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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 248

[Docket Number MARAD-2026-0728]

RIN 2133-AC01

Deepwater Port Application Processing and Licensing

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: This document proposes procedures for the processing of applications for the licensing of deepwater ports. The proposed rule reflects the transfer of deepwater port license application processing management under the Deepwater Port Act from the United States Coast Guard (USCG) to MARAD. Pursuant to the National Defense Authorization Act for Fiscal Year 2026 (2026 NDAA), MARAD is the Federal lead agency for purposes of the National Environmental Policy Act of 1969 (NEPA) for all deepwater port license applications. USCG responsibility for authorities pertaining to design, construction, equipment, operation of deepwater ports, and navigational safety are not affected by the 2026 NDAA statutory changes, or this proposed rule and will continue to be administered by USCG.

DATES: Comments should be filed on or before [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***]. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2026-0728 by any of the following methods:

- Federal eRulemaking Portal: https://www.regulations.gov. Search for the above DOT Docket Number and follow the instructions for submitting comments.

- Mail/Hand-Delivery/Courier: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12-140, Washington, D.C. 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Note: MARAD recommends that you include your name, mailing address, email address, or telephone number in the body of your document so that MARAD can contact you if we have questions regarding your submission. If you submit your input by mail or hand-delivery, it must be submitted in an unbound format, no larger than 8 1/2 by 11 inches, single-sided, suitable for copying and electronic filing. All submissions received should include the agency name and "DOT Docket Number" or Regulation Identifier Number (RIN) for this rulemaking.

Instructions: All comments received will be posted without change to the docket at https://www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled **Public Participation**.

FOR FURTHER INFORMATION CONTACT: Efrain Lopez, Office of Deepwater Port Licensing and Port Conveyance by phone at (202) 495-8867, email: efrain.lopez@dot.gov, or mail addressed to U.S. Department of Transportation, Maritime Administration, MAR-530, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. If you have questions about viewing the docket, call the Docket Management Facility, telephone: (800) 647-5527.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

As required by 5 U.S.C. 553(b)(4), this document, including a summary of the rule, and all comments may be viewed online through the Federal eRulemaking portal at https://www.regulations.gov. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at https://www.federalregister.gov.

Privacy Act information. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or other entity). For information on DOT's compliance with the Privacy Act, please visit https://www.transportation.gov/privacy.

Background

MARAD and USCG have worked collaboratively to process Deepwater Port applications since the agencies began jointly processing applications in 1997. However, as required by the 2026 NDAA, MARAD and USCG are realigning their review responsibilities, with MARAD leading the application review process and conducting NEPA reviews of project applications.

The Deepwater Port Act of 1974, as amended (DWPA, 33 U.S.C. 1501 *et seq*.), establishes a licensing system for the ownership, construction, and operation of oil and liquefied natural gas (LNG) deepwater ports located beyond State seaward boundaries. Deepwater ports are fixed or floating facilities used as terminals to transfer oil or natural gas to or from shore via sub-sea pipeline to load or unload onto carrier vessels for the import or export of oil or LNG.

The DWPA vests licensing authority in the Secretary of Transportation. Shortly after the enactment of the statute, the Secretary delegated the authority to process applications and issue regulations to USCG, but reserved the authority to issue, transfer, and amend deepwater port licenses (40 FR 43901, 43906 (Sept. 24, 1975)). As a result, USCG issued DWPA implementing regulations at 33 CFR parts 148, 149, and 150 (40 FR 52339, 52540 (Nov. 10, 1975)). In 1997, the Secretary delegated to MARAD the authority to work in coordination with USCG to process deepwater port applications (62 FR 11382, 11383 (Mar. 12, 1997)). In 2003, the Secretary delegated to the Maritime Administrator the Secretary's authority to issue, transfer, and amend deepwater port licenses (68 FR 36496, 36497 (June 18, 2003)). This delegation did not change the previous delegation of license processing functions to USCG, and its authorities under the DWPA remained intact upon its transfer to the Department of Homeland Security under sections

888 and 1512(d) of the Homeland Security Act (Pub. L. No. 107-296, Sections 888 and 1512 (Nov. 25, 2002)). Section 7342 of subtitle E of title LXXIII of the 2026 NDAA (Pub. L. No. 119-60 (Dec. 18, 2025)) amended the DWPA by designating MARAD as the Federal lead agency for the purposes of NEPA compliance and directed the Commandant of the USCG to transfer its authorities under 33 CFR part 148 to the Secretary of Transportation and to retain responsibility for authorities pertaining to the design, construction, equipment, and operation of deepwater ports and navigational safety.

Discussion

Pursuant to Section 7342 of the 2026 NDAA, 33 CFR part 148 functions, as well as rulemaking authority, were transferred from the USCG to the Secretary of Transportation. Executive Order (E.O.) 14154, *Unleashing American Energy*, sets a national policy for the efficient administration of licensing and permitting regimes that govern the development of domestic energy resources and directs Federal agencies to review their regulations and processes to promote this policy. Since passage of the 2026 NDAA, MARAD and USCG have evaluated the deepwater port licensing process considering decades of experience jointly reviewing license applications and determined that license application processing functions should be consolidated and realigned so that MARAD, the license issuing agency, would lead the application review process for deepwater port licenses. MARAD and the USCG have concluded that the consolidation and realignment of processing functions would help clarify and streamline the application review process, leading to greater efficiency in the issuance of licensing decisions.

Under the proposed realignment, MARAD would serve as the lead agency for conducting environmental review of applications under 33 U.S.C. 1504(f) and NEPA, manage application processing, and assume rulemaking authority over application processing under 33 U.S.C. 1504(a). USCG would retain responsibility for authorities pertaining to risk and consequence assessments (currently 33 CFR section 148.105(y)) and navigational safety, design, construction, equipment, and operation of deepwater ports (33 CFR parts 149 and 150). To carry out this

realignment, MARAD proposes to adopt the provisions of 33 CFR part 148 pertaining to the application processing and environmental review criteria as well as revisions to Part 148 proposed by USCG's Notice of Proposed Rulemaking (2015 NPRM) published on April 9, 2015 (80 FR 19118), which were intended to clarify existing application requirements.

MARAD conducts environmental reviews for deepwater port applications consistent with the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado* and its progeny.[1] Consistent with the requirements of 42 U.S.C. 4336a(b), if a proposed action will require action by more than one Federal agency, MARAD and the cooperating agencies evaluate the proposal in a single environmental document. MARAD proposes to add a new section 248.44, *How will environmental reviews be conducted?*, to reflect the agency's approach to conducting these reviews. MARAD seeks comment on whether further changes to the regulatory text are needed consistent with the Court's decision in *Seven County*.

Public Participation

MARAD encourages public participation in this rulemaking by submitting comments and related materials.

How long do I have to submit comments?

MARAD provides a 60-day comment period for this proposed rulemaking. Comments must be submitted on or before the date indicated in the **DATES** section at the beginning of this document.

How do I prepare and submit comments?

Comments may be submitted to the docket electronically by logging onto the Docket Management System website at https://www.regulations.gov, searching for this rulemaking by the DOT Docket Number listed above and following the online instructions for submitting

[1] *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 145 S. Ct. 1497 (2025); see also *Sierra Club v. FERC*, 145 F.4th 74, 88-9 (D.C. Cir. 2025). The Court in *Seven County* determined that analysis beyond the direct regulatory impact at issue is not required in an EIS.

comments. MARAD will also accept comments via mail or hand-delivery to the Docket Management Facility at the address given above under **ADDRESSES**.

All comments, no matter how they are received, will be posted to the docket following DOT rulemaking procedures. To ensure that your comments are correctly filed in the docket, please include the DOT Docket Number shown at the beginning of this document in your comments.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, MARAD encourages you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at https://www.opm.gov/information-management/information-quality-guidelines/. DOT's guidelines may be accessed at https://www.transportation.gov/sites/dot.gov/files/docs/regulations/513/dot-information-quality-guidelines-2019.pdf.

How can I be sure that my comments were received?

For electronic comments: Comments submitted electronically at https://www.regulations.gov will be reflected on the docket typically within three business days.

For mailed comments: If you wish for the Docket Management Facility to notify you upon receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. All comments received by the Docket Management Facility will be posted to the electronic docket typically within five business days.

How do I submit confidential business information?

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments to the rule

contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information and make your submission via email to Rulemakings.MARAD@dot.gov. MARAD will treat such marked submissions as confidential under the FOIA, and they will be redacted or omitted in their entirety, as appropriate, from the public docket of this rule. In addition, to assist our proper management of your CBI/PROPIN comment submission, MARAD recommends that you submit a version of your confidential comment from which you have redacted the sensitive information. Doing so will assist MARAD in posting a redacted version of your comment to the docket and it will allow for MARAD to rely on the substantive content of your comment in developing the rulemaking. A redacted submission will also assist any review under a relevant FOIA request where the submission may be considered responsive information. Any comments MARAD receives that are not specifically designated as CBI/PROPIN will be placed in the public docket for this rulemaking.

May I submit comments anonymously?

