

papers, or other tangible things at a designated time or place; and

(5) Explanation of the procedure in § 148.279 and paragraph (e) of this section for quashing a subpoena.

(c) Unless otherwise authorized by the administrative law judge, a subpoena must be served in accordance with Rule 45 of the Federal Rules of Civil Procedure.

(d) A subpoenaed witness is paid the same fees and mileage paid to witnesses subpoenaed in District Courts of the United States. The person requesting a subpoena must pay the fees and mileage.

(e) Any motion to quash a subpoena must be submitted within seven days after service of the subpoena.

(f) If a person does not comply with a subpoena and the administrative law judge on motion rules that good cause has been shown for seeking judicial enforcement of a subpoena, he refers his ruling to the Commandant.

§ 148.283 Hearing date.

(a) The administrative law judge schedules the formal hearing by issuing a notice to the parties.

(b) The clerk mails or delivers a copy of the notice to any person who requests it.

§ 148.285 Reporter: transcript; corrections.

(a) The reporter for a formal hearing is arranged for by the clerk. The reporter prepares a verbatim transcript of the hearing under the supervision of the administrative law judge. Nothing may be deleted from the transcript unless ordered by the administrative law judge and noted in the transcript.

(b) After a formal hearing is completed, the administrative law judge certifies and forwards the transcript to the clerk for docketing.

(c) At any time within 20 days after the transcript is docketed, the administrative law judge may make corrections to the certified transcript. Corrections when filed are attached to the transcript as appendices. Any motion to correct the transcript must be submitted within ten days after the transcript is docketed.

§ 148.287 Order of procedure.

The administrative law judge determines the order of procedure for each formal hearing.

§ 148.289 Evidence.

A party may present evidence and conduct cross-examination of witnesses at a formal hearing. Other persons may present evidence that they have been authorized to present under § 148.265.

§ 148.291 Rulings referred or appealed to the Commandant.

(a) The Commandant reviews each ruling referred or appealed to him under this subpart and issues a ruling and any appropriate order. Unless otherwise ordered by the Commandant or the administrative law judge, review of a ruling does not stay a formal hearing or extend a time period prescribed by this subpart.

(b) If the administrative law judge refers a ruling to the Commandant, he gives notice to the parties of the referral.

APPLICATION APPROVAL OR DENIAL

§ 148.321 Decision process generally.

(a) During the 45-day period immediately following the completion of the final public hearing on a proposed deepwater port license for a designated application area, opportunity is provided for the various Federal departments and agencies having expertise concerning, or jurisdiction over, any aspect of ownership, construction, or operation of deepwater ports or having a duty under the Act with respect thereto and the Governor of each adjacent coastal State to formulate and transmit to the Secretary their determinations, recommendations, opinions and approvals or disapprovals, as the case may be.

(b) Within 45 days after the expiration of the 45-day period described in paragraph (a) of this section, the Secretary approves or denies each application for a deepwater port license in the designated application area.

§ 148.323 Criteria and considerations.

(a) The Secretary approves an application only after he determines that:

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(1) The applicant is financially responsible and will carry insurance or give evidence of other financial responsibility in the amount of \$50,000,000 to cover the clean-up costs and damages that could result from a discharge of oil from the deepwater port concerned or from a vessel moored at the deepwater port;

(2) The applicant can and will comply with applicable laws, regulations, and license conditions;

(3) 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) 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) In accordance with the environmental review criteria set forth in Appendix A to this part, that the applicant has demonstrated that the deepwater port will be constructed and operated using the best available technology, so as to prevent or minimize adverse impact on the marine environment; and

(6) The adjacent coastal State to which the deepwater port concerned is to be connected by pipeline, has developed, or is making, at the time the application was submitted, reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 in the area to be directly and primarily impacted by land and water development in the coastal zone resulting from the deepwater port or is receiving a planning grant under section 305 of the Coastal Zone Management Act.

(b) In deciding whether to approve or deny an application and in making the related preliminary determinations specified in paragraph (a) of this section, the Secretary considers:

(1) The information set forth in the application concerned and any other applications for licenses for the same application area submitted in accordance with section 5(d)(3) of the Act;

(2) The information developed during hearings held pursuant to §§ 148.231 through 148.291;

(3) The final environmental impact statement for the application area concerned;

(4) The views of the Secretary of the Army, the Secretary of State, and the Secretary of Defense on the adequacy of the application and its effects on programs within their respective jurisdictions;

(5) The views and recommendations of the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the ownership, construction or operation of deepwater ports; and

(6) The opinions of the Federal Trade Commission and the Attorney General 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.

(c) The Secretary does not approve an application if, within the 45-day period immediately following the completion of the final public hearing:

(1) The Administrator of the Environmental Protection Agency determines that the proposed deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended; or

(2) The Governor of an adjacent coastal State disapproves the issuance of the license.

§ 148.325 Multiple applications.

(a) Except as provided in paragraph (b) of this section, in the case of more than one application for a deepwater port license in a designated application area, only one application may be approved according to the following order of priorities:

(1) An applicant that is an adjacent coastal State (or combination of States), any political subdivision thereof or agency or instrumentality, including a wholly owned corporation thereof.

(2) An applicant who is not:

(i) Engaged in producing, refining, or marketing oil;