## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 33 CFR Part 137

**[Docket 50112]**

**RIN 2105–AC01**

## Limit of Liability for Deepwater Ports

**AGENCY:** Office of Secretary, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a $62 million limit of liability for the Louisiana Offshore Oil Port (LOOP) deepwater port. This limit applies only to those oil spills where LOOP would be entitled to limit its liability in accordance with the Oil Pollution Act of 1990. This action does not alter LOOP's unlimited liability for spills caused by gross negligence, willful misconduct, or violation of certain Federal regulations. LOOP is the only U.S. deepwater port in operation at this time; specific liability limits for other, future deepwater ports will be established through separate rulemakings as appropriate.

**EFFECTIVE DATE:** August 4, 1995.

**ADDRESSES:** Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying in Docket 50112, Office of Documentary Services (C–55), U.S. Department of Transportation, room PL 401 (Plaza level), 400 Seventh St., SW., Washington, DC. 20590–0001. Certain studies referenced in this notice may be ordered from the National Technical Information Service (NTIS), Springfield, VA 22161; phone orders (703) 487–4650 (Visa, Mastercard and American Express accepted).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert I. Stein, Office of Environment, Energy and Safety, at (202) 366–4846, or Mr. Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, at (202) 366–9161.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On February 8, 1995, the Department of Transportation published a notice of proposed rulemaking (NPRM) entitled Limit of Liability for Deepwater Ports. The Department received 12 letters commenting on this proposal. No public hearings were requested or held. A request for an extension of the comment period was received, but decided against (this is further discussed in paragraph (5) below).

### Statutory Basis and Purpose

The purpose of this regulatory action is to establish an appropriate limit of liability for deepwater ports in accordance with section 1004 of OPA 90 (Public Law 101–380).

Section 1004 originally set the limit of liability for deepwater ports at $350 million. However, it also allows the limit to be adjusted to a lower amount as appropriate (but not less than $50 million), subject to a study of the relative operational and environmental risks of transporting oil to the United States by deepwater ports compared to other ports.

The relative risk study, entitled the ''Deepwater Ports Study,'' has been completed and forwarded to Congress. The study concluded that deepwater ports represent a lower operational and environmental risk for delivering crude oil to the United States than the three other common modes of crude oil delivery (direct vessel deliveries, lightering, and offshore mooring stations). Copies of the Deepwater Port Study may be ordered from NTIS (publication number PB94–124054).

At present, the only deepwater port in operation in the United States is LOOP. However, other deepwater ports may be built in the future. Because there may be significant engineering and environmental differences between different deepwater ports, the Department has determined that it is necessary to review any deepwater port individually before setting its limit of liability within the statutory limits of $50 million and $350 million. Limits for other deepwater ports may be different from LOOP's limit.

Therefore, in accordance with its authority under section 1004(d)(2)(C) of OPA 90 (33 U.S.C. 2704), and for reasons explained in the NPRM and this preamble, the Department is establishing a $62 million limit of liability for the LOOP deepwater port.

### Discussion of Comments and Changes

Twelve responses were received which commented on several issues in the NPRM. These comments, and the Department's deliberations, are discussed below.

*1. Limit of Liability*

Ten comments addressed the limit of liability issue, seven of which supported a $58 million limit and one which supported a $50 million limit. These comments stated that the present $350 million limit of liability is inequitable to deepwater ports, particularly when compared to the limits of liability allowed for tank vessels. The comments pointed out the results of the ''Deepwater Ports Study'' (which determined that delivery of oil via deepwater ports represented a lower environmental risk than delivery by tankers, lightering, or offshore mooring station) and the Coast Guard's risk analysis of LOOP (which determined the maximum credible pipeline spill to be 5,194 barrels), and argued that the limit of liability should reflect the lower risks and smaller credible spill sizes of deepwater ports.

One comment supported an unspecified limit between $58 million and $150 million. Another comment alternatively suggested that it would be more equitable for the deepwater port limit of liability to be the same as for other offshore facilities: $75 million plus cleanup costs, with a requirement for demonstrated financial responsibility of $150 million.

The Department has determined that it is appropriate national policy that a deepwater port should be liable for the cost of its maximum credible spill (assuming no gross negligence or other acts that would disqualify it from limiting its liability). Further, since Congress has directed that the liability limit should be based on the study of the risk of deepwater ports relative to the risk of other means of transporting oil by vessel, it is inappropriate to base a deepwater port limit of liability on that for other offshore facilities.

The NPRM discussed a worst-case unit spill cost of $11,088 per barrel for crude oil, which was based upon national historical spill costs up to 1992. Although it is appropriate to revise the unit cost to a more-current amount, at this time no new historical cost data is available and the Department has decided to use the Consumer Price Index (CPI) as a basis for revision. The national average CPI for 1992 was 140.3 and the most current CPI (March 1995) is 151.4, an increase of 7.9 percent. Therefore, the new unit spill cost is $11,965 per barrel. Applying this to LOOP's maximum credible spill of 5,194 barrels yields $62,146,210. Accordingly, the Department is setting the limit of liability for LOOP at $62 million.

The CPI does not specifically track oil spill costs in its analysis. However, Section 1004 (d)(4) of OPA 90 requires adjustment of the liability limit reflecting significant increases in the CPI.

*2. Periodic Review of Limits of Liability*

The NPRM requested comments on whether the Department should reassess limits of liability at fixed time intervals. Two comments addressed this issue.