All comments on this rulemaking, whether submitted to regulations.gov or by mail or hand-delivery to the Docket Management Facility at DOT, may be made anonymously. It is not necessary to identify yourself when submitting comments on the rule. Because public comments are generally posted to the public docket without change, MARAD recommends that information of a personal nature that the commenter (or the involved party, if not the commenter) does not want to be made public not be submitted in response to the request for public comment on this rule. MARAD notes that under the FOIA, information is exempt from public disclosure if disclosure would constitute a clearly unwarranted invasion of personal privacy. If your comments contain personal information relevant or responsive to this rule but disclosure of the information would be a clearly unwarranted invasion of personal privacy, it is important that you

clearly designate the submitted comments as confidential.

Anonymous submissions containing confidential information should be sent to MARAD via email to Rulemakings.MARAD@dot.gov with the term "CONFIDENTIAL" in the subject heading and on each page containing confidential information. In addition, to assist our proper management of your comment submission, MARAD recommends that you submit a version of your confidential comment from which you have redacted the confidential information. This will allow MARAD to post the redacted version of your comment to the docket without attribution to you or your organization and allow MARAD to rely on the substantive content in developing the rulemaking. It will also assist any review under a relevant FOIA request where your submission may be considered responsive information.

Will the agency consider late comments?

MARAD will consider all comments received via regulations.gov and mail or hand-delivery to the Docket Management Facility before the close of business on the comment closing date indicated above under **DATES.** To the extent practicable, MARAD will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read comments in the docket for this rulemaking online by going to https://www.regulations.gov and following the instructions for accessing the docket or by searching for the DOT Docket Number available at the beginning of this document and under the **ADDRESSES** section. You may also read physical copies of the publicly available comments received by the Docket Management Facility at the address given above under **ADDRESSES**. The hours of the Docket Management Facility office are indicated above in the same section.

Please note that, even after the comment closing date, MARAD will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the docket for new material.

Regulatory Analyses and Notices

Executive Order 12866

This proposed rule has been determined to be "significant" pursuant to Section 3(f) of E.O. 12866 and was therefore reviewed by the Office of Management and Budget (OMB).

Need for the Regulation

Section 7342 of 2026 NDAA designated MARAD as the Federal lead agency for the purposes of NEPA compliance and directed the Commandant of the USCG to transfer its authorities under 33 CFR part 148, governing the deepwater port license application process and environmental review, to the Secretary of Transportation and to retain responsibility for authorities pertaining to the design, construction, equipment, and operation of deepwater ports and navigational safety. The proposed regulation would largely adopt and replace the provisions of 33 CFR part 148 pertaining to deepwater port license application submittal and processing and environmental criteria for application review. MARAD and USCG have concluded that the consolidation and realignment of application processing functions under MARAD would streamline the application review process, leading to greater efficiency in the issuance of licensing decisions in furtherance of E.O. 14154's policy for the efficient administration of licensing and permitting regimes that govern the development of domestic energy resources and directs Federal agencies to review their regulations and processes to promote this policy

Baseline

Under the no action baseline, applicants for deepwater port licenses are subject to USCG regulations found at 33 CFR part 148, rather than regulations issued by MARAD.

Costs

This proposed rule would update existing MARAD administrative responsibilities reflecting the transfer of deepwater port NEPA review and compliance functions from USCG to MARAD.

NEPA responsibilities for deepwater port license applications were transferred from USCG to MARAD by statute. As a result, the NPRM does not impose new or additional NEPA compliance requirements or costs on applicants for deepwater port licenses; rather, the proposed rule would simply reassign Federal responsibilities with regard to NEPA review. Although there would likely be transactional and adminstrative adjustments concerning correspondence, *e.g.*, interacting with new points of contact and familiarization with MARAD's internet site concerning NEPA requirements, the adjustments are expected to be minor and temporary because MARAD is adopting USCG's regulations in 33 CFR part 148. Additionally, MARAD proposes to adopt clarifying amendments proposed by USCG's April 9, 2015, Notice of Proposed Rulemaking (2015 NPRM) (80 FR 19118), which are not expected to result in increased regulatory burdens on applicants. See the *Section-by Section Analysis* for additional information. MARAD expects that this proposed rule would result in improved efficiency and clarity regarding the permitting process.

Consolidating the application processing and NEPA review within MARAD right-sizes inter-agency communications and reviews, streamlining the processing of operators' applications by the agencies. This proposed rule also provides specific administrative flexibilities and relief. It replaces previous agency-driven extensions with a process where timelines are suspended only upon request by the applicant when responding to additional information requests. The rule also allows applicants to submit existing hydrographic and engineering geological survey data collected within the previous 5 years (or longer with MARAD approval) rather than forcing new, expensive offshore surveys. It also amends 33 CFR 148.115 to require only one printed copy and one electronic copy, eliminating multi-copy physical filing burdens (currently multiple copies in different formats to the USCG, MARAD, and the U.S. Army Corps of Engineers). In addition, the proposed rule removes unused regulatory definitions and eliminates obsolete procedures (such as Adjacent Coastal State designation petitions under 33 CFR 148.217 that were repealed by statute).

MARAD is unable to estimate the expected cost savings for operators. MARAD requests comment on the potential direct savings operators may experience based on compliance costs, applications processing, and other aspects of this proposed rule.

Costs to MARAD consist of the incremental monetary and non-monetary expenses that would be incurred as MARAD undertakes the responsibilities mandated by the 2026 NDAA and reflected in the proposed regulation. The costs include (but are not limited to) application completeness review, attendance at public meetings/hearings, government travel costs, and development of the NEPA and other environmental documents. Although MARAD expects that administrative efficiency would result in a reduction in these costs, it is unable to estimate the amount that would be saved.

Transfers

The DWPA requires applicants to remit a a nonrefundable application fee (with the amount established by regulation) and to reimburse the government for all costs in processing applications (see 33 U.S.C. 1504(h)(1)). Current USCG regulations at 33 CFR 148.125 set the application fee at $350,000, and the proposed regulation would maintain the same fee level. Due to the reimbursement requirement, however, the total cost to the Government of processing applications would continue to effectively be borne by the applicants and are not expected to change as a result of the transfer of responsibilities from USCG.

Benefits

The elimination of duplicative agency application processing functions, resulting in reduced statutory processing cost reimbursement obligations borne by applicants, is in the national interest and consistent with national security, energy sufficiency, environmental quality, and other national policy goals and objectives. The benefits of this NPRM would ensure that deepwater port applications are reviewed and processed, and a license determination is made, all within one Department. With this new authority, MARAD would continue to work to ensure that deepwater ports, as United States maritime transportation systems, are well designed, safe,

secure, and approved in a timely manner.

Summary

The proposed rule reflects the transfer of deepwater port license application processing management under the DWPA from USCG to MARAD. USCG responsibility for authorities pertaining to the design, equipment, construction, operation of deepwater ports, and navigational safety are not affected by this NPRM and would continue to be administered by USCG. The NPRM provides procedures for processing applications, including NEPA review, for the licensing of deepwater ports, which are any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State. The rule would clarify agency functions, eliminate duplicative interagency communication requirements, incorporate statutory changes, and allow both MARAD and USCG to focus exclusively on areas of core technical expertise.

Executive Order 14192

E.O. 14192 requires that for "each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination." Implementation guidance for E.O. 14192, issued by OMB (Memorandum M-25-20, March 26, 2025), defines an E.O. 14192 deregulatory action as "an action that has been finalized and has total costs less than zero." A determination of whether this proposed rule is considered a deregulatory action under the requirements of Executive Order 14192 and OMB Memorandum M-25-20 will be made when any final rule in this rulemaking is issued.

Executive Order 13132

MARAD analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132, *Federalism*, and has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking, which reflects the transfer of deepwater port application processing

management, clarifies agency functions, including Federal lead NEPA review and compliance, and incorporates statutory changes to the DWPA since the deepwater port regulations were last published in 2006, would have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among the various local officials. The proposed rule would apply to deepwater ports only in waters beyond the territorial limits of the United States (33 U.S.C. 1501(a)(1)). As regulation of these deepwater ports is beyond State seaward boundaries, this proposed rule would not preempt State law.

Executive Order 13175

This rulemaking, in which MARAD proposes to transfer deepwater port license application processing management under the DWPA from the USCG to MARAD, would not significantly or uniquely affect the communities of Indian Tribal governments when analyzed under the principles and criteria contained in E.O. 13175. Therefore, the funding and consultation requirements of E.O. 13175 do not apply.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to publish a NPRM for public comment, it must prepare and make available for public comment an initial regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations and small governmental jurisdictions), unless the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. Agencies must also provide a statement of the factual basis for this certification.

