this requirement upon finding:

(A) That the affiliate does not, in the normal course of business, produce audited statements; and

(B) That the affiliate is part of a larger corporate group whose audited statement provides sufficient information to support an adequate assessment of the affiliate's relationship with and impact on the applicant; and

(ii) Interim income statements and balance sheets for each quarter that ends at least 30 days before submission of the application, unless it is included in the most recent annual financial statement.

(2) An estimate of construction costs, including:

(i) A phase-by-phase breakdown of costs;

(ii) The estimated completion dates for each phase; and

(iii) A preliminary estimate of the cost of removing all of the deepwater port marine components, including pipelines that lie beneath the seabed. The operator of a deepwater port is responsible for the costs associated with removal of all port components. Should a license be granted, MARAD will require a bond, guarantee, or other financial instrument to cover the complete cost of decommissioning as a condition of the license.

(3) Annualized projections or estimates, along with the underlying assumptions, for the next 5 years and at reasonable intervals throughout the life of the deepwater port, of each of the following:

(i) Total oil or natural gas throughput, and subtotals showing throughput owned by the applicant and its affiliates and throughput owned by others;

(ii) Projected financial statements, including a balance sheet and income statement; and

(iii) Annual operating expenses, showing separately any payment made to an affiliate for any management duties carried out in connection with the operation of the deepwater port.

(4) A copy of all proposals or agreements concerning the management and financing of the deepwater port, includ-

ing agreements relating to throughputs, capital contributions, loans, guarantees, commitments, charters, and leases.

(5) The throughput reports for the calendar year preceding the date of the application, for the applicant and each of the applicant's affiliates engaged in producing, refining, or marketing oil or natural gas and natural gas liquids, along with a copy of each existing or proposed throughput agreement. Each throughput report must list the throughput of the following products:

(i) Crude oil; and if crude oil is the only product the port is designed to transport, the throughput report may be limited to reporting crude oil;

(ii) Gasoline;

(iii) Jet aviation fuel;

(iv) Distillate fuel oils;

(v) Other refinery products;

(vi) Natural gas; and

(vii) Natural gas liquids.

(h) *Construction contracts and construction-related studies.*

(1) A copy of each contract that the applicant made for the construction of any component of the deepwater port or for the operation of the port.

(2) A listing and abstract of:

(i) All completed or ongoing studies on deepwater ports conducted by or for the applicant; and

(ii) All other construction-related studies used by the applicant.

(3) The identity of each contractor, if known, that will construct or install the deepwater port or a portion of the port, including each firm's:

(i) Name;

(ii) Address;

(iii) Citizenship;

(iv) Telephone number; and

(v) Qualifications.

(i) *Compliance with Federal water pollution requirements.*

(1) Evidence, to the extent available, that the requirements of section 401(a)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied. If complete information is not available by the time MARAD must either approve or deny the application under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the applicant demonstrating that the requirements of section 401(a)(1) of the

Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied.

(2) In cases where certification under 33 U.S.C. 1341(a)(1) must be obtained from the Environmental Protection Agency Administrator, the request for certification, and pertinent information, such as plume modeling, related to the certification.

(j) *Coastal zone management.* A request for each certification required by section 307 of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456, as amended.

(k) *Identification of lease block.*

(1) Identification of each lease block where any part of the proposed deep-water port or its approaches is located. This identification must be made on official OCS leasing maps or protraction diagrams, where available. Each map and diagram must be certified by a professional surveyor. For each lease block, provide the following:

(i) A description of each pipeline, or other right-of-way crossing, in enough detail to allow plotting of the rights-of-way to the nearest one-tenth of a second in latitude and longitude; and

(ii) The identity of the lessee or grantee of each pipeline or other right-of-way.

(2) Detailed information concerning any interest that anyone, including the applicant, has in each block.

(3) Detailed information concerning the present and planned use of each block.

(l) *Overall site plan.* Single-line drawings showing the location and type of each component of the proposed deep-water port and its necessary facilities, including:

- (1) Floating structures;
- (2) Fixed structures;
- (3) Aids to navigation;
- (4) Manifold systems; and
- (5) Onshore storage areas, pipelines, and refineries.

(m) *Site plan for marine components.* A site plan consisting of the following:

(1) The proposed size and location of all:

(i) Fixed and floating structures and associated components seaward of the high water mark, only if the proposal does not involve a connected action, for example, installation of new pipe-

line extending inshore of the state boundary line;

(ii) Recommended ships' routing measures and proposed vessel traffic patterns in the port area, including aids to navigation;

(iii) Recommended anchorage areas and, for support vessels, mooring areas; and

(2) A reconnaissance hydrographic survey of the proposed marine site. This survey should provide data on the water depth, prevailing currents, cultural resources, and a general characterization of the sea bottom. A requirement to submit an engineering hydrographic survey of the final marine site will be imposed as a condition in the license. The latter survey will require more extensive analysis of the soil, and detailed study to determine its physical composition, such as minerals, and if the sea bottom can support fixed components comprising a deepwater port. The applicant may submit existing data, gathered within the previous 5 years, but it must be supplemented by field data for the specific locations in which a high degree of variability exists.

(n) *Soil data.* An analysis of the general character and condition of the ocean bottom, sub-bottom, and upland soils throughout the marine site. The applicant may use existing data, so long as it was collected within the last 5 years and continues to provide accurate information about conditions throughout the site. If not, a new survey must be completed to provide supplemental data. The analysis must include an opinion by a registered professional engineer specializing in soil mechanics concerning:

(1) The suitability of the soil to accommodate the anticipated design load of each marine component that will be fixed to or supported on the ocean floor; and

(2) The stability of the seabed when exposed to environmental forces resulting from severe storms or lesser forces that occur over time, including any history of accretion or erosion of the coastline near the marine site.

(o) *Archeological information.* An analysis of the information from the reconnaissance hydrographic survey by a qualified underwater archeologist to

determine the historical or other significance of the area where the site evaluation and pre-construction testing activities were conducted. The analysis must meet standards established by the Minerals Management Service for activities on the OCS, or an alternative standard that has been submitted to and approved by the Coast Guard. The survey must include the areas potentially affected by the deepwater port, or any other associated platforms, and its pipeline route(s).

(p) *Vessel information.*

(1) The nation of registry for, and the nationality or citizenship of, officers and crew serving on board vessels transporting natural gas that are reasonably anticipated to be servicing the deepwater port; and

(2) Description of the information that will be provided in the operations manual pertaining to vessel operations, vessel characteristics, and weather forecasting.

(q) *Information on floating components.*

(1) A description and preliminary design drawing of each floating component, including the hoses, anchoring or securing structure, and navigation lights if the component is a mooring buoy.

(2) The criteria, developed under part 149 of this chapter, to which each floating component will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice that will be applied.

(5) A description of safety, firefighting, and pollution prevention equipment to be used on each floating component.

(6) A description of the lighting that will be used on floating hoses, for night detection.

(r) *Information on dedicated fixed offshore components.*

(1) A description and preliminary design drawing for each dedicated fixed offshore component.

(2) The design criteria, developed under part 149 of this chapter, to which each fixed offshore component will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the following equipment that will be installed:

- (i) Navigational lighting;
- (ii) Safety equipment;
- (iii) Lifesaving equipment;
- (iv) Firefighting equipment;
- (v) Pollution prevention equipment,

excluding response equipment which must be outlined in the facility response plan; and

- (vi) Waste treatment equipment.

(6) A description and preliminary design drawing of the following:

- (i) The cargo pumping equipment;
- (ii) The cargo piping system;
- (iii) The control and instrumentation system; and

(iv) Any associated equipment, including equipment for oil or natural gas throughput measuring, leak detection, emergency shutdown, and the alarm system.

(7) The personnel capacity of each deepwater port pumping platform complex.

(s) *Refurbished OCS facilities and co-located fixed offshore components.*

(1) A description and preliminary design drawing for each such facility or component.

