

One comment suggested 3-year intervals (in order to be consistent with other periodic review requirements in OPA 90) and the other comment suggested 10 years. DOT will issue a separate CPI adjustment regulation as required by law.

3. Universal Versus Port-by-Port Limit of Liability

One comment called for a single (universal) limit of liability for all deepwater ports instead of the NPRM's proposed port-by-port limit for each individual deepwater port. The comment argued that, by virtue of the Federal licensing process, all deepwater ports would be designed and operated at the same level of safety. Therefore, it is not necessary to establish individual limits.

The Department disagrees that there is no basis for setting individual limits of liability for different deepwater ports. This is because, although all deepwater ports will be designed and operated to the same high safety standards, the worst-case spill can still differ substantially from port to port. LOOP's maximum credible pipeline spill of 5,194 barrels is directly governed by its distance offshore (18 miles), its design flow rate (100,000 barrels per hour), and the size of its pipeline (48 inches). Even when designed and operated to the same safety standards, these parameters may be significantly different for another deepwater port, resulting in a different maximum credible spill.

The same commenter also discussed some economic issues; these are addressed in the "Assessment" section of this preamble.

4. Consistency Determination

The state of Louisiana requested submittal of a Consistency Determination with respect to its Coastal Zone Management Plan in accordance with 15 CFR part 930 subpart C. Such determinations are required whenever any action by a Federal agency affects land or water uses with a state's coastal zone.

The Department has determined that a Consistency Determination is not necessary because this action is administrative in nature and does not affect either land or water usage.

5. Extension of Comment Period

One commenter has recently acquired an interest in a planned deepwater port project off the coast of Texas and requested an extension of the comment period to respond to the NPRM.

The Department has determined that extending the comment period for this reason would not materially benefit the

rulemaking. This is because this final rule only directly affects the LOOP deepwater port; other deepwater ports will be separately and individually evaluated for their own limit of liability when appropriate.

6. Basis for Regulatory Action

One comment disagreed that the findings of the "Deepwater Ports Study" form a sufficient basis for this regulatory action (to reduce the limit of liability for deepwater ports) because the Study did not include relative risks of other onshore and offshore facilities. The comment stated that many onshore facilities pose less risks than deepwater ports and, therefore, adjusting limits of liability for deepwater ports should not be undertaken without also adjusting limits of liability for onshore and offshore facilities.

The "Deepwater Ports Study" did not include relative risk analyses of onshore and offshore facilities because these are not alternative modes for the transportation of oil by vessel to the United States. The Department has determined that the Study's findings are a sufficient basis for this action. Further, although OPA 90 does give the Department discretion to also adjust limits of liability for transportation-related onshore facilities, such action would be a separate rulemaking.

7. Joint Liability Scenarios

The NPRM discussed several scenarios in which LOOP might be liable (solely or jointly) for a tanker spill. LOOP's comment on this issue took exception to these scenarios, stating that OPA 90 does not provide for joint liability: the source of the spill is considered the responsible party except where a third party was solely responsible for the spill. LOOP stated that in cases where responsibility for a spill may be shared, liability under such a spill would not be created by OPA 90 and therefore such scenarios are outside the scope of this rulemaking.

Although OPA 90 does not recognize joint responsible parties other than between the owner, operator, or demise charterer of a vessel, it does recognize (in section 1002(d)(2)(A)) that third parties might cause an incident, and makes them liable up to their limit as if they were the responsible party. In addition, liability under OPA 90 is defined to be the standard of liability which obtains under 33 U.S.C. 1321. As noted in the conference report, this has been construed as joint and several liability. The Department has determined that the existence of potential liability for a tanker spill, under limited circumstances, was not a

determinative factor in setting the liability limits in this rule.

8. Unlimited Liability Provisions of OPA 90

The \$62 million limit of liability herein applies only to spills at LOOP that are not caused by gross negligence, willful misconduct, or violation of certain Federal regulations in accordance with section 1004 of OPA 90 (33 U.S.C. 2704). The unlimited liability provisions of OPA 90 are not affected by this rulemaking.

Regulatory Analyses and Notice

DOT Regulatory Policies and Procedures

This final rule is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11040, because of substantial industry interest.

Executive Order 12866

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12866, and it has been determined that it is not an economically significant rulemaking.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department must consider whether this regulation will have a significant impact on a substantial number of small entities.

The NPRM stated that the proposed action only directly affected a single company, Louisiana Offshore Oil Port (LOOP), Inc., which owns and operates the only deepwater port in the United States at present. The NPRM also stated that neither LOOP specifically, nor deepwater ports in general, qualify as small business concerns. The NPRM specifically requested comments from small companies affected by the proposed action; however, no comments were received.

Therefore, the Department concludes that this action does not affect any small business entities.

Paperwork Reduction Act

This final rule contains no collection of information requirements under the Paperwork Reduction Act.