For the following reasons, the Maritime Administrator certifies that this rulemaking action would not have a significant economic impact on a substantial number of small entities. The new MARAD regulations would, if adopted, act only to reflect the transfer of existing responsibilities from USCG to MARAD, clarify agency functions, and incorporate statutory

changes to the DWPA since the deepwater port regulations were last updated in 2006. The rule would place no new substantive requirements on deepwater port applicants. Accordingly, the rule would not have a significant economic impact on small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires agencies to evaluate whether an agency action would result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $212 million or more (as adjusted for inflation in 2026) in any one year, and if so, to take steps to minimize these unfunded mandates. This rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $212 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

National Environmental Policy Act

Pursuant to 49 CFR 1.81, the Secretary has delegated the "functions" under NEPA to the Administrators "as they relate to the matters within the primary responsibility of each Operating Administration." MARAD has determined that this proposed rule is categorically excluded pursuant to DOT Order 5610.1D, subpart C, section (e)(3). A categorical exclusion (CE) is an action identified in an agency's NEPA procedures that does not normally have a significant impact on the environment and therefore does not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* DOT Order 5610.1D, section 9. In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* at section 9(b). MARAD may utilize its own CEs, in addition to CEs listed in DOT Order 5610.1D Appendix A or another Operating Administration's CEs, using the procedures described in DOT Order 5610.1D, section 9, and subpart C, section (e). This rule titled, *Deepwater Port Application Processing and Licensing*, is categorically excluded pursuant to DOT Order 5610.1D, subpart C, section (e)(3):

"Internal orders and procedures not required to be published in the *Federal Register*, promulgation of rules, regulations, directives, and amendments thereto which do not require a regulatory impact analysis under section 3 or do not have a potential to cause a significant impact on the environment...." This rule would only reflect the transfer of deepwater port license application processing management under the Deepwater Port Act from the United States Coast Guard (USCG) to MARAD and so does not have the potential to cause a significant impact on the environment. MARAD does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. No. 108-447, div. H, 118 Stat. 2809 at 3268) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. This rulemaking does not result in personally identifiable information (PII) being collected or maintained in a Government-run website or IT system. Therefore, MARAD did not conduct a Privacy Impact Assessment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public. Notwithstanding any other provision of law, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number.

Section-by-Section Analysis

MARAD provides the following section-by-section analysis of the revisions it proposes to make to those provisions currently found at 33 CFR Part 148, which MARAD would adopt in 46 CFR Part 248. Where indicated below, MARAD would adopt many of the USCG's proposed amendments to 33 CFR Part 148 published in its 2015 NPRM.

A—GENERAL PROVISIONS

§ 248.3 What Federal agencies are responsible for implementing the Act? MARAD would clarify that it is now the sole agency responsible for processing deepwater port applications under the Act, as required by statute, and would identify the Federal cooperating agencies with related permitting and authorization responsibilities for deepwater ports.

§ 248.4 How are terms used in this part defined? MARAD would eliminate defined terms found at 33 CFR 148.5 that do not appear elsewhere in 33 CFR Part 148. Currently, 33 CFR 148.5 includes defined terms that are used only in 33 CFR Parts 149 and 150. MARAD proposes to omit such terms. MARAD also proposes to adopt the revisions to defined terms proposed in the 2015 NPRM. *See* Table 1, Changes for 33 CFR Subchapter NN, 80 FR 19120-19121.

§ 248.4(m) *Construction*. MARAD would revise this definition to make it consistent with the statutory definition found at 33 U.S.C. 1502(7).

§ 248.4(t) *Engineering geological survey*. MARAD would adopt the proposed revised definition from the 2015 NPRM clarifying that the necessary analysis considers all geological factors and is not limited to hydrographics. This change will reduce the need for applicants to, as is currently the case, submit additional information as a supplement under 33 CFR 148.107.

§ 248.4(v) *Lease block*. MARAD would revise this definition to simplify statutory citations.

§ 248.4(aa) *Maritime Administrator or MARAD*. MARAD would update its address provided in 33 CFR 148.5.

§ 248.4(cc) *Mile*. MARAD would adopt the proposed clarification from the 2015 NPRM that *mile* refers to nautical mile.

§ 248.4(jj) ***Pipeline***. MARAD would add a definition for *pipeline* that mirrors the definition of that term used by the Pipeline and Hazardous Materials Administration (PHMSA).

B—APPLICATION FOR A LICENSE

§ 248.5 What must I include in my application?

§ 248.5(d) ***Citizenship and operating authority.*** MARAD would provide an affidavit of U.S. citizenship template that an applicant would use to evidence that it qualifies as a citizen of the United States as defined by 33 U.S.C. 1502(4). MARAD has made affidavit templates available upon request of prospective applicants but proposes to provide a form of affidavit for corporations within the text of the 46 CFR 248.5**.** MARAD would clarify that an applicant may adapt the affidavit to reflect types of business formation or associations other than corporations.

§ 248.5(j) ***Identification of lease block.*** MARAD would adopt the 2015 NPRM's proposed clarification to 33 CFR 148.105(k) providing an alternative to the use of a professional surveyor when identifying each lease block where any part of a proposed deepwater port is located. 80 FR 19122.

§ 248.5(l) S*ite plan for marine components.* MARAD would adopt the 2015 NPRM's proposed revisions to 33 CFR 148.5(m) clarifying that anchorages and mooring areas can be used during a deepwater port's construction as well as after it becomes eligible. We would delete some survey specifications found at 33 CFR 148.5(m)(2) because MARAD describes the specific information required in the license conditions for individual deepwater ports. We would allow use of older hydrographic data, with MARAD approval, so long as newer data is provided for any specific locations having a high degree of hydrographic variability. We would further require applications to include MetOcean data, which is essential for analyzing a proposed deepwater port's environmental impact.

§ 248.5(m) ***Engineering geological survey data.*** MARAD would adopt the 2015 NPRM's proposed revision to 33 CFR 148.105(n) clarifying that full geological information, not just soil data, is essential for analyzing a proposed deepwater port's environmental impact.

§ 248.5(r) ***Refurbished Outer Continental Shelf facilities and co-located fixed offshore components.*** MARAD would adopt the 2015 NPRM's proposed revision to 33 CFR 148.105(s) clarifying that information about the methods the applicant expects to use in regasifying natural gas prior to transmission is essential for analyzing a proposed deepwater port's environmental impact. This change will reduce the need for applicants to, as is currently the case, submit this additional information as a supplement under 33 CFR 148.107.

§ 248.5(s) ***Information on offshore pipelines.*** MARAD would adopt the 2015 NPRM's proposed revision to 33 CFR 148.105(t) encouraging applicants to consult with PHMSA to help facilitate the applicant's ability to comply with PHMSA requirements for pipeline safety.

§ 248.5(x) ***Risk and consequence assessment.*** MARAD would encourage applicants to consult USCG to ensure that appropriate risk and consequence assessment procedures are used..

§ 248.5 (aa) ***Applicable environmental permits and authorizations.*** MARAD would clarify that applicants submit copies of filed applications or draft applications for permits or other authorizations under the Clean Air Act, Clean Water Act, Coastal Zone Management Act, Rivers and Harbors Act, and other applicable environmental standards. MARAD would provide examples of relevant Federal permits and authorizations.

§ 248.5(dd) ***MARPOL.*** MARAD would adopt the 2015 NPRM's proposed clarification adding language for the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention, and as further modified by the Protocol of 1997.

§ 248.6 What additional information may be required? This section describes the process MARAD would follow in those cases where an applicant is required to provide additional information that MARAD deems necessary to process an application. The proposed 46 CFR 248.6 would replace the procedure provided at 33 CFR 148.107 under which MARAD extended the application review period upon the recommendation of the Commandant (CG-5P).

The process MARAD would follow is the process established by Sec. 3514 of Public Law 118-31 (Dec. 22, 2023), which amended 33 U.S.C. 1504 by providing applicants subject to a MARAD request for additional information with the right to request a technical assistance meeting with MARAD. MARAD proposes that it would suspend the application review timeline only upon the request of an applicant in the event an applicant needs additional time to submit required information previously requested by MARAD. MARAD also specifies that an application would be denied due to insufficient information to process the application only if an applicant does not submit the required information within the statutory review period (as tolled by approved suspension requests under 46 CFR 248.6(d)).

MARAD would provide a procedure for an applicant that has received a request for additional information from MARAD to request a meeting for technical assistance with MARAD personnel and representatives of any cooperating Federal agency MARAD determines to be relevant with respect to the application.

§ 248.9 How many copies of the application must I send and where must I send them? MARAD would amend the application submission procedures described at 33 CFR 148.115 by requiring applicants to submit one printed copy and one electronic copy to MARAD.

C—PROCESSING APPLICATIONS

§ 248.14 What must I do if I need to change my application? MARAD would amend the application change procedures found at 33 CFR 148.211 to clarify that MARAD may require the applicant to submit an amended application in the event the information in the application changes, becomes incomplete, or becomes inaccurate.

§ 248.16 May I resubmit my application? MARAD would provide a procedure for an applicant to resubmit a previously withdrawn application.

E—FORMAL HEARINGS

§ 248.21 What if a formal evidentiary hearing is necessary? MARAD would replace the evidentiary hearing procedures prescribed by the USCG at 33 CFR sections 148.228-256, which

govern such hearings under USCG procedures, with procedures prescribed by MARAD in accordance with 5 U.S.C. 554. The proposed use of procedures prescribed pursuant to 5 U.S.C.554 will not differ in any substantive way from the current procedures.

F—APPROVAL OR DENIAL OF THE APPLICATION

§ 248.22 What is the timeline for approving or denying an application? MARAD would provide additional information about publishing a notice of availability of the final environmental impact statement to the description of the application review timeline currently found at 33 CFR 148.276.

§ 248.23 How may Federal agencies and States participate in the application process? MARAD would add a subparagraph to the provisions found at 33 CFR 148.277 clarifying the deadline for Governors of Adjacent Coastal States to submit their approval or disapproval of an application. MARAD would accept Governors' decisions only within the 45-day period after the close of the final public hearing on the application and not before the final public hearing. MARAD would not adopt the provisions found at 33 CFR 148.217 providing procedures for designating an Adjacent Coastal State upon request of a State because the right to make such a designation request was repealed by Public Law 118-31, Sec. 3514(k)(k)(6)(A) (Dec. 22, 2023).