(2) The design criteria, developed under part 149 of this chapter, to which each facility or component will be designed and built or modified;

(3) The design standards and codes to be used;

(4) The title of each recommended engineering practice to be followed;

(5) A description of the following equipment to be installed or refurbished:

- (i) Navigational lighting;
- (ii) Safety equipment;
- (iii) Lifesaving equipment;
- (iv) Firefighting equipment;
- (v) Pollution prevention equipment,

excluding response equipment which must be outlined in the facility response plan;

- (vi) Waste treatment equipment; and
- (vii) Cathodic protection.

(6) A description and preliminary design drawing of the following:

- (i) The cargo pumping equipment;
- (ii) The cargo piping system;
- (iii) The control and instrumentation system; and

(iv) Any associated equipment, including equipment for oil or natural gas throughput measuring, leak detection, emergency shutdown, and the alarm system.

(7) The personnel capacity of each deepwater port pumping platform complex.

(t) *Information on offshore pipelines.*

(1) A description and preliminary design drawing of the marine pipeline, including:

- (i) Size;
- (ii) Throughput capacity;
- (iii) Length;
- (iv) Depth of cover; and
- (v) Protective devices.

(2) The design criteria to which the marine pipeline will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the metering system that will measure flow rate.

(6) Information concerning all submerged or buried pipelines that will be crossed by the offshore pipeline, and how each crossing will be made.

(7) Information on the pipeline that will connect to the port, including a detailed analysis that shows throughput and capacity rates of all pipelines involved in the transport of product to shore.

(u) *Information about onshore components.* To the extent known by the applicant:

(1) A description of the location, capacity, and ownership of all planned and existing onshore pipelines, storage facilities, refineries, petrochemical facilities, and transshipment facilities that will be served by the deepwater port. Crude oil or natural gas gathering lines and lines wholly within a deepwater port must be included in data about onshore components only if specifically required. Entry points and major connections between lines and with bulk purchasers must be included.

(2) A chart showing the location of all planned and existing facilities that will be served by the port, including:

- (i) Onshore pipelines;
- (ii) Storage facilities;
- (iii) Refineries;
- (iv) Petrochemical facilities; and

(v) Transshipment facilities.

(3) A copy of all proposals or agreements with existing and proposed refineries that will receive oil transported through the deepwater port, the location and capacity of each such refinery, and the anticipated volume of such oil to be refined by each such refinery.

(v) *Information on miscellaneous components.*

(1) A description of each radio station or other communications facility to be used during construction and operation of the deepwater port and its proposed concept of operation.

(2) A description of the radar navigation system to be used in operation of the deepwater port outlined in the operations manual.

(3) A description of the method that will be used for bunkering vessels using the deepwater port.

(4) A brief description of the type, size, and number of vessels that will be used in bunkering, mooring, and servicing the vessels using the deepwater port.

(5) A description and location of the shore-based support facilities, if any, that will be provided for vessels that will be used in bunkering, mooring, and servicing the vessels using the deepwater port; or that serve as offices or facilities in support of the deepwater port operations.

(6) A copy of the actual radio station license, or, if not available, a copy of the application sent to the Federal Communications Commission, if available.

(w) *Construction procedures.* A description of the method and procedures to be used in constructing each component of the deepwater port, for example shoreside fabrication, assembly and support, including anticipated dates of completion for each specific component during each phase of construction.

(x) *Operations manual.* A draft of the operations manual for the proposed port, containing the information under §150.15 of this chapter, must demonstrate the applicant's ability to operate the port safely and effectively. To the extent that circumstances are similar, this demonstration can be in the form of evidence appended to the

draft operations manual of the applicant's participation in the safe and effective management or operation of other offshore facilities, for example, evidence of compliance with Mineral Management Service requirements for those facilities. If the information required for the manual is not available, state why it is not and when it will be available.

(y) *Risk and consequence assessment.* Data to support an independent, site-specific analysis to assess the risks and consequences of accidental and intentional events that compromise cargo containment. At minimum, potential events that result in liquefied natural gas or oil spill, vapor dispersion and/or fire will be analyzed. The Coast Guard will utilize validated models, for example computational fluid dynamics or an equivalent model. The applicant may consult with Commandant (G-P) to ensure that appropriate assessment procedures are used.

(z) *Environmental evaluation.* An analysis, sufficient to meet the requirements of the National Environmental Policy Act, and as outlined in subpart G of this part, of the potential impacts on the natural and human environments, including sufficient information that complies with all applicable Federal, tribal, and State requirements for the protection of the environment.

(aa) *Aids to navigation.*

(1) For each proposed aid to navigation, the proposed position of the aid, described by latitude and longitude coordinates to the nearest second or tenth of a second, as determined from the largest scale chart of the area in which the aid is to be located. Specify latitude and longitude to a level obtained by visual interpolation between the finest graduation of the latitude and longitude scales on the chart.

(2) For each proposed obstruction light and rotating lit beacon:

- (i) Color;
- (ii) Characteristic;
- (iii) Effective intensity;
- (iv) Height above water; and
- (v) General description of the illumination apparatus.

(3) For each proposed sound signal on a structure, a general description of the apparatus.

(4) For each proposed buoy:

- (i) Shape;
- (ii) Color;
- (iii) Number or letter;
- (iv) Depth of water in which located; and
- (v) General description of any light and/or sound signal apparatus on the buoy.

(5) For the proposed radar beacon, or RACON, height above water and a general description of the apparatus.

(bb) *National Pollutant Discharge Elimination System (NPDES).* A copy of the NPDES Application for Permit to Discharge Short Form D, for applying for a discharge permit from the Environmental Protection Agency (EPA) and any accompanying studies and analyses. If complete information is not available by the time MARAD must either approve or deny the application for a designated application area under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the applicant receiving the required discharge permit from the EPA before the start of any discharge requiring such a permit. The issuance of the permit demonstrates that all potential water discharges have been satisfactorily analyzed and water quality control measures implemented to mitigate discharges to meet NPDES.

(cc) *Structures' placement and the discharge of dredged or fill material.* The information required to obtain a Department of the Army permit for placement of structures and the discharge of dredged or fill material.

(dd) *Additional Federal authorizations.* All other applications for Federal authorizations not listed elsewhere in this subpart that are required for ownership, construction, and operation of a deepwater port.

(ee) *Sworn statement.* A statement that the information in the application is true must be placed at the end of the application, sworn to before a notary public, and signed by a responsible applicant official.

#### § 148.107 What additional information may be required?

(a) The Commandant (G-P), in coordination with MARAD, may require the applicant or the applicant's affiliates to file, as a supplement to the application, any analysis, explanation, or

other information he or she deems necessary.

(b) The Commandant (G-P) may require the applicant or the applicant's affiliates to make available for Coast Guard examination, under oath or for interview, persons having, or believed to have, necessary information.

(c) The Commandant (G-P) may set a deadline for receiving the information.

(1) If the applicant states that the required information is not yet available but will be at a later date, the Commandant (G-P) may specify a later deadline.

(2) If a requirement is not met by a deadline fixed under this paragraph, the Commandant (G-P), in coordination with MARAD, may determine whether compliance with the requirement is important to processing the application within the time prescribed by the Act.

(3) If the requirement is important to processing the application within the time limit set by the Act, the Commandant (G-P) may recommend to the Maritime Administrator that he or she either not approve the application or suspend it indefinitely. The deadline for the Administrator's review under the Act is extended for a period of time equal to the time of the suspension.

**§ 148.108 What if a Federal or State agency or other interested party requests additional information?**

(a) Any Federal or State agency or other interested person may recommend that the applicant provide information that is not specified by this subchapter.

(b) Recommendations must state briefly why the information is needed.

(c) The Commandant (G-P) must receive the request prior to the closing dates for the comment periods for scoping, and the draft or final environmental impact statement or environmental assessment. MARAD will consider the request before making a final decision on whether or not to approve the license application.

(d) The Commandant (G-P) will consider whether:

(1) The information requested is essential for processing the license application; and

(2) The time and effort required by the applicant in gathering the information will result in an undue delay in the application process.

(e) The Commandant (G-P) may discuss the recommendation with the recommending person and the applicant prior to issuing a determination.

**§ 148.110 How do I prepare my application?**

(a) Any person may confer with the Commandant (G-P) concerning requirements contained in this rule for the preparation of an application or the requirements of this subchapter.

