

(3) A licensee shall pay annually in advance the fair market rental value (as determined by the Secretary of the Interior) of the subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed.

(i) Application approval; period for determination; priorities; criteria for determination of application best serving national interest

(1) The Secretary shall approve or deny any application for a designated application area submitted pursuant to this chapter not later than 90 days after the last public hearing on a proposed license for that area.

(2) In the event more than one application is submitted for an application area, the Secretary, unless one of the proposed deepwater ports clearly best serves the national interest, shall issue a license according to the following order of priorities:

(A) to an adjacent coastal State (or combination of States), any political subdivision thereof, or agency or instrumentality, including a wholly owned corporation of any such government;

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate of any such affiliate;

(C) to any other person.

(3) In determining whether any one proposed deepwater port clearly best serves the national interest, the Secretary shall consider the following factors:

(A) the degree to which the proposed deepwater ports affect the environment, as determined under criteria established pursuant to section 1505 of this title;

(B) any significant differences between anticipated completion dates for the proposed deepwater ports; and

(C) any differences in costs of construction and operation of the proposed deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil to the consumer.

(4) The Secretary shall approve or deny any application for a deepwater port for natural gas submitted pursuant to this chapter not later than 90 days after the last public hearing on a proposed license. Paragraphs (1), (2), and (3) of this subsection shall not apply to an application for a deepwater port for natural gas.

(Pub. L. 93-627, § 5, Jan. 3, 1975, 88 Stat. 2131; Pub. L. 98-419, § 2(f), Sept. 25, 1984, 98 Stat. 1607; Pub. L. 104-324, title V, § 505, Oct. 19, 1996, 110 Stat. 3927; Pub. L. 107-295, title I, § 106(c), (f), (g), Nov. 25, 2002, 116 Stat. 2086-2088.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (f), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (d)(4). Pub. L. 107-295, § 106(c)(1), added par. (4).

Subsec. (f). Pub. L. 107-295, § 106(f), substituted “NEPA compliance” for “Environmental impact statement for single application area; criteria” in heading and amended text generally. Prior to amendment, text read as follows: “For all timely applications covering a single application area, the Secretary, in cooperation with other involved Federal agencies and departments, shall, pursuant to section 4332(2)(C) of title 42, prepare a single, detailed environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this chapter to prepare an environmental impact statement. In preparing such statement the Secretary shall consider the criteria established under section 1505 of this title.”

Subsec. (h)(2). Pub. L. 107-295, § 106(g), inserted “and unless prohibited by law,” after “Notwithstanding any other provision of this chapter,”.

Subsec. (i)(4). Pub. L. 107-295, § 106(c)(2), added par. (4). 1996—Subsec. (c)(3). Pub. L. 104-324 added par. (3).

1984—Subsec. (g). Pub. L. 98-419 substituted “issued” for “issued, transferred, or renewed”.

REGULATIONS

Pub. L. 107-295, title I, § 106(e), Nov. 25, 2002, 116 Stat. 2087, provided that:

“(1) AGENCY AND DEPARTMENT EXPERTISE AND RESPONSIBILITIES.—Not later than 30 days after the date of the enactment of this Act [Nov. 25, 2002], the heads of Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports for natural gas shall transmit to the Secretary of Transportation written comments as to such expertise or statutory responsibilities pursuant to the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) or any other Federal law.

“(2) INTERIM FINAL RULE.—The Secretary may issue an interim final rule as a temporary regulation implementing this section [amending this section and sections 1501 to 1503, 1507, and 1520 of this title] (including the amendments made by this section) as soon as practicable after the date of enactment of this section, without regard to the provisions of chapter 5 of title 5, United States Code.

“(3) FINAL RULES.—As soon as practicable after the date of the enactment of this Act, the Secretary of Transportation shall issue additional final rules that, in the discretion of the Secretary, are determined to be necessary under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) for the application and issuance of licenses for a deepwater port for natural gas.”

§ 1505. Environmental review criteria

(a) Establishment; evaluation of proposed deepwater ports

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 January 3, 1975, environmental review criteria consistent with the National Environmental Policy Act [42 U.S.C. 4321 et seq.]. 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) Review and revision

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) Concurrent development of criteria and regulations

Criteria established pursuant to this section shall be developed concurrently with the regulations in subsection (a) of section 1504 of this title and in accordance with the provisions of that subsection.

(Pub. L. 93-627, § 6, Jan. 3, 1975, 88 Stat. 2135.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (a), is Pub. L. 91-190, § 2, Jan. 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 1506. Repealed. Pub. L. 104-324, title V, § 506, Oct. 19, 1996, 110 Stat. 3927

Section, Pub. L. 93-627, § 7, Jan. 3, 1975, 88 Stat. 2135; Pub. L. 98-419, § 2(g), (h), Sept. 25, 1984, 98 Stat. 1607, provided for antitrust review by Attorney General and Federal Trade Commission prior to issuance of license for ownership, construction, and operation of deepwater port.

§ 1507. Common carrier status

(a) Status of deepwater ports and storage facilities

A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued, except as provided by subsection (b) of this section.

(b) Discrimination prohibition; exceptions

A licensee is not discriminating under this section and is not subject to common carrier regulations under subsection (a) of this section when that licensee—

(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and

the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) Enforcement, suspension, or termination proceedings

When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

(d) Managed access

Subsections (a) and (b) of this section shall not apply to deepwater ports for natural gas. A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates.

(e) Jurisdiction

Notwithstanding any provision of the Natural Gas Act (15 U.S.C. 717 et seq.), any regulation or rule issued thereunder, or section 1518 of this title as it pertains to such Act, this chapter shall apply with respect to the licensing, siting, construction, or operation of a deepwater natural gas port or the acceptance, transport, storage, regasification, or conveyance of natural gas at or through a deepwater port, to the exclusion of the Natural Gas Act or any regulation or rule issued thereunder.

(Pub. L. 93-627, § 8, Jan. 3, 1975, 88 Stat. 2136; Pub. L. 98-419, § 3(a), Sept. 25, 1984, 98 Stat. 1608; Pub. L. 104-324, title V, § 507, Oct. 19, 1996, 110 Stat. 3927; Pub. L. 107-295, title I, § 106(d), Nov. 25, 2002, 116 Stat. 2087.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (a), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Part I of the Act, which was classified to chapter 1 (§ 1 et seq.) of former Title 49, Transportation, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

The Natural Gas Act, referred to in subsec. (e), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.