§ 248.24 What are the criteria for approval or denial of an application? MARAD would include the list of statutory criteria for deepwater port license approval in this section.

§ 248.26 When may the application process be stopped and an application be treated as withdrawn? MARAD would clarify that conditions for stopping the application process and treating an application as withdrawn found at 33 CFR 148.283 include when an applicant fails to provide information necessary, in a timely fashion, to complete an environmental impact statement.

H—SITE EVALUATION AND PRE-CONSTRUCTION TESTING.

§ 248.34 What are the procedures for notifying MARAD of proposed site evaluation and pre-construction testing? MARAD would clarify that MARAD, and not the USCG, is

responsible for administering the provisions governing site evaluation and pre-construction testing. MARAD would adopt the clarification on guidelines for geological and geophysical surveys as proposed in the 2015 NPRM.

I—EXEMPTION FROM OR ADJUSTMENTS TO REQUIREMENTS. 46 CFR Sections 248.38 – 248.40. MARAD would clarify that MARAD, and not the USCG, is responsible for administering the provisions governing exemptions from the requirements of the proposed subchapter.

J—OIL POLLUTION ACT OF 1990 LIMITS OF LIABILITY FOR DEEPWATER PORTS.

§ 248.41 Where can I find the Oil Pollution Act of 1990 (OPA 90) limits of financial liability for deepwater ports? MARAD adopt the 2015 NPRM's proposed amendment to 33 CFR 148.600 providing additional information about deepwater port financial liability limits under OPA 90.

§ 248.42 What are the procedures under OPA 90 for adjusting a deepwater port's limit of liability under 33 U.S.C. 2704(d)(2)? MARAD would clarify that USCG retains the authority to lower the applicable OPA 90 limit of liability upon an applicant or licensee's request and would direct applicants to submit such requests to the Commandant (CG-5P).

K—ENVIRONMENTAL REVIEW CRITERIA FOR DEEPWATER PORTS

§ 248.46 What type of criteria will be used in an environmental review and how will they be applied? MARAD would adopt the 2015 NPRM's proposed amendment to 33 CFR 148.700 setting forth the list of resource areas which will be considered in the environmental impact analysis to include, without being limited to, threatened species, marine protected areas, marine, coastal and migratory birds, marine mammals, and fisheries. This change will reduce the need for applicants to, as is currently the case, submit additional information as a supplement under 33 CFR 148.107.

§ 248.49 What environmental conditions must be satisfied? MARAD would adopt the 2015 NPRM's proposed amendment to 33 CFR 148.715 providing applicants with more complete information about the scope of environmental evaluation.

Collection of Information

MARAD invites the public to comment on its intention to request Office of Management and Budget (OMB) approval of a new information collection in accordance with the PRA, given the transfer of responsibilities from USCG to MARAD. The proposed collection entitled Deepwater Port Application Processing and Licensing Information is necessary for MARAD to identify qualified applicants, secure all necessary information to ensure the development and submission of an EIS; issue a Record of Decision (ROD); and if an applicant is approved and fulfills all of the conditions set forth in the ROD, to issue a Deepwater Port License to own, operate, and construct a deepwater port in accordance with the DWPA.

MARAD is required to publish this notice in the *Federal Register* to obtain comments from the public and affected agencies. Comments must be submitted following the directions in the **DATES** and **ADDRESSES** sections above.

Title: Deepwater Port Application Processing and Licensing Information

OMB Control Number: Proposed.

Type of Request: New.

Abstract: This collection will allow MARAD to administer the DWPA. MARAD will evaluate the information collected from respondents to ensure the proposed deepwater project complies with NEPA and also determine if the appropriate technical and financial data is provided for the issuance of a deepwater port license.

Respondents: Oil and gas import and export enterprises, oil and gas producers and suppliers.

Affected Public: Members of the public, adjacent coastal States, and members of the oil and gas industry.

Estimated Number of Respondents: 2 once annually.

Estimated Number of Responses: 2 once annually.

Estimated Hours per Response: 5,232 hours to complete all aspects of the application process (*i.e.*, the application and administrative requirements (1200 hours), environmental review and analysis (3,000 hours), and technical and supplemental submission (1,032 hours).

Annual Estimated Total Annual Burden Hours: 10,464 hours.

Frequency of Response: One time.

Total cost for all Respondents: $705,843, including an application fee of $350,000 and copying and mailing costs totaling an estimated $2,921.90.

Other Costs to Industry: For applicant lawyers, environmental engineers, and environmental technologists and technicians to complete all components of the application process is $770,952.64.

MARAD welcomes public comments and feedback from the industry regarding the cost estimates. MARAD will consider all comments received as indicated in the above **DATES** section. In addition, public comments will be accepted and considered during both this 60-day and a later 30-day *Federal Register* notice period.

List of Subjects in 46 CFR Part 248

Administrative practice and procedure, Environmental protection, Ports, Harbors, Petroleum.

For the reasons stated in the preamble, MARAD proposes to amend 46 CFR ch. II, subch. B by adding part 248 to read as follows:

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES MARITIME INTERESTS

SUBPART H---DEEPWATER PORTS

Part 248— DEEPWATER PORT APPLICATION PROCESSING AND LICENSING

Sec.

A—GENERAL PROVISIONS

248.1 What is the purpose of this part?

248.2 Who is responsible for complying with this part?
248.3 What Federal agencies are responsible for implementing the Act?
248.4 How are terms used in this part defined?

B—APPLICATION FOR A LICENSE

248.5 What must I include in my application?
248.6 What additional information may be required?
248.7 What if a Federal or State agency or other interested party requests additional information?
248.8 How do I prepare my application?
248.9 How many copies of the application must I send and where must I send them?
248.10 What are the application fees?

C—PROCESSING APPLICATIONS

248.11 How are documents related to the application maintained?
248.12 How and where may I view docketed documents?
248.13 How is the application processed?
248.14 What must I do if I need to change my application?
248.15 How do I withdraw my application?
248.16 May I resubmit my application?
248.17 What if a port has plans for a deep draft channel and harbor?
248.18 How do I claim, or object to a claim of, privileged information?

D—PUBLIC HEARINGS OR MEETINGS

248.19 When must public hearings or meetings be held?
248.20 How is a public hearing or meeting reported?

E—FORMAL HEARINGS

248.21 What if a formal evidentiary hearing is necessary?

F—APPROVAL OR DENIAL OF THE APPLICATION

248.22 What is the timeline for approving or denying an application?
248.23 How may Federal agencies and States participate in the application process?
248.24 What are the criteria for approval or denial of an application?
248.25 What happens when more than one application is submitted for a deepwater port in the same application area?
248.26 When may the application process be stopped and an application treated as withdrawn?

G—LICENSES

248.27 What is included in a deepwater port license?
248.28 Who may consult with MARAD on developing the proposed conditions of a license?
248.29 How long does a license last?
248.30 How is a license amended, transferred, or reinstated?
248.31 How is a license enforced, suspended, or revoked?
248.32 How soon after deepwater port decommissioning must the licensee initiate removal?

H— SITE EVALUATION AND PRE-CONSTRUCTION TESTING

248.33 What does this subpart do?
248.34 What are the procedures for notifying MARAD of proposed site evaluation and pre-construction testing?
248.35 What are the conditions for conducting site evaluation and pre-construction testing?
248.36 When conducting site evaluation and pre-construction testing, what must be reported?
248.37 When may MARAD suspend or prohibit site evaluation or pre-construction testing?

I—EXEMPTION FROM OR ADJUSTMENTS TO REQUIREMENTS

248.38 How do I apply for an exemption?
248.39 What happens when a petition for exemption involves the interests of an Adjacent Coastal State?
248.40 When is an exemption allowed?

J—OIL POLLUTION ACT OF 1990 LIMITS OF LIABILITY FOR DEEPWATER PORTS

248.41 Where can I find the Oil Pollution Act of 1990 (OPA 90) limits of financial liability for deepwater ports?
248.42 What are the procedures under OPA 90 for adjusting a deepwater port's limit of liability under 33 U.S.C. 2704(d)(2)?

K—ENVIRONMENTAL REVIEW CRITERIA FOR DEEPWATER PORTS

248.43 How does the Deepwater Port Act interact with other Federal and State laws?
248.44 How will environmental reviews be conducted?
248.45 What is determined by the environmental evaluation?
248.46 What type of criteria will be used in an environmental review and how will they be applied?
248.47 How are these criteria reviewed and revised?
248.48 What environmental conditions must be satisfied?
248.49 How is an environmental review conducted?
248.50 What are the siting criteria?
248.51 Should the construction plan incorporate best available technology and recommended industry practices?
248.52 What are the design, construction, and operational criteria?
248.53 What are the land use and coastal zone management criteria?
248.54 What are other critical criteria that must be evaluated?
248.55 What environmental statutes must an applicant follow?

Authority: 33 U.S.C. 1504, 49 CFR 1.93(h).

A—GENERAL PROVISIONS

§ 248.1 What is the purpose of this part?

Part 248 prescribes regulations for the licensing of deepwater ports under the Deepwater Port Act of 1974, as amended (codified at 33 U.S.C. 1501 *et seq.*) (the Act or DWPA).

§ 248.2 Who is responsible for complying with this part?

Unless otherwise specified, the owner of a deepwater port is responsible for compliance with the requirements of this part.