(b) The applicant may incorporate, by clear and specific reference in the application:

(1) Standard reference material that the applicant relied on that is readily available to Federal and State agencies;

(2) Current information contained in previous applications or reports that the applicant has submitted to the application staff; or

(3) Current information contained in a tariff, report, or other document previously filed for public record with the Surface Transportation Board or the Securities and Exchange Commission, if:

(i) A certified true and complete copy of the document is attached to each copy of the application as required by § 148.115(a);

(ii) The date of filing and the document number are on the cover of the document; and

(iii) Any verification or certification required for the original filing, other than from auditors or other independent persons, is dated no earlier than 30 days before the date of the application.

**§ 148.115 How many copies of the application must I send and where must I send them?**

Send the following copies of the application:

(a) Two printed copies and three electronic versions to the Commandant (G-PSO), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

**§ 148.125**

(b) Two printed copies and two electronic versions to the MARAD Administrator, 400 7th Street SW., Washington, DC 20590.

(c) One copy to the U.S. Army Corps of Engineers District Office having jurisdiction over the proposed port. For the address, see *http://www.usace.army.mil/*.

(d) Additional printed and electronic copies for distribution to Federal, tribal, and State regulatory agencies involved in reviewing the application in accordance with the needs of each agency.

**§ 148.125 What are the application fees?**

(a) The applicant must submit a non-refundable application fee of \$350,000 with each application for a license. If additional information is necessary to make an application complete, no additional application fee is required.

(b) The costs incurred by the Federal Government in processing an application will be charged to the application fee until it is exhausted. If the fee is exhausted and the Federal Government incurs further processing costs, the applicant will be charged for the additional costs. The Commandant (G-P) will periodically advise the applicant of the status of expenses incurred during the application process.

(c) Additional costs attributable to processing a deepwater port license application and post-license activities, for example the engineering plan review or development of the final operations manual, are due when they are assessed, and must be paid by the applicant prior to commencing operation of the deepwater port.

(d) Application fees and additional costs assessed under this section must be made payable to the United States Treasury, and submitted to the Commandant (G-P).

**33 CFR Ch. I (7-1-08 Edition)**

**Subpart C—Processing Applications**

**GENERAL**

**§ 148.200 What is the purpose of this subpart?**

This subpart prescribes the requirements for processing an application for a deepwater port license.

It includes the procedures for:

- (a) Maintaining the docket;
- (b) Designating adjacent coastal states;
- (c) Holding informal and formal public hearings; and
- (d) Approving or denying an application.

**§ 148.205 How are documents related to the application maintained?**

(a) The Commandant (G-P) maintains the docket for each application.

(1) The docket contains a copy of all documents filed or issued as part of the application process.

(2) Recommendations submitted by Federal departments and agencies under 33 U.S.C. 1504(e)(2) are docketed when they are received.

(3) Copies of applicable National Environmental Policy Act documents prepared under 33 U.S.C. 1504(f) are docketed when they are sent to the Environmental Protection Agency.

(b) For a document designated as protected from disclosure under 33 U.S.C. 1513(b), the Commandant (G-P):

(1) Prevents the information in the document from being disclosed, unless the Commandant (G-P) states that the disclosure is not inconsistent with 33 U.S.C. 1513(b); and

(2) Keeps a record of all individuals who have a copy of the document.

**§ 148.207 How and where may I view docketed documents?**

(a) All material in a docket under § 148.205 is available to the public for inspection and copying at Commandant (G-P) at the address under “Commandant (G-P)” in § 148.5, except for:

- (1) Contracts under 33 U.S.C. 1504(c)(2)(B) for the construction or operation of a deepwater port; and

(2) Material designated under paragraph (b) of this section as a trade secret, or commercial or financial information that is claimed to be privileged or confidential.

(b) A person submitting material that contains either a trade secret or commercial or financial information under paragraph (a)(2) of this section must designate those portions of the material that are privileged or confidential. Section 148.221 contains procedures for objecting to these claims.

(c) Docketed material for each deepwater port project is also available to the public electronically at the Department of Transportation Docket Management System Web site at <http://www.dot.dms.gov>. The projects are also listed by name and the assigned docket number at the G-PSO-5 Web site: <http://www.uscg.mil/hq/g-m/mso/mso5.htm>.

**§ 148.209 How is the application processed?**

The Commandant (G-P), in cooperation with the Maritime Administrator, processes each application and the Maritime Administration publishes the notice of application under 33 U.S.C. 1504(c) in the FEDERAL REGISTER. Upon publication of a notice of application, the Commandant (G-P) ensures delivery of copies of the application to:

(a) Each Federal agency with jurisdiction over any aspect of ownership, construction, or operation of deepwater ports. A complete listing of the Federal agencies involved with deepwater port licensing is outlined in the Deepwater Port Interagency MOU available at the following hyperlink: [http://www.uscg.mil/hq/G-M/mso/docs/dwp\\_white\\_house\\_task\\_force\\_energy\\_streamlining.pdf](http://www.uscg.mil/hq/G-M/mso/docs/dwp_white_house_task_force_energy_streamlining.pdf).

(b) Each adjacent coastal State, including relevant State and tribal agencies in those States.

**§ 148.211 What must I do if I need to change my application?**

(a) If at any time before the Secretary approves or denies an application, the information in it changes or becomes incomplete, the applicant must promptly submit the changes or additional information in the manner set forth in § 148.115 of this part.

(b) The Coast Guard may determine that the change or required information is of such magnitude that it warrants submission of a complete revised application.

**§ 148.213 How do I withdraw my application?**

The applicant may withdraw an application at any time before the proceeding is terminated by delivering or mailing notice of withdrawal to the Commandant (G-P) for docketing.

**§ 148.215 What if a port has plans for a deep draft channel and harbor?**

(a) If a State port will be directly connected by pipeline to a proposed deepwater port, and has existing plans for a deep draft channel and harbor, a representative of the port may request a determination under 33 U.S.C. 1503(d).

(b) The request must be sent, in writing, to the Commandant (G-P) within 30 days after the date that the notice of application for the deepwater port is published in the FEDERAL REGISTER.

(c) The request must contain:

(1) A signature of the highest official of the port submitting the request;

(2) A copy of the existing plans for the construction of a deep draft channel and harbor;

(3) Certification that the port has an active study by the Secretary of the Army for the construction of a deep draft channel and harbor, or that the port has an application pending for a permit under 33 U.S.C. 403 for the construction;

(4) Any available documentation on:

(i) Initial costs, by phases if development is staged, for the proposed onshore project, including dredging, ship terminal, and attendant facilities;

(ii) Estimated annual operating expenses, by phases if development is staged, including labor, for 30 years for all elements of the project;

(iii) Estimated completion time for all elements of the project;

(iv) Estimated vessel traffic volume, and the volume and variety of the tonnage;

(v) Potential traffic congestion conditions in the port, and the port's ability to control vessel traffic as a result of the proposed dredging project;

**§ 148.217**

**33 CFR Ch. I (7-1-08 Edition)**

(vi) Estimated economic benefits of the project, including:

- (A) Economic contribution to the local and regional area;
- (B) Induced industrial development;
- (C) Increased employment; and
- (D) Increases in tax revenues;

(vii) Environmental and social impacts of the project on the local and regional community; and

(viii) An estimate of the economic impact that the deepwater port license will have on the proposed project.

(d) A statement whether the port seeks a determination that the port best serves the national interest.

**§ 148.217 How can a State be designated as an adjacent coastal State?**

(a) Adjacent coastal States are named in the notice of application published in the FEDERAL REGISTER. However, a State not named as an adjacent coastal State in the notice may request to be designated as one if the environmental risks to it are equal to or greater than the risks posed to a State directly connected by pipeline to the proposed deepwater port.

(b) The request must:

(1) Be submitted in writing to the Commandant (G-P) within 14 days after the date of publication of the notice of application in the FEDERAL REGISTER;

(2) Be signed by the Governor of the State;

(3) List the facts and any available documentation or analyses concerning the risk of damage to the coastal environment of the State; and

(4) Explain why the State believes the risk of damage to its coastal environment is equal to or greater than the risk to a State connected by a pipeline to the proposed deepwater port.

