

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 1**

[Docket No. OST 1999-6189]

RIN 9991-AA37

Organization and Delegation of Powers and Duties, Update of Secretarial Delegations**AGENCY:** Office of the Secretary, Department of Transportation.**ACTION:** Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administrator his authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port as provided for in the Deepwater Port Act, of 1974, as amended. Section 106 of the Maritime Transportation Security Act of 2002 amended the Deepwater Port Act to include facilities that transport natural gas from the United States outer continental shelf. This rule does not change the previous delegation of license processing functions to the United States Coast Guard, now part of the Department of Homeland Security, and to the Maritime Administration. The two agencies will continue to coordinate their processing of the license applications. The rule also does not change the previous delegation of Deepwater Port Act authority to the Administrator of the Research and Special Programs Administration.

EFFECTIVE DATE: June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kessler, Senior Attorney-Advisor, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, Room 10102, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366-9154.

SUPPLEMENTARY INFORMATION: This rule revises the Secretary's reservation of authority under the Deepwater Port Act, as amended. The Secretary is delegating to the Maritime Administrator his authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater oil or natural gas port as provided for in the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501-1524 (DWPA). The DWPA, as amended by section 106 of the Maritime Transportation Security Act of 2002, Pub. L. 107-295, 116 STAT. 2064 at 286 (MTSA), governs the licensing of any offshore facility used to handle and transport petroleum and natural gas, pursuant to the amendment

of the DWPA. A deepwater port must be licensed by the Secretary. To date, LOOP LLC is the only offshore deepwater port facility licensed by the Secretary under the DWPA. LOOP LLC's License was issued on January 17, 1977, and was amended and updated on June 1, 2000.

The Commandant of the United States Coast Guard (USCG) and the Administrator of the Maritime Administration (MARAD) have operated under delegated authority to coordinate the processing of applications for the issuance, transfer, amendment, or reinstatement of a license for the construction and operation of a deepwater port. 62 FR 11382 (March 12, 1997); 49 CFR 1.46(s) and 1.66(aa). The USCG has the additional statutory responsibility to approve an operations manual for a deepwater port. 33 U.S.C. 1503(e)(1). The USCG retained the statutory and delegated authorities upon its transfer to the Department of Homeland Security (Department of Homeland Security Delegation Number: 0170, § 2. (75), March 3, 2003; Pub. L. 107-296, section 888.). This rule does not change the authorities delegated to USCG and to MARAD nor does it change the coordination between the USCG and MARAD for processing license applications. The rule clarifies that the authorities of USCG and MARAD for processing license applications include the authorities to process an application for a license reinstatement. 33 U.S.C. 1503(b) and (f) (as amended by Pub. L. 98-419, Sept. 25, 1984).

This rule does not change the Secretary's previous delegation of DWPA authority to the Administrator of the Research and Special Programs Administration (RSPA) in 49 CFR 1.53(a)(3) for the establishment, enforcement, and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. 1520).

By **Federal Register** notices dated, respectively, December 27, 2002 (67 FR 79234), and January 23, 2003 (68 FR 3299), the Department of Transportation through the USCG and MARAD gave notice, as required by the DWPA, of applications filed by Port Pelican LLC and El Paso Energy Bridge Gulf of Mexico, LLC for licenses to own, construct, and operate deepwater natural gas port facilities. Since then, MARAD and the USCG have been coordinating the processing of these applications. By this rule, MARAD has the authority over the issuance of the licenses for the respective applicants and for any future applicants.

This amendment to 49 CFR part 1 to reflect the Secretary's delegation of his authority to issue, transfer, amend or reinstate a license for the construction and operation of a deepwater port to the Maritime Administrator relates solely to departmental organization, procedure, and practice. Therefore, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the MARAD's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Process Matters*Regulatory Assessment*

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, (Act) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include all small businesses that are potential offerors and contractors bidding on Department of Transportation proposed acquisitions. The Act does not apply to this rulemaking, since a notice of proposed rulemaking was not required. However, the Department certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule makes administrative changes to 49 CFR Part 1; therefore, a Regulatory Flexibility Analysis has not been performed.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and

criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295.

■ 2. In § 1.44, revise paragraph (o) to read as follows:

§ 1.44 Reservation of authority.

* * * (o) Deepwater ports. Repealed.
* * * * *

■ 3. In § 1.66, redesignate paragraphs (aa)(1) through (6) as paragraphs (aa)(2) through (7). Add a new paragraph (aa)(1) and revise newly designated (aa)(2) to read as follows:

§ 1.66 Delegations to the Maritime Administrator.

* * * * *

(aa) * * *

(1) The authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

(2) The authority to process applications for the issuance, transfer, amendment, or reinstatement of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)), as amended, in coordination with the Commandant of the Coast Guard.

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Issued in Washington, DC on this 4th day of June, 2003.

Norman Y. Mineta,

Secretary of Transportation.

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