§ 248.3 What Federal agencies are responsible for implementing the Act?

(a) By delegation from the Secretary of Transportation, MARAD is authorized to process applications for the issuance, transfer, or amendment of licenses for the construction and operation of deepwater ports. Pursuant to that authority, MARAD is responsible for the following:

(1) Complying with the National Environmental Policy Act of 1969 (NEPA), including, but not limited to, ensuring the preparation of all appropriate environmental documents (*e.g.*, Environmental Assessments, Environmental Impact Statement) for each deepwater port license application. The United States Coast Guard (USCG) is responsible for certain matters relating to navigation safety and security, engineering and safety standards, and deepwater port operations;

(2) Issuing the Record of Decision (ROD) to announce whether a license application is approved, approved with conditions, or denied, and for issuing, revoking, and reinstating deepwater port licenses;

(3) Approving fees charged by Adjacent Coastal States; and

(4) Administering certain matters relating to international policy, civil actions, and suspension or termination of licenses.

(b) By delegation from the Secretary of Transportation, the Administrator of the Pipeline Hazardous Materials and Safety Administration (PHMSA) is authorized to carry out the functions vested in the Secretary under section 21 of the Act relating to the safe construction, operation, and maintenance of pipelines associated with deepwater ports.

(c) The Secretary of the Interior is responsible for determining the fair market rental value of the subsoil and seabed of the Outer Continental Shelf of the United States to be used by the deepwater port, including, but not limited to, the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed. Any proposed

subsurface storage of oil and gas in the submerged lands of the Outer Continental Shelf is also subject to the review and approval of the Secretary of the Interior. To minimize potential impacts to existing facilities and protect the development potential of nearby oil, gas, and mineral resources, the Department of the Interior should also be involved in the site selection process.

(d) USCG, Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration, U.S. Army Corps of Engineers, and other Federal agencies are designated by the Act as cooperating agencies to provide support to MARAD in its review and evaluation of deepwater port license applications including any required environmental review.

§ 248.4 How are terms used in this part defined?

(a) *Accommodation module* means a module with one or more modular accommodation spaces that are individually contracted and may be used for one or more facilities.

(b) *Act* means the Deepwater Port Act of 1974, as amended (codified at 33 U.S.C. 1501 *et seq.*).

(c) *Adjacent Coastal State* means any coastal State which:

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

(2) Would be located within 15 nautical miles of any such proposed deepwater port.

(d) *Affiliate* means a person or company that:

(1) Owns a direct or indirect interest of more than three percent in an applicant;

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

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

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

(e) *Applicant* means a person that proposes to own, construct, and operate a deepwater port and applies for a license under this part.

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

(g) *Approved* means approved by MARAD unless otherwise specified.

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

(i) *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.

(j) *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.

(k) *Coastal State* means a State of the United States in or bordering the Atlantic, Pacific, or Arctic Oceans or the Gulf of America.

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

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

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

(m) *Construction* means the 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.

(n) *Control* means the direct or indirect power to determine the policy, business practices, or decision-making 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.

(o) *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.

(p) *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.

(q) *Deepwater port* means any fixed or floating manmade 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 or from 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 Port Act, including transportation of oil or natural gas from the United States OCS, and:

(1) 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;

(2) 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 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

(3) Must be considered a "new source" for purposes of the Clean Air Act, as amended (codified at 42 U.S.C. 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (codified at 33 U.S.C. 1251 *et seq.*).

(r) *District commander* means an officer who commands a USCG district described in 33 CFR ch. I, subch. NN, or that individual's authorized representative.

(s) *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.

(t) *Engineering geological 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.

(u) *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.

(v) *Lease block* means an area established either by the Secretary of the Interior under 43 U.S.C. 1334, or by a State under 43 U.S.C. 1311.

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

(x) *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.

(y) *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.

(z) *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.

(aa) *Maritime Administration* or *MARAD* means the Administrator of the Maritime Administration or that person's designee(s) at 1200 New Jersey Avenue S.E., Washington, D.C. 20590.

(bb) *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 between vessels and pipelines.

(cc) *Mile* means nautical mile.

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

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

(ff) *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.

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

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

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

(jj) *Pipeline* means all parts of those physical facilities through which oil or gas moves in transportation, including pipe, valves, and other appurtenances.

(kk) *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 activity or specific functions may be carried out.

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

(mm) *Routing system* 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.

(nn) *Safety zone* means a safety zone established around a deepwater port and extending up to 500 meters (approximately 1,640 feet) around the deepwater port, 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 but not interfering with the use of recognized sea lanes.

(oo) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(pp) *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.

(qq) *Survival craft* means a craft described in 33 CFR ch. I, subch. NN.

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

(ss) *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.

B—APPLICATION FOR A LICENSE

§ 248.5 What must I include in my application?

(a) *General.* For each applicant, affiliate, and consultant, the application must include the following:

(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 affiliates 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) For each applicant, affiliate, and consultant, the application must include 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; and

(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.* Each engineering firm that will design the deepwater port or a portion of the port must provide the following information:

(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 the following:

(1) An affidavit demonstrating that the applicant is a citizen of the United States, which in the case of a corporation[2], reads as follows:

AFFIDAVIT OF U.S. CITIZENSHIP

State of _____)

) ss.:

[2] The form of affidavit of U.S. citizenship may be adapted for applicants which are partnerships, limited partnerships, limited liability companies, and associations formed in any State.

County of _____)

I, (Name), of (Physical residence address, city, and state), being duly sworn, depose and say:

1. That I am authorized by and in behalf of _____ (Name Applicant) (hereinafter called the "Corporation") to execute and deliver this Affidavit of U.S. Citizenship;

2. That this affidavit is provided as evidence of the Corporation's status as a citizen of the United States as defined in accordance with 33 U.S.C. § 1502(4);

3. That the Corporation is organized and existing under the laws of the State of _____ with offices at (Business address), in evidence of which incorporation true copies of the Certificate or Articles of Incorporation and Bylaws of the Corporation are filed herewith (or have previously been filed with the Maritime Administration);

4. That the names of the Chief Executive Officer, by whatever title, President, Vice Presidents or other individuals, by whatever title, who are authorized to act in the absence or disability of the Chief Executive Officer, the Chairman of the Board of Directors, and the Directors of the Corporation are as follows:

Name: Title: Nationality:

Each of said individuals is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, or as otherwise authorized by law, except: (give name and nationality of all non-citizen officers meeting the description above and non-citizen directors, if any)

The Bylaws of the Corporation provide that (Number) of the Directors are necessary to constitute a quorum; therefore, Non-Citizen Directors (if any) represent no more than a minority of the number necessary to constitute a quorum; and

5. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

(Name and title of affiant)

_____ _____

(Signature of affiant) Date

(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 for limited liability companies, the equivalent organizational documents; 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.

(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 deepwater port, and whether access will be open or closed.

(g) *Financial information.* 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:

(1) 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 MARAD may waive this requirement upon finding:

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

(ii) That the affiliate is part of a larger corporate group whose audited statements provide sufficient information to support an adequate assessment of the affiliate's relationship with and impact on the applicant.

(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 licensee of a deepwater port is responsible for the costs associated with removal of all deepwater 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) Annual projections or estimates, along with the underlying assumptions, for the next 5 years and at reasonable intervals thereafter throughout the life of the deepwater port, of the following:

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

(ii) 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, including agreements relating to throughputs, capital contributions, loans, guarantees, commitments, charters, and leases.

(h) *Construction contracts and construction-related studies.* For applicants with construction contracts and construction-related studies, provide the following:

(1) A copy of each contract that the applicant has 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 the following information for each contractor:

(i) Name;

(ii) Address;

(iii) Citizenship;

(iv) Telephone number; and

(v) Qualifications.

(i) *Compliance with Federal water pollution requirements.* Provide the following information evidencing compliance with Federal water pollution requirements:

(1) Evidence, to the extent available, that the requirements of 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 will be conditioned upon the applicant demonstrating that the requirements of 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) *Identification of lease block.* Provide the following lease block information:

(1) Identification of each lease block where any part of the proposed deepwater port or its approaches is located. This identification must be made on official Outer Continental Shelf

leasing maps or protraction diagrams, where available. Each map and diagram must be certified by a professional surveyor, or, in the alternative, the applicant must provide an equivalent means of certifying accuracy. 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 any person, including the applicant, has in each block.

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

(k) *Overall site plan.* Single-line drawings showing the location and type of each component of the proposed deepwater 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.

(l) *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;

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

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

(iv) Proposed anchorage and mooring areas, including areas associated with construction and pipelaying operations;

(2) A reconnaissance hydrographic survey of the proposed marine site. This survey should provide data on the water depth, cultural resources, and a general characterization of the sea bottom. A requirement to submit a reconnaissance hydrographic survey of the final marine site will be imposed as a condition in the license. The applicant may submit existing data gathered within the previous five years (or within a longer timeframe if approved by MARAD), but it must be supplemented by field data for specific locations in which a high degree of variability exists;

(3) Meteorological/oceanographic ("MetOcean") data. This should include data on prevailing winds, currents, waves and storms in the vicinity of the proposed marine site; and

(4) Vessel traffic data. This should include at least one year of vessel traffic data from the most recent year's data, if available, in the vicinity of the proposed marine site.