(c) Upon receipt of a request, the Commandant (G-P) will send a copy of the State's request to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and ask for the Administrator's recommendations within an amount of time that will allow the Commandant (G-P) and the MARAD Administrator 45 days from receipt of the request to determine the matter.

(d) If after receiving NOAA's recommendations the Commandant (G-P), in concurrence with MARAD Administrator, determines that the State should be considered an adjacent coastal State, the Commandant (G-P), in concurrence with the MARAD Administrator, will so designate it. If the Commandant (G-P), in concurrence with the MARAD Administrator, denies the request, he or she will notify the requesting State's Governor of the denial.

**§ 148.221 How do I claim, or object to a claim, that required information is privileged?**

(a) Any person may claim that specific information required pursuant to this part should be withheld because it is privileged, and any person can object to that claim.

(b) Requests or objections must be submitted to the Commandant (G-P) in writing, with sufficient specificity to identify the information at issue, and to show why it should or should not be considered privileged.

(c) The Commandant (G-P) determines whether to grant or deny a claim of privilege.

(d) Submission of a claim stays any deadline for providing the information at issue, unless the claim is made pursuant to the protection for confidential information that is provided by 33 U.S.C. 1513(b), in which case deadlines are not stayed. The Commandant (G-P) may also determine that the information at issue is so material that processing of the application must be suspended pending the determination of the claim.

**PUBLIC HEARINGS OR MEETINGS**

**§ 148.222 When must public hearings or meetings be held?**

(a) Before a license is issued, at least one public license hearing under 33 U.S.C. 1504(g) must be held in each adjacent coastal State. Other Federal statutes and regulations may impose additional requirements for public hearings or meetings, and if not otherwise prohibited, a hearing under this paragraph may be consolidated with any such additional hearing or meeting.

(b) The Commandant (G–P) or the MARAD Administrator will publish a notice of public hearings or meetings in the FEDERAL REGISTER, and will mail or deliver a copy of the notice to the applicant, to each adjacent coastal State, and to all who request a copy.

(c) Anyone may attend a public hearing or meeting and provide relevant oral or written information. The presiding officer may limit the time for providing oral information.

**§ 148.227 How is a public hearing or meeting reported?**

(a) After completion of a public hearing or meeting, the presiding officer forwards a report on the hearing or meeting to the Commandant (G–P) for docketing.

(b) The report must contain at least:

- (1) An overview of the factual issues addressed;
- (2) A transcript or recording of the hearing or meeting; and
- (3) A copy of all material submitted to the presiding officer.

(c) During the hearing or meeting, the presiding officer announces the information that the report must contain.

FORMAL HEARINGS

**§ 148.228 What if a formal evidentiary hearing is necessary?**

(a) After all public meetings under § 148.222 of this part are concluded, the Commandant (G–PSO), in coordination with the MARAD Administrator, will consider whether there are one or more specific and material factual issues that may be resolved by a formal evidentiary hearing.

(b) If the Commandant (G–PSO), in coordination with the MARAD Administrator, determines that one or more issues under paragraph (a) of this section exist, the Coast Guard will hold at least one formal evidentiary hearing under 5 U.S.C. 554 in the District of Columbia.

(c) The Commandant (G–PSO) files a request for assignment of an administrative law judge (ALJ) with the ALJ Docketing Center. The Chief ALJ designates an ALJ or other person to conduct the hearing.

(d) The recommended findings and the record developed in a hearing under

paragraph (b) of this section are considered by the MARAD Administrator in deciding whether to approve or deny a license.

**§ 148.230 How is notice of a formal hearing given?**

(a) The Commandant (G–P) publishes a notice of the hearing in the FEDERAL REGISTER and sends a notice of the hearing to the applicant, to each adjacent coastal State, and to each person who requests such a notice.

(b) The notice of the hearing includes the applicant's name, the name of the ALJ assigned to conduct the hearing, a list of the factual issues to be resolved, the address where documents are to be filed, and the address where a copy of the rules of practice, procedure, and evidence to be used at the hearing is available.

**§ 148.232 What are the rules for a formal hearing?**

(a) The Commandant (G–P) determines the rules for each formal hearing. Unless otherwise specified in this part, the Commandant (G–P) applies the rules of practice, procedure, and evidence in part 20 of this chapter.

(b) The Commandant (G–P) sends a written copy of the procedure to the applicant, each person intervening in the proceedings, and each person who requests a copy.

**§ 148.234 What are the limits of an Administrative Law Judge (ALJ)'s jurisdiction?**

(a) An ALJ's jurisdiction begins upon assignment to a proceeding.

(b) An ALJ's jurisdiction ends after the recommended findings are filed with the Commandant (G–P) or immediately after the ALJ issues a notice of withdrawal from the proceeding.

**§ 148.236 What authority does an Administrative Law Judge (ALJ) have?**

When assigned to a formal hearing, an ALJ may:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (c) Issue rules of procedure for written evidence;
- (d) Rule on offers of proof and receive evidence;

**§ 148.238**

- (e) Examine witnesses;
- (f) Rule on motions of the parties;
- (g) Suspend or bar an attorney from representing a person in the proceeding for unsuitable conduct;
- (h) Exclude any person for disruptive behavior during the hearing;
- (i) Set the hearing schedule;
- (j) Certify questions to the Commandant (G-P);
- (k) Proceed with a scheduled session of the hearing in the absence of a party who failed to appear;
- (l) Extend or shorten a non-statutorily imposed deadline under this subpart within the 240-day time limit for the completion of public hearings in 33 U.S.C. 1504(g);
- (m) Set deadlines not specified in this subpart or the Deepwater Ports Act; and
- (n) Take any other action authorized by or consistent with this subpart, the Deepwater Ports Act, or 5 U.S.C. 551-559.

**§ 148.238 Who are the parties to a formal hearing?**

The parties to a formal hearing are:

- (a) The applicant;
- (b) The Commandant (G-P); and
- (c) Any person intervening in the proceedings.

**§ 148.240 How does a State or a person intervene in a formal hearing?**

- (a) Any person or adjacent coastal State may intervene in a formal hearing.
- (b) A person must file a petition of intervention within 10 days of notice that the formal hearing is issued. The petition must:
  - (1) Be addressed to the *Administrative Law Judge* (ALJ) Docketing Center;
  - (2) Identify the issues and the petitioner's interest in those issues; and
  - (3) Designate the name and address of a person who can be served if the petition is granted.
- (c) An adjacent coastal State need only file a notice of intervention with the ALJ Docketing Center.
- (d) The ALJ has the authority to limit the scope and period of intervention during the proceeding.
- (e) If the ALJ denies a petition of intervention, the petitioner may file a notice of appeal with the ALJ Dock-

**33 CFR Ch. I (7-1-08 Edition)**

eting Center within 7 days of the denial.

- (1) A brief may be submitted with the notice of appeal.
- (2) Parties who wish to file a brief in support of or against the notice of appeal may do so within 7 days of filing the notice.
- (f) The Commandant (G-P) will rule on the appeal. The ALJ does not have to delay the proceedings for intervention appeals.

**§ 148.242 How does a person who is not a party to a formal hearing present evidence at the hearing?**

- (a) A person who is not a party to a formal hearing may present evidence at the hearing if he or she sends a petition to present evidence to the ALJ Docketing Center before the beginning of the formal hearing. The petition must describe the evidence that the person will present and show its relevance to the issues listed in the notice of formal hearing.
- (b) If a petition is granted, the ruling will specify which evidence is approved to be presented at the hearing.

**§ 148.244 Who must represent the parties at a formal hearing?**

- (a) All organizations that are parties to the proceeding must be represented by an attorney. Individuals may represent themselves.
- (b) Any attorney representing a party to the proceeding must file a notice of appearance according to § 20.301(b) of this chapter.
- (c) Each attorney must be in good standing and licensed to practice before a court of the United States or the highest court of any State, territory, or possession of the United States.

