

2002—Par. (9). Pub. L. 107-295, §106(b)(2), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “‘deepwater port’ means any fixed or floating manmade structures other than a vessel, or any group of structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the transportation, storage, and further handling of oil for transportation to any State, except as otherwise provided in section 1522 of this title, and for other uses not inconsistent with the purposes of this chapter, including transportation of oil from the United States outer continental shelf. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a ‘new source’ for purposes of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;”

Pars. (13) to (19). Pub. L. 107-295, §106(b)(1), (3), added par. (13) and redesignated former pars. (13) to (18) as (14) to (19), respectively.

1996—Pars. (3) to (8). Pub. L. 104-324, §503(a), redesignated pars. (4) to (9) as (3) to (8), respectively, and struck out former par. (3) which read as follows: “‘anti-trust laws’ includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and sections 73 and 74 of the Act of August 27, 1894, as amended;”

Par. (9). Pub. L. 104-324, §503(a)(2), (b), redesignated par. (10) as (9) and substituted “structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the transportation, storage, and further handling of oil for transportation to any State, except as otherwise provided in section 1522 of this title, and for other uses not inconsistent with the purposes of this chapter, including transportation of oil from the United States outer continental shelf.” for “such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 1522 of this title.” Former par. (9) redesignated (8).

Pars. (10) to (19). Pub. L. 104-324, §503(a)(2), redesignated pars. (11) to (19) as (10) to (18), respectively. Former par. (10) redesignated (9).

1984—Par. (4). Pub. L. 98-419 substituted “means an application” for “means any application”, struck out designation “(A)” before “for a license”, and struck out cls. (B) and (C) which provided that “application” meant any application submitted under this chapter for transfer of any license referred to in this paragraph, or for any substantial change in any of the conditions and provisions of any such license.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1503. License for ownership, construction, and operation of deepwater port

(a) Requirement

No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this chapter. No person may transport or otherwise transfer any oil or natural gas between a deepwater port and the United States unless such port has been so licensed and the license is in force.

(b) Issuance, transfer, amendment, or reinstatement

The Secretary may—

(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this chapter.

(c) Conditions for issuance

The Secretary may issue a license in accordance with the provisions of this chapter if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 2716 of this title¹

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

(3) he 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;

(4) he 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;

(5) he determines, in accordance with the environmental review criteria established pursuant to section 1505 of this title, 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;

(6) he 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.];

(7) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(8) the Governor of the adjacent coastal State of States, pursuant to section 1508 of this title, approves, or is presumed to approve, issuance of the license; and

(9) 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, as determined in accordance with section 1508(c) of this title, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.].

¹ So in original. Probably should be followed by a semicolon.

(d) Application for license subject to examination and comparison of economic, social, and environmental effects of deepwater port facility and deep draft channel and harbor; finality of determination

If an application is made under this chapter for a license to construct a deepwater port facility off the coast of a State, and a port of the State which will be directly connected by pipeline with such deepwater port, on the date of such application—

(1) has existing plans for construction of a deep draft channel and harbor; and

(2) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 403 of this title for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not issue a license under this chapter until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and nonreviewable.

(e) Additional conditions; removal requirements, waiver; Outer Continental Shelf Lands Act applicable to utilization of components upon waiver of removal requirements

(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe those conditions which the Secretary deems necessary to carry out the provisions and requirements of this chapter² or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.² To the extent practicable, conditions required to carry out the provisions and requirements of this chapter² shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port's operating procedures to be stated in an operations manual, approved by the Coast Guard, in accordance with section 1509(a) of this title, rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in regulations. On petition of a licensee, the Secretary shall review any condition of a license issued under this chapter to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this chapter, reasonable, and necessary to meet the objectives of this chapter. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the licensee

or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his license, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this chapter.

(3) The Secretary shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port. In the case of components lying in the subsoil below the seabed, the Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation or to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(f) Amendments, transfers, and reinstatements

The Secretary may amend, transfer, or reinstate a license issued under this chapter² if the Secretary finds that the amendment, transfer, or reinstatement is consistent with the requirements of this chapter.

(g) Eligible citizens

Any citizen of the United States who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of a deepwater port.

(h) Term of license

A license issued under this chapter remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.

(i) Liquefied natural gas facilities

To promote the security of the United States, the Secretary shall give top priority to the processing of a license under this chapter for liquefied natural gas facilities that will be supplied with or that will supply liquefied natural gas by United States flag vessels.

(Pub. L. 93-627, § 4, Jan. 3, 1975, 88 Stat. 2128; Pub. L. 98-419, § 2(b)-(e), Sept. 25, 1984, 98 Stat. 1607; Pub. L. 101-380, title II, § 2003(a)(1), Aug. 18, 1990, 104 Stat. 507; Pub. L. 104-324, title V, § 504, Oct. 19, 1996, 110 Stat. 3926; Pub. L. 107-295, title I, § 106(a)(2), Nov. 25, 2002, 116 Stat. 2086; Pub. L. 109-241, title III, § 304(b), July 11, 2006, 120 Stat. 527; Pub. L. 113-281, title III, § 307(c), Dec. 18, 2014, 128 Stat. 3045.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(6), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title

² See References in Text note below.

42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Federal Water Pollution Control Act, as amended, referred to in subsec. (c)(6), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

The Marine Protection, Research and Sanctuaries Act, referred to subsec. (c)(6), probably means Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, known as the Marine Protection, Research, and Sanctuaries Act of 1972, which is classified generally to chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of this title and chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (c)(9), is title III of Pub. L. 89-454, as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

This chapter, referred to first three times in subsec. (e)(1) and first time in subsec. (f), was in the original "this title" and was translated as reading "this Act", meaning Pub. L. 93-627, which is classified generally to this chapter, to reflect the probable intent of Congress, because Pub. L. 93-627 does not contain titles.