(m) *Engineering geological survey data.* An initial preliminary analysis of the general character and condition of the ocean bottom and sub-bottom, soils and sediments throughout the marine site, and, if applicable, soils and topography throughout the terrestrial site. If the applicant proposes to use horizontal directional drilling (HDD), the initial preliminary analysis must include a study addressing the feasibility of HDD in the proposed HDD location. The applicant may use existing data, so long as it was collected within the last 5 years (or within a longer timeframe if approved by MARAD) 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 specializing in soil mechanics, such as a registered professional engineer or an equivalent means of certifying accuracy, 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.

(n) *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 Department of the Interior for activities on the Outer Continental Shelf. The survey must include the areas potentially affected by the deepwater port, or any other associated platforms, and its pipeline routes.

(o) *Vessel information.* Vessel information consisting of the following:

(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.

(p) *Information on floating components.* Floating component information consisting of the following:

(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 33 CFR ch. I, subch. NN 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; and

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

(q) *Information on dedicated fixed offshore components.* Dedicated fixed offshore component information consisting of the following:

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

(2) The design criteria, developed under 33 CFR ch. I, subch. NN 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 structure.

(r) *Refurbished Outer Continental Shelf facilities and co-located fixed offshore components.* Refurbished OCS facilities and co-located fixed offshore component information consisting of the following:

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

(2) The design criteria, developed under 33 CFR ch. I, subch. NN 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 regasification, throughput measuring, leak detection, emergency shutdown, and the alarm system.

(7) The personnel capacity of each deepwater port structure.

(s) *Information on offshore pipelines.* To facilitate timely processing of an application, applicants are encouraged to consult with PHMSA to verify the requirements for the design,

construction, operation, and maintenance of pipelines prior to submitting an application, which must include the following:

(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; and

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

(t) *Information about onshore components.* To the extent known by the applicant, onshore component information consisting of the following:

(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 or utilized 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;

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

(i) Onshore pipelines;

(ii) Storage facilities;

(iii) Refineries;

(iv) Petrochemical facilities; and

(v) Transshipment facilities.

(3) For proposed oil import projects, 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.

(u) *Information on miscellaneous components.* Miscellaneous component information consisting of the following:

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

(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; and

(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.

(v) *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.

(w) *Operations manual.* A draft of the operations manual for the proposed deepwater port, containing the information required by 33 CFR ch. I, subch. NN. The operations manual must demonstrate the applicant's ability to operate the deepwater 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 BOEM requirements for those facilities. If the information required for the manual is not available, explain why it is not and when it will be available.

(x) *Risk and consequence assessment.* The applicant must submit data to support an independent, site-specific analysis to assess the risks and consequences of accidental and intentional events that compromise cargo containment. The applicant should consult with USCG to ensure that appropriate assessment procedures are used.

(y) *Environmental evaluation.* An analysis, sufficient to meet the requirements of NEPA, and as outlined in subpart K 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. The analysis must identify a reasonable range of alternatives to the proposed action including, but not limited to, deepwater port location, pipeline route and landfall, construction methods, deepwater port design, technologies used during operation, and the no-action alternative. Applicants should normally submit this analysis in the form of an applicant-prepared Environmental Impact Statement (EIS). Contractors may be utilized by the applicant and MARAD to prepare environmental documentation. MARAD retains responsibility for the contents of the environmental document

and will independently evaluate and may require changes or additional analyses to meet the requirements of NEPA.

(z) *Aids to navigation.* Aids to navigation information consisting of the following:

(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.

(aa) *Applicable Environmental Permits and Authorizations*. Provide copies of filed applications or draft applications for permits and other authorizations under the Clean Air Act, Clean Water Act, Coastal Zone Management Act, Rivers and Harbors Act, and other applicable

environmental statutes that will be required for construction and operation of the facility and the status of each application. Applicants must separately submit completed applications for any required permits and authorizations to the respective permitting agencies in accordance with those agencies' application submission procedures. If all completed permits, authorizations, and all necessary information are not available by the time MARAD must either approve or deny the application, the applicant will be required to obtain all outstanding permits or authorizations as a condition of the license, as applicable. Examples of relevant Federal permits and authorizations may include, but are not limited to:

(1) National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act;

(2) Section 401 Water Quality Certification under the Clean Water Act;

(3) Section 404 permit under the Clean Water Act;

(4) Title V permit under the Clean Air Act;

(5) New Source Review minor source permit under the Clean Air Act;

(6) Section 10 permit under the Rivers and Harbors Act;

(7) Section 408 authorization under the Rivers and Harbors Act; and

(8) Coastal Zone Consistency Certification under the Coastal Zone Management Act. This certification must include the following:

(i) The statement: "The proposed activity complies with the enforceable policies of [Name of Affected State]'s approved Coastal Management Program and will be conducted in a manner consistent with such program";

(ii) A copy of the environmental evaluation required by section 248.5(y) of this part; and

(iii) The applicant must also furnish to the appropriate agency of each State where the proposed project may affect a coastal use or resource, a copy of the certification requesting concurrence with the consistency certification. Complete procedures for providing data for the consistency certification are specified at 15 CFR part 930, subpart D.

(bb) *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.

(cc) *Sworn statement.* A declaration that conforms to the requirements of 28 U.S.C. 1746.

(dd) *MARPOL requirements for certification as Reception Facility for Oil, Noxious Liquid Substances, and Garbage.* An application for a Certificate of Adequacy (COA) as defined in 33 CFR ch. I, subch. ONN or a written waiver justifying why compliance with the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention, and as further modified by the Protocol of 1997 or MARPOL, is unreasonable or impracticable.

§ 248.6 What additional information may be required?

(a) MARAD may require the applicant, or the applicant's affiliates to submit any additional analysis, explanation, or other information MARAD deems necessary to process the application;

(b) MARAD may require the applicant, or the applicant's affiliates, to make available for MARAD examination, under oath or for interview, persons having, or believed to have, necessary information;

(c) If information under paragraph (a) or (b) of this section is required, MARAD, with input from the applicant, will set a time by which the required information must be provided to meet the Act's timeline for processing the application. If the applicant is unable to provide the information under paragraph (a) or (b) by the specified time, the applicant may request that MARAD grant a suspension of the timeline for processing the application to provide the applicant additional time to submit the required information;

(d) The timeline for MARAD's review of an application under the Act will be extended by the total number of days that the timeline is suspended under paragraph (c) of this section. If the applicant does not provide the required information within the timeline provided in the Act

for processing the application, then MARAD will deny the application based on the lack of sufficient information for MARAD to process the application;

(e) An applicant that receives a request under paragraphs (a) or (b) above may submit to MARAD a request for a meeting with appropriate MARAD personnel and representatives of any cooperating Federal agency determined by MARAD to be relevant with respect to the application, including such officials as are appropriate, to provide the applicant technical assistance, status, process, and timeline updates and additional information as necessary. MARAD will hold a meeting not later than 30 days after the date on which MARAD receives an applicant's request.

§ 248.7 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 request that MARAD obtain from the applicant information not specified by this subchapter;

(b) Requests must state briefly why the information is needed;

(c) MARAD must receive the request prior to the closing dates for the comment periods for scoping and, where appropriate, the environmental impact statement. MARAD will consider the request before making a final decision on whether to approve the license application.

(d) MARAD 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) MARAD may discuss the request with the requesting person and the applicant prior to determining whether to obtain the requested information.

§ 248.8 How do I prepare my application?

(a) MARAD encourages prospective applicants to confer with MARAD concerning requirements contained in this part for the preparation of an application or the requirements of this part.

(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 MARAD; or

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

(i) A certified true and complete copy of the document is attached to each copy of the application as required by section 248.9(a) of this part;

(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.

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

Send the following copies of the application:

(a) One printed copy and one electronic version in a format approved by MARAD to MARAD, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; and

(b) MARAD may require additional printed and electronic copies for distribution to Federal, Tribal, and State regulatory agencies involved in reviewing the application in accordance with the requirements of each agency.

§ 248.10 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 any additional costs associated with the processing of an application. MARAD will 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 and additional environmental analysis, are due when they are assessed, and must be paid by the applicant prior to commencing operation of the deepwater port; and

(d) Application fees and additional costs assessed under this section must be made payable to the United States Treasury and submitted to MARAD.

C—PROCESSING APPLICATIONS

§ 248.11 How are documents related to the application maintained?

(a) MARAD maintains a 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; and

(3) Copies of applicable NEPA 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), MARAD:

(1) Prevents the information in the document from being disclosed, unless MARAD 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.

§ 248.12 How and where may I view docketed documents?

(a) All material in a docket under section 248.11 of this part is available to the public for inspection and copying at MARAD at the address under "MARAD" in section 248.4 of this part, except for:

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

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

(3) information protected from disclosure under 5 U.S.C. 552.

(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 248.18 of this part contains procedures for objecting to these claims; and

(c) Docketed material for each deepwater port project is also available to the public electronically at the Federal Docket website at *www.regulations.gov*.

§ 248.13 How is the application processed?

MARAD processes each application and publishes the notice of application under 33 U.S.C. 1504(c) in the Federal Register. Upon publication of a Notice of Application, MARAD delivers copies of the application to:

(a) Each Federal agency with jurisdiction over any aspect of ownership, construction, or operation of deepwater ports; and

(b) Each Adjacent Coastal State, including relevant State and Tribal agencies in those Adjacent Coastal States.