**§ 148.246 When is a document considered filed and where should I file it?**

- (a) If a document to be filed is submitted by mail, it is considered filed on the date it is postmarked. If a document is submitted by hand delivery or electronically, it is considered filed on the date received by the clerk.
- (b) File all documents and other materials related to an administrative proceeding at the U.S. Coast Guard Administrative Law Center, Attention:

Hearing Docket Clerk, room 412, 40 South Gay Street, Baltimore, MD, 21201-4022.

**§ 148.248 What happens when a document does not contain all necessary information?**

Any document that does not satisfy the requirements in §§ 20.303 and 20.304 of this chapter will be returned to the person who submitted it with a statement of the reasons for denial.

**§ 148.250 Who must be served before a document is filed?**

Before a document may be filed by any party, it first must be served upon:

- (a) All other parties; and
- (b) The Commandant (G-P).

**§ 148.252 What is the procedure for serving a subpoena?**

(a) A party may submit a request for a subpoena to the Administrative Law Judge (ALJ). The request must show the relevance and scope of the evidence sought.

(b) Requests should be submitted sufficiently in advance of the hearing so that exhibits and witnesses can be included in the lists required by § 20.601 of this chapter, but may be submitted later and before the end of the hearing, if good cause is shown for the late submission.

(c) A request for a subpoena must be submitted to the ALJ.

(d) A proposed subpoena, such as the form in <http://cgweb.comdt.uscg.mil/g-cj/subpoena.doc>, must be submitted with the request. If you do not use this form, the proposed subpoena must contain:

- (1) The docket number of the proceedings;
- (2) The captions “Department of Homeland Security,” “Coast Guard,” and “Licensing of deepwater port for coastal waters off (insert name of the coastal State closest to the proposed deepwater port and the docket number of the proceeding)”;
- (3) The name and the address of the office of the ALJ;
- (4) For a subpoena giving testimony, a statement commanding the person to whom the subpoena is directed to attend the formal hearing and give testimony;

(5) For a subpoena producing documentary evidence, a statement commanding the person to produce designated documents, books, papers, or other tangible things at a designated time or place; and

(6) An explanation of the procedure in § 20.309(d) of this chapter and paragraph (h) of this section for quashing a subpoena.

(e) The procedure for serving a subpoena must follow Rule 45 of the Federal Rules of Civil Procedure, unless the ALJ authorizes another procedure.

(f) The witness fees for a subpoenaed witness are the same as the fees for witnesses subpoenaed in U.S. District Courts. The person requesting the subpoena must pay these fees.

(g) When serving a subpoena, a party must include witness fees in the form of a check to the individual or organization for one day plus mileage, or, in the case of a government-issued subpoena, a form SF-1157 so a witness may receive fees and mileage reimbursement.

(h) Any person served with a subpoena has 10 days from the time of service to move to quash the subpoena.

(i) If a person does not comply with a subpoena, the ALJ decides whether judicial enforcement of the subpoena is necessary. If the ALJ decides it is, the Commandant (G-P) reviews this decision.

**§ 148.254 How is a hearing transcript prepared?**

(a) Under the supervision of the Administrative Law Judge (ALJ), the reporter prepares a verbatim transcript of the hearing. Nothing may be deleted from the transcript, unless ordered by the ALJ and noted in the transcript.

(b) After a formal hearing is completed, the ALJ certifies and forwards the record, including the transcript, to the clerk to be placed into the docket.

(c) At any time within the 20 days after the record is docketed, the ALJ may make corrections to the certified transcript. When corrections are filed, they are attached as appendices.

(d) Any motion to correct the record must be submitted within 10 days after the record is docketed.

**§ 148.256**

**§ 148.256 What happens at the conclusion of a formal hearing?**

After closing the record of a formal hearing, the Administrative Law Judge (ALJ) prepares a recommended finding on the issues that were the subject of the hearing. The ALJ submits that finding to the Commandant (G-P).

APPROVAL OR DENIAL OF THE  
APPLICATION

**§ 148.276 When must the application be approved or denied?**

(a) In 33 U.S.C. 1504, the Deepwater Port Act provides strict timelines for action on a license application, which, if closely observed, can lead to action in just under 1 year. The Coast Guard, in concurrence with MARAD, can suspend the process if an applicant fails to provide timely information or requests additional time to comply with a request.

(b) The Coast Guard must conduct public hearings in each adjacent Coastal State within 240 days of publishing the notice of receipt of a deepwater port license application.

(c) MARAD issues a record of decision (ROD) approving or denying a license application within 90 days after the final public hearing. Actual issuance of a license may not take place until certain conditions imposed by the ROD have been met. Those conditions may include how the applicant must address design, construction, installation, testing, operations, and decommissioning of the port, or meet the requirements of other agencies.

**§ 148.277 How may Federal agencies and States participate in the application process?**

(a) Under §148.209, Federal agencies and adjacent coastal States are sent copies of the application. The agencies and States are encouraged to begin submitting their comments at that time.

(b) To be considered, comments from Federal agencies and adjacent coastal States must be received by the Commandant (G-P) within 45 days after the close of the public hearing period specified in §148.276(b). Separate comment periods will apply to the review of documents created during the National

**33 CFR Ch. I (7-1-08 Edition)**

Environmental Policy Act process. Both the Commandant (G-P) and MARAD review the comments received.

(c) Comments should identify problems, if any, and suggest possible solutions.

**§ 148.279 What are the criteria for approval or denial of an application?**

The criteria for approving or denying a license application appear in 33 U.S.C. 1503.

**§ 148.281 What happens when more than one application is submitted for a deepwater port in the same application area?**

(a) When more than one application is submitted for a deepwater port in the same application area under 33 U.S.C. 1504(d), only one application is approved. Except as provided in paragraph (b) of this section, applicants receive priority in the following order:

(1) An adjacent coastal State or combination of States, political subdivision of the State, or an agency or instrumentality, including a wholly owned corporation of the State;

(2) A person that is:

(i) Not engaged in producing, refining, or marketing oil;

(ii) Not an affiliate of a person engaged in producing, refining, or marketing oil; or

(iii) Not an affiliate of a person engaged in producing, refining, or marketing oil; and then

(3) Any other applicant.

(b) MARAD may also approve one of the proposed deepwater ports if it determines that that port will best serve the national interest. In making this determination, MARAD considers:

(1) The degree to which each deepwater port will affect the environment, as determined under the review criteria in subpart G to this part;

(2) The differences between the anticipated completion dates of the deepwater ports; and

(3) The differences in costs for construction and operation of the ports that would be passed on to consumers of oil.

(c) This section does not apply to applications for natural gas deepwater ports.

**§ 148.283 When is the application process stopped before the application is approved or denied?**

The Commandant (G–P) recommends to MARAD that the application process be suspended before the application is approved or denied if:

(a) All applications are withdrawn before MARAD approves one of them; or

(b) There is only one application; it is incomplete, and the applicant does not respond to a request by the Commandant (G–P) for further information, as per § 148.107.

**Subpart D—Licenses****§ 148.300 What does this subpart concern?**

This subpart concerns the license for a deepwater port and the procedures for transferring, amending, suspending, reinstating, revoking, and enforcing a license.

**§ 148.305 What is included in a deepwater port license?**

A deepwater port license contains information about the licensee and the port, and any conditions of its own or of another agency that may be described by MARAD in the license. Licenses are issued in conformance with the Deepwater Ports Act of 1974, as amended, and with rules and policies of MARAD that implement that Act.

**§ 148.307 Who may consult with the Commandant (G–P) and the MARAD Administrator on developing the proposed conditions of a license?**

Federal agencies, the adjacent coastal States, and the owner of the deepwater port may consult with the Commandant (G–P) and the MARAD Administrator on the conditions of the license being developed under 33 U.S.C. 1503(e).

**§ 148.310 How long does a license last?**

Each license remains in effect indefinitely subject to the following:

(a) If it is suspended or revoked by MARAD;

(b) If it is surrendered by the owner; or

(c) As otherwise provided by condition of the license.

**§ 148.315 How is a license amended, transferred, or reinstated?**

(a) MARAD may amend, transfer, or reinstate a license if it finds that the amendment, transfer, or reinstatement is consistent with the requirements of the Act and this subchapter.