The Outer Continental Shelf Lands Act, referred to in subsec. (e)(3), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

AMENDMENTS

2014—Subsec. (i). Pub. L. 113-281 inserted "or that will supply" after "be supplied with".

2006—Subsec. (i). Pub. L. 109-241 added subsec. (i).

2002—Subsec. (a). Pub. L. 107-295 inserted "or natural gas" after "oil".

1996—Subsec. (a). Pub. L. 104-324, §504(a), struck out at end "A deepwater port, licensed pursuant to the provisions of this chapter, may not be utilized—

"(1) for the loading and unloading of commodities or materials (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port,

"(2) for the transshipment of commodities or materials, to the United States, other than oil,

"(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States."

Subsec. (c)(7) to (10). Pub. L. 104-324, §504(b), redesignated pars. (8) to (10) as (7) to (9), respectively, and struck out former par. (7) which read as follows: "he has received the opinions of the Federal Trade Commission and the Attorney General, pursuant to section 1506 of this title, as to whether issuance of the license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws;"

Subsec. (e)(1). Pub. L. 104-324, §504(c), substituted "In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe those conditions which the Secretary deems necessary to carry out the provisions and requirements of this chapter or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter. To the extent practicable, conditions required to carry out the provisions and requirements of this chapter shall be addressed in license conditions

rather than by regulation and, to the extent practicable, the license shall allow a deepwater port's operating procedures to be stated in an operations manual, approved by the Coast Guard, in accordance with section 1509(a) of this title, rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in regulations." for "In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter."

Subsec. (e)(2). Pub. L. 104-324, §504(d), substituted "his license" for "his application".

Subsec. (f). Pub. L. 104-324, §504(e), inserted heading and amended text generally. Prior to amendment, text read as follows: "The Secretary may amend, transfer, or reinstate a license issued under this chapter if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued."

1990—Subsec. (c)(1). Pub. L. 101-380 substituted "section 2716 of this title" for "section 1517(l) of this title;"

1984—Subsec. (b). Pub. L. 98-419, §2(b), substituted provisions authorizing the Secretary, on application, to issue a license for the ownership, construction, and operation of a deepwater port and, on petition of the licensee, to amend, transfer, or reinstate a license issued under this chapter for provisions which had authorized the Secretary, upon application and in accordance with the provisions of this chapter, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

Subsec. (e)(1). Pub. L. 98-419, §2(e), inserted provision that on petition of a licensee, the Secretary shall review any condition of a license issued under this chapter to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this chapter and is reasonable, and necessary to meet the objectives of this chapter, and that the Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this chapter.

Subsec. (f). Pub. L. 98-419, §2(c), substituted provisions authorizing the Secretary to amend, transfer, or reinstate a license issued under this chapter if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued for provisions which had authorized the Secretary to transfer such licenses if the Secretary determined that such transfer was in the public interest and that the transferee met the requirements of this chapter and the prerequisites to issuance under subsec. (c) of this section.

Subsec. (h). Pub. L. 98-419, §2(d), substituted provision that a license issued under this chapter remain in effect unless suspended or revoked by the Secretary or until surrendered by the licensee for provisions which had limited the terms of licenses to not more than 20 years and which had granted each licensee a preferential right of renewal for not more than 10 years, subject to subsec. (c), upon such conditions and for such term as determined by the Secretary to be reasonable and appropriate.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections

468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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Pub. L. 109-241, title III, §304(a), July 11, 2006, 120 Stat. 527, as amended by Pub. L. 113-281, title III, §307(b), Dec. 18, 2014, 128 Stat. 3045, provided that: “The Secretary of Transportation shall develop and implement a program to promote the transportation of liquefied natural gas to and from the United States on United States flag vessels.”

§ 1504. Procedure

(a) Regulations; issuance, amendment, or rescission; scope

The Secretary shall, as soon as practicable after January 3, 1975, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter in accordance with the provisions of section 553 of title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this chapter, to amend or rescind any such regulation.

(b) Additional regulations; criteria for site evaluation and preconstruction testing

The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after January 3, 1975, prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations 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. Such activity may thenceforth not be undertaken except in accordance with regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this chapter.

(c) Plans; submittal to Secretary of Transportation; publication in Federal Register; application contents; exemption

(1) Any person making an application under this chapter shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all of the required information does not appear to be contained in the application, the Secretary shall notify the applicant

and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to—

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 3 per centum;

(B) to the extent feasible, the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the construction or operation of the deepwater port and a copy of any such contract;

(C) the name, address, citizenship, and telephone number of each affiliate of the applicant and of any person required to be disclosed pursuant to subparagraphs (A) or (B) of this paragraph, together with a description of the manner in which such affiliate is associated with the applicant or any person required to be disclosed under subparagraph (A) or (B) of this paragraph;

(D) the proposed location and capacity of the deepwater port, including all components thereof;

(E) the type and design of all components of the deepwater port and any storage facilities associated with the deepwater port;

(F) with respect to construction in phases, a detailed description of each phase, including anticipated dates of completion for each of the specific components thereof;

(G) the location and capacity of existing and proposed storage facilities and pipelines which will store or transport oil transported through the deepwater port, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(H) with respect to any existing and proposed refineries which 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, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this chapter;

(K) 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;

(L) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; and

(M) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.