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

(a) If at any time before MARAD approves or denies an application, the information in it changes, becomes incomplete, or becomes inaccurate, the applicant must promptly submit the changes, additional information, or necessary corrections in the manner set forth in section 248.9 of this part.

(b) MARAD may determine that the change or required information is of such magnitude that it warrants submission of an amended application. MARAD will review the proposed change and determine if the change is of such a magnitude as to require additional environmental evaluation, pursuant to NEPA and the Department of Transportation's "Procedures for Considering Environmental Impacts."

§ 248.15 How do I withdraw my application?

The applicant may terminate the application proceeding by delivering or mailing notice of withdrawal of its application to MARAD.

§ 248.16 May I resubmit my application?

(a) With the approval of MARAD, an applicant may resubmit a previously withdrawn application in accordance with subpart B of this part. MARAD may waive such subpart B requirements as MARAD deems appropriate.

(b) A resubmitted application is considered a new licensing proceeding for purposes of the statutory timelines set forth in the Act.

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

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

(b) The request must be sent, in writing, to MARAD within 30 days after the date that the Notice of Application for the deepwater port is published in the *Federal Register*; and

(c) The request must contain:

(1) A signature of the highest official of the State 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 State port has an active study by the Secretary of the Army for the construction of a deep draft channel and harbor, or that the State 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 State port 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 project;

(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.

(5) A statement whether the State port seeks a determination that the proposed deepwater port best serves the national interest.

§ 248.18 How do I claim, or object to a claim of privileged information?

(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 MARAD in writing, with sufficient specificity to identify the information at issue, and to show why it should or should not be considered privileged;

(c) MARAD will determine whether to grant or deny a claim of privilege; and

(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.

D—PUBLIC HEARINGS OR MEETINGS

§ 248.19 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) MARAD will publish in the *Federal Register* notices of public hearings or of meetings, 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; and

(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.

§ 248.20 How is a public hearing or meeting reported?

(a) After completion of a public hearing or meeting, the presiding officer must forward a report on the hearing or meeting to MARAD for docketing;

(b) The report must contain the following information:

(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 will announce the information that the report must contain.

E—FORMAL HEARINGS

§ 248.21 What if a formal evidentiary hearing is necessary?

After all public meetings under section 248.19 of this part are concluded, MARAD will consider whether there are one or more specific and material factual issues that may be resolved by a formal evidentiary hearing. If MARAD determines that a formal evidentiary hearing is necessary, the hearing will be conducted in accordance with 5 U.S.C. 554, following procedures prescribed by MARAD.

F—APPROVAL OR DENIAL OF THE APPLICATION

§ 248.22 What is the timeline for approving or denying an application?

(a) The Act provides timelines for action on a license application. Applicants may request that MARAD suspend the application processing timeline as described in section 248.6 of this part.

(b) The timeline for action on a license application includes publishing a notice of application. A notice of application is published after it has been determined that the application contains sufficient material for processing the application. MARAD must conduct a public hearing in each Adjacent Coastal State within 240 days of publishing the notice.

(c) At the completion of the NEPA review, when an EIS is determined to be required, MARAD will publish a notice of availability of the final environmental impact statement in the *Federal Register*.

(d) MARAD will hold a final public hearing on the license application in each Adjacent Coastal State. MARAD issues a 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 deepwater port, or meet the requirements of other agencies.

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

(a) Under section 248.13 of this part, Federal agencies and Adjacent Coastal States are sent copies of the application. The agencies and States are encouraged to begin submitting their comments on the application at that time;

(b) To be considered, comments from Federal agencies and Adjacent Coastal States must be received by MARAD within 45 days after the close of the public hearing period specified in section 248.19 of this part. MARAD reviews the comments received;

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

(d) MARAD will accept approvals or disapprovals from the Governors of adjacent coastal states only during the 45-day period following the close of the application's final public hearing. Submissions made before the hearing concludes will not be accepted. If the Governor fails to transmit his or her approval or disapproval to MARAD not later than 45 days after the last public hearing, approval will be conclusively presumed.

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

MARAD may approve an application if:

(a) MARAD determines that the applicant is (i) financially able to construct, own, operate, and decommission the proposed deepwater port; and (ii) meets the oil pollution liability financial responsibility requirements of 33 U.S.C. 2716;

(b) MARAD determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

(c) MARAD determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality;

(d) MARAD determines that the deepwater port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

(e) MARAD determines that the applicant has demonstrated that the deepwater port will be constructed and operated using best available technology, so as to prevent or minimize adverse impact on the marine environment;

(f) MARAD has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Administrator of the Environmental Protection Agency that the deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended [42 U.S.C. 7401 *et seq*.], the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 *et seq*.], or the Marine Protection, Research and Sanctuaries Act, as amended [16 U.S.C. 1431 *et seq*., 1447 *et seq*.; 33 U.S.C. 1401 *et seq*., 2801 *et seq*.];

(g) MARAD has consulted with the Secretary of the Army, the Secretary of State, the Secretary of Homeland Security, and the Secretary of War, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(h) the Governor of each Adjacent Coastal State approves, or is presumed to approve, the issuance of the license; and

(i) the Adjacent Coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 *et seq*.].

§ 248.25 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(i), only one application is approved. Unless one port clearly best serves the public interest, the Secretary will issue the license according to the following order of priorities:

(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 neither engaged in producing, refining, or marketing oil nor an affiliate of a person engaged in producing, refining, or marketing oil; and then

(3) Any other applicant.

(b) In determining whether a port best serves the national interest, MARAD will consider:

(1) The degree to which each deepwater port will affect the environment, as determined under the review criteria in subpart K 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 deepwater ports that would be passed on to consumers of oil.

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

§ 248.26 When may the application process be stopped and an application be treated as withdrawn?

(a) MARAD may consider an application as withdrawn before the application is approved or denied if:

(1) The application is withdrawn before MARAD approves it;

(2) The application is incomplete, and the applicant does not respond to a request by MARAD for further information, as per section 248.6 of this part; or

(3) The applicant fails to provide information necessary, in a timely fashion, to complete an environmental impact statement, which is normally required for a project application.

(b) MARAD will provide written notice to the applicant of an action taken under this section.

G—LICENSES

§ 248.27 What is included in a deepwater port license?

A deepwater port license contains information about the licensee and the deepwater port, and any conditions that may be described by MARAD in the license. Licenses are issued in conformance with the Act, and with rules and policies of MARAD that implement the Act.

§ 248.28 Who may consult with MARAD on developing the proposed conditions of a license?

Federal agencies, the Adjacent Coastal States, and the owner of the deepwater port may consult with MARAD on the conditions of the license being developed under 33 U.S.C. 1503(e).

§ 248.29 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.

§ 248.30 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 subch; and

(b) The owner must submit a request for an amendment, transfer, or reinstatement to MARAD.

§ 248.31 How is a license enforced, suspended, or revoked?

MARAD may enforce, suspend, or revoke a license under 33 U.S.C. 1511(a) if the licensee fails to comply with any applicable provision of the Act, any applicable rule, regulation, or restriction, or if the licensee fails to comply with a condition stated clearly in the license.

§ 248.32 How soon after deepwater port decommissioning must the licensee initiate removal?

Within two years of deepwater port decommissioning, the licensee must initiate removal procedures. MARAD will advise and coordinate with appropriate Federal agencies and the States concerning activities covered by this section.

H—SITE EVALUATION AND PRE-CONSTRUCTION TESTING

§ 248.33 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 Outer Continental Shelf; 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 section 248.5 of this part.

§ 248.34 What are the procedures for notifying MARAD 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 deepwater port must submit a written notice to MARAD at least 30 days before the beginning of the evaluation or testing. MARAD 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.

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

(a) No person may conduct site evaluation or 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 section 248.33(a) of this part.

§ 248.36 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 MARAD:

(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 Outer Continental Shelf;

(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 MARAD 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 MARAD on a case-by-case basis.

§ 248.37 When may MARAD suspend or prohibit site evaluation or pre-construction testing?

(a) MARAD 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) MARAD will consult with the applicant on measures to remove the cause for suspension.

(c) MARAD may lift a suspension after the applicant assures MARAD that the activity will no longer cause the threat on which the suspension was based.

I—EXEMPTION FROM OR ADJUSTMENTS TO REQUIREMENTS

§ 248.38 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 MARAD; and

(c) MARAD may require the petition to provide an alternative to the requirement.

§ 248.39 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, MARAD forwards the petition to the Governor of the State for the Governor's recommendation.

§ 248.40 When is an exemption allowed?

MARAD may allow an exemption if it 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.

J—OIL POLLUTION ACT OF 1990 LIMITS OF LIABILITY FOR DEEPWATER PORTS

§ 248.41 Where can I find the Oil Pollution Act of 1990 (OPA 90) limits of financial liability for deepwater ports?

(a) The OPA 90 limits of liability for deepwater ports are set forth in 33 CFR ch. I, subch. M. The limits of liability in that subchapter are adjusted periodically for significant increases in the Consumer Price Index, in accordance with 33 U.S.C. 2704(d)(4) and the procedures in 33 CFR ch. I, subch. M; and;

(b) The limits of liability may also be adjusted under 33 U.S.C. 2704(d)(2) and the procedures in 33 CFR ch. I, subch. NN.

§ 248.42 What are the procedures under OPA 90 for adjusting a deepwater port's limit of liability under 33 U.S.C. 2704(d)(2)?