(b) The owner must submit a request for an amendment, transfer, or reinstatement to the Commandant (G–P) or the MARAD Administrator.

**§ 148.320 How is a license enforced, suspended, or revoked?**

MARAD may enforce, suspend, or revoke a license under 33 U.S.C. 1507(c).

**§ 148.325 How soon after port decommissioning must the licensee initiate removal?**

Within 2 years of port decommissioning, the licensee must initiate removal procedures. The Commandant (G–P) will advise and coordinate with appropriate Federal agencies and the States concerning activities covered by this section.

**Subpart E—Site Evaluation and Pre-Construction Testing****§ 148.400 What does this subpart do?**

(a) This subpart prescribes requirements under 33 U.S.C. 1504(b) for the activities that are involved in site evaluation and pre-construction testing at potential locations for deepwater ports and that may:

(1) Adversely affect the environment;

(2) Interfere with authorized uses of the OCS; or

(3) Pose a threat to human health and welfare.

(b) For the purpose of this subpart, “site evaluation and pre-construction testing” means studies performed at potential deepwater port locations, including:

(1) Preliminary studies to determine the feasibility of a site;

(2) Detailed studies of the topographic and geologic structure of the ocean bottom to determine its ability to support offshore structures and other equipment; and

(3) Studies done for the preparation of the environmental analysis required under § 148.105.

**§ 148.405 What are the procedures for notifying the Commandant (G-P) of proposed site evaluation and pre-construction testing?**

(a) Any person who wants to conduct site evaluation and pre-construction testing at a potential site for a deep-water port must submit a written notice to the Commandant (G-P) at least 30 days before the beginning of the evaluation or testing. The Commandant (G-P) advises and coordinates with appropriate Federal agencies and the States concerning activities covered by this subpart.

(b) The written notice must include the following:

(1) The names of all parties participating in the site evaluation and pre-construction testing;

(2) The type of activities and the way they will be conducted;

(3) Charts showing where the activities will be conducted and the locations of all offshore structures, including pipelines and cables, in or near the proposed area;

(4) The specific purpose for the activities;

(5) The dates when the activities will begin and end;

(6) The available data on the environmental consequences of the activities;

(7) A preliminary report, based on existing data, of the historical and archeological significance of the area where the proposed activities are to take place. The report must include contacts made with any appropriate State liaison officers for historic preservation; and

(8) Additional information, if necessary, in individual cases.

(c) For the following activities, the notice only needs the information required in paragraphs (b)(1), (b)(2), and (b)(5) of this section, as well as a general indication of the proposed location and purpose of the activities, including:

(1) Gravity and magneto-metric measurements;

(2) Bottom and sub-bottom acoustic profiling, within specified limits, without the use of explosives;

(3) Sediment sampling of a limited nature using either core or grab samplers, and the specified diameter and depth to which the sampling would

penetrate if geological profiles indicate no discontinuities that may have archeological significance;

(4) Water and biotic sampling if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if the sampling is permitted by another Federal agency;

(5) Meteorological measurements, including the setting of instruments;

(6) Hydrographic and oceanographic measurements, including the setting of instruments; and

(7) Small diameter core sampling to determine foundation conditions.

(d) A separate written notice is required for each site.

**§ 148.410 What are the conditions for conducting site evaluation and pre-construction testing?**

(a) No person may conduct site evaluation and pre-construction testing unless it complies with this subpart and other applicable laws.

(b) Measures must be taken to prevent or minimize the effect of activities under § 148.400(a).

**§ 148.415 When conducting site evaluation and pre-construction testing, what must be reported?**

(a) When conducting site evaluation or pre-construction testing, the following must be immediately reported by any means to the Commandant (G-P):

(1) Any evidence of objects of cultural, historical, or archeological significance;

(2) Any adverse effect on the environment;

(3) Any interference with authorized uses of the OCS;

(4) Any threat to human health and welfare; and

(5) Any adverse effect on an object of cultural, historical, or archeological significance.

(b) Within 120 days after the site evaluation or pre-construction testing, a final written report must be submitted to the Commandant (G-P) that contains:

(1) A narrative description of the activities performed;

(2) A chart, map, or plat of the area where the activities occurred;

(3) The dates when the activities were performed;

(4) Information on the adverse effects of items reported under paragraph (a) of this section;

(5) Data on the historical or archeological significance of the area where the activities were conducted, including a report by an underwater archeologist; and

(6) Any additional information required by the Commandant (G-P) on a case-by-case basis.

**§ 148.420 When may the Commandant (G-P) suspend or prohibit site evaluation or pre-construction testing?**

(a) The Commandant (G-P) may order, either in writing or orally, with written confirmation, the prohibition or immediate suspension of any activity related to site evaluation or pre-construction testing when the activity threatens to harm:

- (1) Human life;
- (2) Biota;
- (3) Property;
- (4) Cultural resources;
- (5) Any valuable mineral deposits; or
- (6) The environment.

(b) The Commandant (G-P) will consult with the applicant on measures to remove the cause for suspension.

(c) The Commandant (G-P) may lift a suspension after the applicant assures the Commandant (G-P) that the activity will no longer cause the threat on which the suspension was based.

**Subpart F—Exemption From or Adjustments to Requirements in This Subchapter**

**§ 148.500 What does this subpart do?**

This subpart provides procedures for requesting an exemption from a requirement in this subchapter. The Commandant (G-P) and MARAD coordinate in evaluating requests for exemption from the requirements in this subchapter.

**§ 148.505 How do I apply for an exemption?**

(a) Any person required to comply with a requirement in this subchapter may submit a petition for exemption from that requirement.

(b) The petition must be submitted in writing to the Commandant (G-P) and the MARAD Administrator.

(c) The Commandant (G-P) may require the petition to provide an alternative to the requirement.

**§ 148.510 What happens when a petition for exemption involves the interests of an adjacent coastal State?**

If the petition for exemption concerns an adjacent coastal State, the Commandant (G-P) forwards the petition to the Governor of the State for the Governor's recommendation.

**§ 148.515 When is an exemption allowed?**

The Commandant (G-P) may recommend that MARAD allow an exemption if he or she determines that:

(a) Compliance with the requirement would be contrary to public interest;

(b) Compliance with the requirement would not enhance safety or the health of the environment;

(c) Compliance with the requirement is not practical because of local conditions or because the materials or personnel needed for compliance are unavailable;

(d) National security or national economy justifies a departure from the rules; or

(e) The alternative, if any, proposed in the petition would:

(1) Ensure comparable or greater safety, protection of the environment, and quality of deepwater port construction, maintenance, and operation; and

(2) Be consistent with recognized principles of international law.

**§ 148.600 What is the limit of financial liability?**

The financial limit for liability for deepwater ports is set in accordance with 33 U.S.C. 2704.

**§ 148.605 How is the limit of liability determined?**

(a) The Coast Guard may lower the \$350,000,000 limit of liability for deepwater ports set by 33 U.S.C. 2704(a)(4), pursuant to paragraph (d) of that section, particularly for natural gas deepwater ports that will store or use oil in much smaller amounts than an oil deepwater port.

(b) Requests to adjust the limit of liability for a deepwater port must be submitted to the Commandant (G-P). Adjustments are established by a rule-making with public notice and comment that may take place concurrently with the processing of the deepwater port license application.

**Subpart G—Environmental Review Criteria for Deepwater Ports**

**§ 148.700 How does the Deepwater Port Act interact with other Federal and State laws?**

(a) Nothing in this subpart supersedes any Federal, tribal, or State requirements for the protection of the environment.

(b) The applicant must prepare and submit applications to each respective agency that requires a permit or license to operate the port.

(c) A list of Federal and State agencies that require certification includes, but is not limited to:

(1) The Environmental Protection Agency, for Clean Air Act and Clean Water Act permits;

(2) The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety; and

(3) The Mineral Management Service (MMS); or

(4) Both the Office of Pipeline Safety and MMS for pipeline approvals, and the appropriate State environmental agency or permitting agency.

