

## § 148.701

(b) Compliance would not enhance safety or the environment;

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

(d) National defense or national economy justify a departure from the rules; or

(e) The alternative proposed in the petition would:

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

(2) Would be consistent with recognized principles of international law.

### Subpart G—Limits of Liability

SOURCE: CGD 97-023, 62 FR 33363, June 19, 1997, unless otherwise noted.

#### § 148.701 Purpose.

This subpart sets forth the limits of liability for U.S. deepwater ports in accordance with section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704).

#### § 148.703 Limits of liability.

(a) The limits of liability for U.S. deepwater ports will be established by the Secretary of Transportation on a port-by-port basis, after review of the maximum credible spill and associated costs for which the port would be liable. The limit for a deepwater port will not be less than \$50 million or more than \$350 million.

(1) The limit of liability for the LOOP deepwater port licensed and operated by Louisiana Offshore Oil Port, Inc., is \$62,000,000.

(2) [Reserved]

(b) [Reserved]

#### APPENDIX A TO PART 148—ENVIRONMENTAL REVIEW CRITERIA FOR DEEPWATER PORTS

I. *Authority.* The Deepwater Port Act of 1974, Pub. L. 93-627 (33 USC 1501 et seq.), authorizes the Secretary of Transportation to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port. Section 6 of the Act requires the Secretary to establish environmental review criteria which shall be used to evaluate a deepwater port as proposed in an application for a license. By amendment of Part 1 of Title 49, Code of Federal Regula-

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tions (49 CFR 1.46(t)), dated April 25, 1975, the Secretary delegated to the Commandant of the Coast Guard the responsibility to establish such criteria (40 FR 20088-20089). (49 CFR 1.46(t) is presently redesignated as 49 CFR 1.46(s) (40 FR 43901-43906)).

Section 6 of the Act reads as follows:

Sec. 6. (a) The Secretary, in accordance with the recommendations of the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration and after consultation with any other Federal departments and agencies having jurisdiction over any aspect of the construction or operation of a deepwater port, shall establish, as soon as practicable after the date of enactment of this Act, environmental review criteria consistent with the National Environmental Policy Act. Such criteria shall be used to evaluate a deepwater port as proposed in an application, including:

(1) the effect on the marine environment;

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

(3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;

(4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;

(5) effects of land-based developments related to deepwater port development;

(6) the effect on human health and welfare; and

(7) such other considerations as the Secretary deems necessary or appropriate.

(b) The Secretary shall periodically review and, whenever necessary, revise in the same manner as originally developed, criteria established pursuant to subsection (a) of this section.

(c) Criteria established pursuant to this section shall be developed concurrently with the regulations in section 5(a) of this Act and in accordance with the provisions of that subsection.

II. *Purpose.* A. Environmental review criteria shall be used to evaluate a deepwater port as proposed in an application for a license to own, construct and operate a deepwater port. The criteria shall be consistent with the National Environmental Policy Act, Pub. L. 91-190 (42 USC 4321 et seq.), which declares a national environmental policy. The Secretary of Transportation may issue a license in accordance with the provisions of the Act if, among other things, he determines:

—that the construction and operation of the deepwater port will be in the national interest and consistent with national security