

Regulatory Analysis and Notice

DOT Regulatory Policies and Procedures

This NPRM 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 NPRM 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 NPRM 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 proposal will have a significant impact on a substantial number of small entities.

This proposal only affects a single company, Louisiana Offshore Oil Port (LOOP), Inc., which owns and operates the only deepwater port in the United States at present. Neither LOOP specifically, nor deepwater ports in general, qualify as small business concerns. Accordingly, the Department has determined that this proposal does not affect any small business entities.

If a company affected by the proposed regulations thinks it qualifies as a small entity, and that the proposed regulations will have an adverse economic impact, then it should submit a comment (see ADDRESSES) explaining why it qualifies as a small entity, and in what way and to what degree the proposed regulations will affect it.

Paperwork Reduction Act

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

Assessment

The original Deepwater Port Act of 1974 (DPA) (33 U.S.C. 1501, *et seq.* and 43 U.S.C. 1333) set the limit of liability for a deepwater port at \$50 million, except for unlimited liability for spills caused by gross negligence or willful misconduct. Under a 1980 Memorandum of Understanding (MOU) between LOOP and the Department of Transportation, LOOP has been periodically certifying to the Department that it is maintaining a combined total of \$150 million of insurance, working capital and net worth. This is the amount that the Department determined to be necessary to ensure that LOOP could meet all of its liabilities (limited and unlimited) in accordance with the DPA.

OPA 90 established a new, \$350 million limit of liability for the negligence of deepwater ports, but allows for the Secretary to set lower limits as appropriate (but not less than \$50 million). This NPRM presents three proposed limits of liability under consideration for the LOOP deepwater port within the range \$50–\$350 million: (1) \$350 million (the status quo limit set by OPA 90), (2) \$58 million (based upon the worst-case cost of maximum pipeline spill), and (3) \$150 million (reflective of the total financial worth requirement per the MOU).

Selecting either the \$58 million or \$150 million options would have minimal economic effect because LOOP is already required to maintain a minimum worth of \$150 million. Selecting the \$350 million may or may not have an impact on LOOP, depending upon its present net worth, working capital, and insurance coverage. None of the options, regardless of which one is selected, is likely to affect the general private sector, consumers, or Federal, state or local governments. Accordingly, the anticipated impact of this proposal is considered so minimal that it does not warrant a full regulatory assessment or evaluation.

National Environmental Policy Act

The Department has determined that this rulemaking is administrative in

nature and therefore is categorically excludable from further environmental assessment.

List of Subjects in 33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution.

For the reasons set out in the preamble, the Department proposes to amend 33 CFR part 137 as follows:

SUBCHAPTER M—MARINE POLLUTION FINANCIAL RESPONSIBILITY AND COMPENSATION

PART 137—DEEPWATER PORT LIABILITY FUND

1. The authority citation for 33 CFR part 137 is revised to read as follows:

Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1), 2704; 49 CFR 1.46.

2. Subpart G is added as follows:

Subpart G—Limits of Liability

Sec.

137.601 Purpose.

137.603 Limits of Liability

Subpart G—Limits of Liability

§ 137.601 Purpose.

(a) This subpart sets forth the limits of liability for U.S. deepwater ports in accordance with section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704).

(b) In general, the limits of liability for U.S. deepwater ports will be established by the Secretary of Transportation on a port-by-port basis, after reviewing a spill risk analysis and associated costs for which the port could be liable. The limit for negligence of the deepwater port will not be less than \$50 million or more than \$350 million.

§ 137.603 Limits of Liability.

(a) The limit of liability for negligence of the deepwater port licensed and operated by Louisiana Offshore Oil Port (LOOP), Inc., is (range \$50,000 to \$350,000).

(b) [Reserved]

Dated: February 2, 1995.

Federico Peña,

Secretary of Transportation.

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