**§ 148.702 How were the environmental review criteria developed?**

Under 33 U.S.C. 1505, the Commandant (G-P) must establish environmental review criteria for use in evaluating a proposed deepwater port. In developing these criteria, the Coast Guard considers the requirements for compliance with Federal and State mandates for the protection of the environment contained in, but not limited to, such guidance as published by:

(a) The Council on Environmental Quality in 40 CFR parts 1500-1508;

(b) Department of Homeland Security Directive 5100.1, Environmental Planning Program; and

(c) The Coast Guard in Commandant Instruction M16475.1D, National Environmental Policy Act Implementing

Procedures and Policy for Considering Environmental Impacts.

**§ 148.705 What is determined by the environmental evaluation?**

(a) The environmental criteria to be used in evaluating a license application are established by general consensus of expertise, scientific opinion, public interest, and institutional requirements, such as laws and regulations established for the protection of the environment. Criteria that may be established in future environmental regulations or other requirements to protect the environment will also be used.

(b) The environmental criteria to be used in evaluating a license application are applied to all relevant aspects of:

(1) The fabrication, construction, operation, and decommissioning phases of a deepwater port;

(2) The operations of the vessels that serve the port;

(3) The port's servicing and support activities;

(4) Shore-based construction and fabrication sites;

(5) Shoreside supporting facilities, if appropriate, for the proposed location; and

(6) The No Action alternative and other reasonable alternatives.

(c) The criteria are also applied in a manner that takes into account the cumulative effects of other reasonably foreseeable actions as outlined in § 148.707.

**§ 148.707 What type of criteria will be used in an environmental review and how will they be applied?**

(a) The license application will be reviewed for the deepwater port's effects on the environment and for the environment's effects on the port and any of its shoreside support facilities.

(b) The environmental evaluation will be applied to the phases of construction, operation, and decommissioning of the proposed location, and at least one alternative site. The evaluation will determine:

(1) The effect on the environment, including but not limited to:

(i) Impacts on endangered species;

(ii) Essential fish habitat;

(iii) Marine sanctuaries;

(iv) Archaeological, cultural and historic sites;

(v) Water and air;

(vi) Coastal zone management;

(vii) Coastal barrier resources; and

(viii) Wetlands and flood plains.

(2) The effect on oceanographic currents and wave patterns;

(3) The potential risks to a deepwater port from waves, winds, weather, and geological conditions, and the steps that can be taken to protect against or minimize these dangers; and

(4) The effect on human health and welfare, including socioeconomic impacts, environmental justice and protection of children from environmental health and safety risks.

**§ 148.708 Must the applicant's proposal reflect potential regulations?**

Although a regulation is of no effect until it has been officially promulgated, to minimize the subsequent impact that potential regulations may have on a licensee, an applicant can and should reflect reasonably foreseeable environmental regulations in planning, operating, and decommissioning a deepwater port.

**§ 148.709 How are these criteria reviewed and revised?**

The Commandant (G-P) periodically reviews and may revise these criteria. Reviews and revisions are conducted in accordance with §148.700 of this subpart. The criteria established are consistent with the National Environmental Policy Act.

**§ 148.710 What environmental conditions must be satisfied?**

(a) MARAD may issue a license to construct a deepwater port under the Act, with or without conditions, if certain specified conditions are met. The relevant environmental considerations include, but are not limited to, the following:

(1) Construction and operation of the deepwater port that will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency, environmental quality, protection from the threat of terrorist attack and other subversive activity against persons and property on

the port and the vessels and crews calling at the port; and

(2) Under the environmental review criteria in §148.707 of this subpart, the applicant has demonstrated that the deepwater port will be fabricated, constructed, operated, and decommissioned using the best available technology to prevent or minimize adverse impacts on the marine environment (33 U.S.C. 1503(c)(3), 1504(f) and 1505(a)(1)).

(b) Under 33 U.S.C. 1504(f), these criteria must be considered in the preparation of a single detailed environmental impact statement or environmental assessment for all timely applications covering a single application area. Additionally, 33 U.S.C. 1504(i)(3) specifies that if more than one application is submitted for an "application area," as defined in 33 U.S.C. 1504(d)(2), the criteria must be used, among other factors, in determining whether any one proposed deepwater port for oil clearly best serves the national interest.

(c) In accordance with 40 CFR 1502.9, the Commandant (G-P) will prepare a supplement to a final environmental impact statement if there is significant new information or circumstances relevant to environmental concerns and bearing on the deepwater port and related activities affecting its location site, construction, operation or decommissioning.

**§ 148.715 How is an environmental review conducted?**

The environmental review of a proposed deepwater port and reasonable alternatives consists of Federal, tribal, State, and public review of the following two parts:

(a) An evaluation of the proposal's completeness of environmental information and quality of assessment, probable environmental impacts, and identification of procedures or technology that might mitigate probable adverse environmental impacts through avoiding, minimizing, rectifying, reducing, eliminating, or compensating for those impacts; and

(b) An evaluation of the effort made under the proposal to mitigate its probable environmental impacts. This evaluation will assess the applicant's consideration of the criteria in

## § 148.720

## 33 CFR Ch. I (7-1-08 Edition)

§§ 148.720 through 148.740 of this subpart.

### § 148.720 What are the siting criteria?

In accordance with § 148.715(b), the proposed and alternative sites for the deepwater port will be evaluated on the basis of how well each:

- (a) Optimizes location to prevent or minimize detrimental environmental effects;
- (b) Minimizes the space needed for safe and efficient operation;
- (c) Locates offshore components in areas with stable sea bottom characteristics;
- (d) Locates onshore components where stable foundations can be developed;
- (e) Minimizes the potential for interference with its safe operation from existing offshore structures and activities;
- (f) Minimizes the danger posed to safe navigation by surrounding water depths and currents;
- (g) Avoids extensive dredging or removal of natural obstacles such as reefs;
- (h) Minimizes the danger to the port, its components, and tankers calling at the port from storms, earthquakes, or other natural hazards;
- (i) Maximizes the permitted use of existing work areas, facilities, and access routes;
- (j) Minimizes the environmental impact of temporary work areas, facilities, and access routes;
- (k) Maximizes the distance between the port, its components, and critical habitats including commercial and sport fisheries, threatened or endangered species habitats, wetlands, flood plains, coastal resources, marine management areas, and essential fish habitats;
- (l) Minimizes the displacement of existing or potential mining, oil, or gas exploration and production or transportation uses;
- (m) Takes advantage of areas already allocated for similar use, without overusing such areas;
- (n) Avoids permanent interference with natural processes or features that are important to natural currents and wave patterns; and

- (o) Avoids dredging in areas where sediments contain high levels of heavy metals, biocides, oil or other pollutants or hazardous materials, and in areas designated wetlands or other protected coastal resources.

### § 148.722 Should the construction plan incorporate best available technology and recommended industry practices?

Each applicant must submit a proposed construction plan. It must incorporate best available technology and recommended industry practices as directed in § 148.730.

### § 148.725 What are the design, construction and operational criteria?

In accordance with § 148.720(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

- (a) Reflect the use of best available technology in design, construction procedures, operations, and decommissioning;
- (b) Include safeguards, backup systems, procedures, and response plans to minimize the possibility and consequences of pollution incidents such as spills and discharges, while permitting safe operation with appropriate safety margins under maximum operating loads and the most adverse operating conditions;
- (c) Provide for safe, legal, and environmentally sound waste disposal, resource recovery, affected area reclamation, and enhanced use of spoil and waste;
- (d) Avoid permanent interference with natural processes or features that are important to natural currents and wave patterns;
- (e) Avoid groundwater drawdown or saltwater intrusion, and minimizes mixing salt, fresh, and brackish waters;
- (f) Avoid disrupting natural sheet flow, water flow, and drainage patterns or systems;
- (g) Avoid interference with biotic populations, especially breeding habitats or migration routes;
- (h) Maximize use of existing facilities;
- (i) Provide personnel trained in oil spill prevention at critical locations identified in the accident analysis;

(j) Provide personnel trained in oil spill mitigation; and

(k) Plan for safe and effective removal of the deepwater port in the event of its decommissioning.