(a) Upon an applicant's or licensee's request, USCG may lower the generally applicable OPA 90 limit of liability for deepwater ports in 33 CFR ch. I, subch. NN. USCG may do so under 33 U.S.C. 2704(d)(2) on a port by-port-basis.

(b) Requests to adjust the limit of liability for a deepwater port must be submitted to USCG. Requests to adjust the limits of liability may be submitted with a license application or upon receipt of a license from MARAD to construct and operate the proposed deepwater port. If the request for adjustment is submitted with the license application, no action will be taken on the request until MARAD issues a license to construct and operate the proposed deepwater port.

K—ENVIRONMENTAL REVIEW CRITERIA FOR DEEPWATER PORTS

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

(a) Nothing in this part 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 deepwater 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;

(3) The Department of the Interior; and

(4) State environmental agencies or permitting agencies.

§ 248.44 How will environmental evaluations be conducted?

Environmental evaluations conducted under this part will be limited to the project that is the subject of the application and will not typically analyze possible environmental effects from upstream and downstream projects separate from that project or impacts beyond the direct impacts of that project, unless required by law.

§ 248.45 What is determined by the environmental evaluation?

(a) The environmental criteria to be used in evaluating a license application are established by consensus of experts, scientific opinion, public interest, and institutional requirements, such as laws and regulations established for the protection of the environment;

(b) Environmental criteria that may be established by future environmental regulations and other requirements to protect the environment may also be used to evaluate license applications; and

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

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

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

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

(4) Shore-based construction and fabrication sites;

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

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

§ 248.46 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 deepwater 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 action and alternatives. Alternatives must consider

alternate siting of the deepwater port as well as different technologies and pipeline routes. The evaluation will assess at the discretion of the agency and consistent with the scope of the project, the following:

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

(i) Soil, Geology, Seismicity

(ii) Coastal Zone

(iii) Air Quality

(iv) Hazardous Materials

(v) Noise and Vibration

(vi) Public Service and Utilities

(vii) Water Quality

(viii) Surface Water and Groundwater

(ix) Wetlands and Waters of the US

(x) Floodplains

(xi) Stormwater

(xii) Threatened & Endangered Species and Critical Habitat

(xiii) Essential Fish Habitat

(xiv) Historic Preservation and Tribal Resources

(xv) Traffic and Safety

(xvi) Terrestrial Wildlife

(xvii) Vegetation

(xviii) Land Use and Visual Impacts

(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.

§ 248.47 How are these criteria reviewed and revised?

MARAD periodically reviews and may revise these criteria. Reviews and revisions are conducted in accordance with section 248.44 of this part. The criteria established are consistent with NEPA.

§ 248.48 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 deepwater port and the vessels and crews calling at the deepwater port; and

(2) Under the environmental review criteria in section 248.46 of this part, the applicant has demonstrated that the deepwater port will be constructed, operated, and decommissioned using the best available technology to prevent or minimize adverse impacts on the environment.

(b) Under 33 U.S.C. 1504(f), the criteria in section 248.46 of this part must be considered in the preparation of a single detailed environmental impact statement for all timely applications covering a single application area. In addition, 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; and

(c) In accordance with the Department of Transportation's "Procedures for Considering Environmental Impacts,"[3] MARAD will prepare a supplemental NEPA analysis if there are substantial changes to the proposed action relevant to environmental or safety concerns, or, in

[3] DOT Order, 5610.1D, DOT's Procedures for Considering Environmental Impacts, July 1, 2025: https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts.

MARAD's discretion, substantial new circumstances or information about the significance of the adverse environmental impacts bearing on the deepwater port and related activities affecting its location, construction, operation or decommissioning.

§ 248.49 How is an environmental review conducted?

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

(a) An evaluation of the proposal's completeness of environmental information and quality of assessment including, but not limited to, geographic relevance, age of data used (generally no more than five years at the time of submission) and methods of data analysis, 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 sections 248.51 through 248.56 of this part.

§ 248.50 What are the siting criteria?

In accordance with section 248.50 of this part, 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 deepwater port, its components, and tankers calling at the deepwater 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 deepwater port, its components, and critical habitats including, but not limited to, 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.

§ 248.51 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 section 248.53 of this part.

§ 248.52 What are the design, construction, and operational criteria?

In accordance with section 248.50 of this part, the deepwater port proposal and a reasonable range of 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.

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

In accordance with section 248.50 of this part, the deepwater port proposal and a reasonable range of 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 as described in section 248.5(aa) of this part;

(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.

§ 248.54 What are other critical criteria that must be evaluated?

In accordance with section 248.50 of this part, the deepwater port proposal and a reasonable range of 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; and

(d) 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.

§ 248.55 What environmental statutes must an applicant follow?

In constructing and operating a deepwater port, the deepwater port must comply with all applicable Federal, State, and Tribal environmental statutes and regulations. For the purposes of information, a list of Federal environmental statutes that may apply includes but is not limited to: Abandoned Shipwreck Act of 1987 (ASA), Pub. L. No. 100-298, 43 U.S.C. 2101, *et. seq.;* American Indian Religious Freedom Act (AIRFA), Pub. L. No. 95-341, 42 U.S.C. 1996, *et. seq.;*

Antiquities Act of 1906, Pub. L. No.59-209, 54 U.S.C. 320301, *et. seq.;* Archeological and Historic Preservation Act of 1974 (AHPA), Pub. L. No. 93-291, 54 U.S.C. 312501, *et seq.*; Archeological Resources Protection Act of 1979 (ARPA), Pub. L. No. 96-95, 16 U.S.C. 470aa, *et. seq.;* Architectural Barriers Act of 1968 (ABA), Pub. L. No. 90-480, 42 U.S.C. 4151, *et. seq.;* Clean Air Act of 1977 (CAA), Pub. L. No. 88-206, 42 U.S.C. 7401, *et. seq.;* Clean Water Act of 1977 (CWA), Pub. L. No. 95-217, 33 U.S.C. 1251, *et. seq.;* Coastal Barrier Resources Act (CBRA), Pub. L. No. 97-348, 16 U.S.C. 3510, *et. seq.;* Coastal Zone Management Act (CZMA), Pub. L. No. 92-583, 16 U.S.C. 1451, *et. seq.;* Community Environmental Response Facilitation Act (CERFA), Pub. L. No. 102-426, 42 U.S.C. 9620*;* Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as Superfund, Pub. L. No. 96-510, 42 U.S.C. 9601, *et. seq.;* Department of Transportation Act, section 4(f), Pub. L. No. 89-670, 49 U.S.C. 303 and 23 U.S.C. 138*;* Emergency Planning and Community Right-to-Know Act (EPCRA), Pub. L. No. 99-499, 42 U.S.C. 11001, *et. seq.;* Endangered Species Act of 1973 (ESA), Pub. L. No. 93-205, 16 U.S.C. 1531, *et. seq.;* Environmental Quality Improvement Act of 1970, Pub. L. No. 91-224, 42 U.S.C. 4371, *et. seq.;* Farmlands Protection Policy Act (FPPA), Pub. L. No. 97-98, 7 U.S.C. 4201, *et. seq.;* Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Pub. L. No. 80-104, 7 U.S.C. 136, *et. seq.;* Fish and Wildlife Act of 1956, Pub. L. No. 84-1024, 16 U.S.C. 742, *et. seq.;* Fish and Wildlife Coordination Act (FWCA), Pub. L. No. 85-624, 16 U.S.C. 661, *et. seq.;* Flood Disaster Protection Act of 1973 (FDPA), Pub. L. No. 93-234, 42 U.S.C. 4002, *et. seq.;* Historic Sites Act of 1935, Pub. L. No. 74-292, 54 U.S.C. 320101, *et. seq.;* Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA or MSA), Pub. L. No. 94-265, 16 U.S.C. 1801, *et. seq.;* Marine Mammal Protection Act of 1972 (MMPA), Pub. L. No. 92-522, 16 U.S.C. 1361, *et seq.*; Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. No. 92-532, 16 U.S.C. 1431, *et. seq.* and 33 U.S.C. 1401, *et. seq.;* Migratory Bird Treaty Act (MBTA), Pub. L. No. 65-186, 16 U.S.C. 703, *et. seq.;* NEPA, Pub. L. No. 91-190, 42 U.S.C. 4321, *et. seq.;* National Historic Preservation

Act of 1966 (NHPA), Pub. L. No. 89-665, 16 U.S.C. 470, *et. seq.;* Native American Graves Protection and Repatriation Act (NAGPRA), Pub. L. No. 101-601, 25 U.S.C. 3001, *et. seq.;* Noise Control Act of 1972, Pub. L. No. 92-574, 42 U.S.C. 4901, *et. seq.;* Pollution Prevention Act of 1990 (PPA), Pub. L. No. 101-508, 42 U.S.C. 13101, *et. seq.;* Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. No. 94-580, 42 U.S.C. 6901, *et. seq.;* Rivers and Harbors Act of 1899 (RHA), 30 Stat. 1151, 33 U.S.C. 403; Safe Drinking Water Act (SDWA), Pub. L. No. 93-523, 42 U.S.C. 300f, *et. seq.;* Toxic Substances Control Act (TSCA), Pub. L. No. 94-469, 15 U.S.C. 2601, *et. seq.;* and Wild and Scenic Rivers Act, Pub. L. No. 90-542, 16 U.S.C. 1271, *et. seq.*

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.
Secretary, Maritime Administration
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