**§ 148.730 What are the land use and coastal zone management criteria?**

In accordance with §148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Accord with existing and planned land use, including management of the coastal region, for which purpose the proposal must be accompanied by a consistency determination from appropriate State agencies for any designated adjacent coastal State;

(b) Adhere to proposed local and State master plans;

(c) Minimize the need for special exceptions, zoning variances, or non-conforming uses;

(d) Plan flood plain uses in ways that will minimize wetlands loss, flood damage, the need for federally-funded flood protection or flood relief, or any decrease in the public value of the flood plain as an environmental resource; and

(e) Avoid permanent alteration or harm to wetlands, and take positive steps to minimize adverse effects on wetlands.

**§ 148.735 What are other critical criteria that must be evaluated?**

In accordance with §148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Avoid detrimental effects on human health and safety;

(b) Pose no compromise to national security;

(c) Account for the historic, archeological, and cultural significance of the area, including any potential requirements for historical preservation;

(d) Minimize harmful impacts to minorities and children; and

(e) Plan for serious consideration of the proposal that offers the least potential for environmental harm to the region, or potential mitigation actions, when conflict exists between two or more proposed uses for a site.

**§ 148.737 What environmental statutes must an applicant follow?**

In constructing and operating a deepwater port, the port must comply with all applicable Federal, State, and tribal environmental statutes. For the purposes of information, a list of Federal environmental statutes and Executive Orders (E.O.s) that may apply includes but is not limited to: Abandoned Shipwreck Act (ASA), 43 U.S.C. 2102, *et. seq.*; American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996, *et. seq.*; Antiquities Act, 16 U.S.C. 433, *et. seq.*; Archeological and Historic Preservation Act (AHPA), 16 U.S.C. 469; Archeological Resources Protection Act (AHPA), 16 U.S.C. 470 aa-ll, *et. seq.*; Architectural Barriers Act, 42 U.S.C. 4151, *et. seq.*; Clean Air Act (CAA), Pub. L. 95-95, 42 U.S.C. 7401, *et. seq.*; Clean Water Act of 1977 (CWA), Pub. L. 95-217, 33 U.S.C. 1251, *et. seq.*; Coastal Barrier Resources Act (CBRA), Pub. L. 97-348, 16 U.S.C. 3510, *et. seq.*; Coastal Zone Management Act (CZMA), Pub. L. 92-583, 16 U.S.C. 1451, *et. seq.*; Community Environmental Response Facilitation Act (CERFA), 42 U.S.C. 9620, *et. seq.*; Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as Superfund, Pub. L. 96-510, 26 U.S.C. 4611, *et. seq.*; Consultation and Coordination With Indian Tribal Governments, E.O. 13175, 65 FR 67249; Coral Reef Protection, E.O. 13089, 63 FR 32701; Department of Transportation Act, Section 4(f), Pub. L. 89-670, 49 U.S.C. 303, Section 4(f), *et. seq.*; Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001-11050, *et. seq.*; Endangered Species Act of 1973 (ESA), Pub. L. 93-205, 16 U.S.C. 1531, *et. seq.*; Energy Efficiency and Water Conservation at Federal Facilities, E.O. 12902, 59 FR 11463; Environmental Effects Abroad of Major Federal Agencies, E.O. 12114, 44 FR 1957; Environmental Quality Improvement Act, Pub. L. 98-581, 42 U.S.C. 4371, *et. seq.*; Farmlands Protection Policy Act, Pub. L. 97-98, 7 U.S.C. 4201, *et. seq.*; Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, E.O. 12898, 59 FR 7629; Federal Compliance with Pollution Control Standards, E.O. 12088, 43 FR 47707; Federal Insecticide, Fungicide, and

Rodenticide Act, Pub. L. 86–139, 7 U.S.C. 135, *et. seq.*; Federal Records Act (FRA), 44 U.S.C. 2101–3324, *et. seq.*; Federalism, E.O. 13083, Fish and Wildlife Act of 1956, Pub. L. 85–888, 16 U.S.C. 742, *et. seq.*; Fish and Wildlife Coordination Act, (Pub. L. 85–624, 16 U.S.C. 661, *et. seq.*; Fisheries Conservation and Recovery Act of 1976, Pub. L. 94–265, 16 U.S.C. 1801, *et. seq.*; Flood Disaster Protection Act, 42 U.S.C. 4001, *et. seq.*; Flood Plain Management and Protection, E.O. 11988, 42 FR 26951; Greening the Government Through Leadership in Environmental Management, E.O. 13148, 65 FR 24595; 63 FR 49643; Historic Sites Act, 16 U.S.C. 46, *et. seq.*; Indian Sacred Sites, E.O. 13007, 61 FR 26771; Intergovernmental Review of Federal Programs E.O. 12372, 47 FR 30959; Invasive Species, E.O. 13112, 64 FR 6183; Locating Federal Facilities on Historic Properties in our Nation’s Central Cities, E.O. 13006, 61 FR 26071; Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996, 16 U.S.C. 1801, *et. seq.*; Marine Mammal Protection Act of 1972 (MMPA), Pub. L. 92–522, 16 U.S.C. 1361; Marine Protected Areas, E.O. 13158, 65 FR 24909; Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, 16 U.S.C. 1431, *et. seq.* and 33 U.S.C. U.S.C. 1401, *et. seq.*; Migratory Bird Treaty Act, 16 U.S.C. 703–712, *et. seq.*; National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, 42 U.S.C. 4321, *et. seq.*; National Historic Preservation Act of 1996 (NHPA), Pub. L. 89–665, 16 U.S.C. 470, *et. seq.*; Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001, *et. seq.*; Noise Control Act of 1972, Pub. L. 92–574, 42 U.S.C. 4901, *et. seq.*; Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101–13109, *et. seq.*; Protection and Enhancement of Cultural Environmental Quality, E.O. 11593, 36 FR 8921; Protection and Enhancement of Environmental Quality, E.O. 11514, 35 FR 4247; Protection of Children from Environmental Health and Safety Risks, E.O. 13045, 62 FR 19885; Protection of Wetlands, E.O. 11990, 42 FR 26961; Recreational Fisheries, E.O. 12962, 60 FR 307695; Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94–580, 42 U.S.C. 6901, *et. seq.*; Responsibilities of Federal Agencies to Protect

Migratory Birds, E.O. 13186, 66 FR 3853; Safe Drinking Water Act (SDWA), Pub. L. 93–523, 42, U.S.C. 201, *et. seq.*; Toxic Substances Control Act (TSCA), 7 U.S.C. 136, *et. seq.*; and Wild and Scenic Rivers Act, Pub. L. 90–542, 16 U.S.C. 1271, *et. seq.*

## PART 149—DEEPWATER PORTS: DESIGN, CONSTRUCTION, AND EQUIPMENT

### Subpart A—General

#### Sec.

- 149.1 What does this part do?
- 149.5 What definitions apply to this part?
- 149.10 Where can I obtain a list of Coast Guard-approved equipment?
- 149.15 What is the process for submitting alterations and modifications affecting the design and construction of a deepwater port?

### Subpart B—Pollution Prevention Equipment

- 149.100 What does this subpart do?
- 149.103 What are the requirements for discharge containment and removal material and equipment?
- 149.105 What are the requirements for the overflow and relief valves?
- 149.110 What are the requirements for pipeline end manifold shutoff valves?
- 149.115 What are the requirements for blank flange and shutoff valves?
- 149.120 What are the requirements for manually operated shutoff valves?
- 149.125 What are the requirements for the malfunction detection system?
- 149.130 What are the requirements for the cargo transfer system alarm?
- 149.135 What should be marked on the cargo transfer system alarm switch?
- 149.140 What communications equipment must be on a deepwater port?
- 149.145 What are the requirements for curbs, gutters, drains, and reservoirs?

### Subpart C—Lifesaving Equipment

- 149.300 What does this subpart do?

#### MANNED DEEPWATER PORT REQUIREMENTS

- 149.301 What are the requirements for lifesaving equipment?
- 149.302 What are the requirements when lifesaving equipment is repaired or replaced?
- 149.303 What survival craft and rescue boats may be used on a manned deepwater port?
- 149.304 What type and how many survival craft and rescue boats must a manned deepwater port have?