of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1005 is revised to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 Bridge, mile 3.5, at Chincoteague shall open on the hour from 6 a.m. to Midnight; except that from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year and from Midnight to 6 a.m. every day the draw need not be opened.

Dated: December 20, 2004.

Ben R. Thomason,

Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–28548 Filed 12–29–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–44–1–7603b; FRL–7856–4]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Recodification and SIP Renumbering of the New Mexico Administrative Code for Albuquerque/ Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of New Mexico on May 2, 2003. The submittal revises the numbering and format of New Mexico's Albuquerque/Bernalillo County SIP and contains no substantive changes to the regulations. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: Written comments must be received by January 31, 2005.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Comments may also be submitted electronically or through hand delivery/ courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521; fax number 214–665–7263; email address *paige.carrie@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

For additional information, see the direct final rule which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 16, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–28502 Filed 12–29–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. RSPA–99–6223 (HM–213B)]

RIN 2137–AD36

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations to prohibit flammable liquids from being transported in unprotected product piping on existing and newly manufactured DOT specification cargo tank motor vehicles. If adopted as proposed, this action will reduce fatalities and injuries that result from accidents involving unprotected product piping. This proposal was developed jointly with the Federal Motor Carrier Safety Administration.

DATES: Comments must be received by February 28, 2005.

ADDRESSES: You may submit comments identified by the docket number RSPA–99–6223 (HM–213B) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on

the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA–99–6223 (HM–213B) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, telephone (202) 366–8553; Mr. Philip Olson, Office of Hazardous Materials Technology, Research and Special Programs Administration, telephone (202) 366–4545; or Mr. Danny Shelton, Hazardous Materials Division; Federal Motor Carrier Safety Administration, telephone (202) 366–6121, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), at § 173.33(e), prohibit the retention of certain liquid hazardous materials in the external product piping (wetlines) of a DOT specification cargo tank, unless the cargo tank motor vehicle (CTMV) is equipped with bottom damage protection devices. The current prohibition applies to liquid hazardous materials in Divisions 5.1 (oxidizer), 5.2 (organic peroxide), 6.1 (toxic), and Class 8 (corrosive to skin only), but does not apply to flammable liquids.

Wetlines are product piping located beneath the cargo tank on MC 306, MC 307, DOT 406, and DOT 407 CTMVs that remain filled with product after loading or unloading. Wetlines on a five-compartment CTMV carrying gasoline typically contain 30–50 gallons of gasoline. If a passenger vehicle strikes the side of a CTMV, the impact likely will fracture unprotected wetlines. In such collisions, the passenger vehicle is often wedged under the CTMV. With the automobile driver and passenger(s) trapped in the vehicle under the CTMV, the fractured wetlines may release their entire contents onto the passenger vehicle. If ignited, fire will rapidly engulf the vehicle. When ignited, a gasoline spill of 50 gallons will create a fire over an area of up to 5000 square feet, dooming those trapped in a vehicle at the site of the release and fire. If it is not extinguished immediately, the fire could result in significant loss of life or damage to property or the environment.

On February 10, 2003, the Research and Special Programs Administration (RSPA, we) published an advance notice of proposed rulemaking (ANPRM; 68 FR 6689) to solicit comments and information regarding methods to reduce the safety risks associated with the retention of lading in unprotected wetlines. The ANPRM described the regulatory history for the current requirements in § 173.33 and detailed our long-standing concern for the inherent safety risk presented by the carriage of flammable liquids in unprotected wetlines. In addition, the ANPRM asked commenters to address a number of issues to assist us in making a determination as to whether regulatory changes are needed, including the current state of technological development, practical alternatives that will protect the wetlines or eliminate the problem, the effectiveness of measures such as increased conspicuity or side guards, and current industry practices to minimize the potential safety problem posed by wetlines.

II. Proposal in This NPRM

Based on comments and information received in response to the ANPRM (*see* discussion below), in this NPRM we propose to prohibit the carriage of flammable liquids in wetlines, unless the cargo tank motor vehicle conforms to the accident damage protection requirements of § 178.337–10 or the bottom damage protection requirements of § 178.345–8(b)(1), as appropriate.

Since product piping configurations on cargo tank motor vehicles transporting gasoline may contain unsafe amounts even when drained, we a proposing a quantity limit of one liter or less in each pipe after it is drained. This is a performance standard. We are not proposing a specific method for achieving this standard. A performance standard permits the industry wide latitude to develop measures to meet the requirement. For example, an operator may elect to install accident damage protection devices or it may decide to equip each CTMV with a system that will remove any lading remaining in unprotected wetlines after loading. This wetline prohibition would not apply to a material classed as a combustible liquid or to a flammable liquid reclassed as a combustible liquid. For hazardous materials other than flammable liquids, the existing unprotected wetline prohibition would remain in effect.

Exception for Truck-Mounted DOT Specification Cargo Tank Motor Vehicles. In this NPRM, we propose to grant an exception from the piping damage protection requirements of §§ 178.337–10 and 178.345–8(b)(1) for truck-mounted (*e.g.*, straight truck) DOT specification CTMVs. Truck-mounted CTMVs are designed and constructed with engine, body, and cargo tank permanently mounted to the same chassis. Based on the protective features afforded by their chassis and running gear, we believe that these cargo tank motor vehicles pose a significantly lower risk than most trailer and semi-trailer cargo tank motor vehicles. Under this proposal, components of the CTMV framework such as chassis rails and cross-members, suspension components, structural mounting members, or any other device that substantially protects product piping from the impact forces of another motor vehicle are expected to provide adequate accident damage protection. We are soliciting comments on whether this exception for truck-mounted cargo tank motor vehicles provides an acceptable level of safety, whether prohibiting flammable liquids in external product piping on truck-mounted DOT specification cargo tank motor vehicles should be considered, or if a quantifiable design or performance standard should be developed for these cargo tank motor vehicles. In addition, we invite comments on whether a Design Certifying Engineer should be required to determine if the product piping on a truck-mounted CTMV is adequately protected as part of the design certification process that is required for all DOT specification CTMVs.

Transitional period. We propose to make the changes in this NPRM effective two years after the effective date of a final rule and to permit CTMV operators five years to phase in requirements applicable to existing CTMVs. The two-year period provides time for planning, developing, and testing damage protection systems or systems designed to remove hazardous materials from product piping, or for redesigning cargo tank motor vehicles to eliminate external product piping altogether. Following this two-year deferral period, each newly manufactured cargo tank motor vehicle,

other than excepted truck-mounted tanks, would be subject to the new requirements. Existing cargo tank motor vehicles, other than excepted truck-mounted cargo tank motor vehicles, would have to be brought into conformance on or before the date of each cargo tank motor vehicle's first scheduled pressure retest after the two-year deferral period. Retrofits for existing CTMVs would be required to be completed no later than five years after the effective date of a final rule. The proposed seven-year transition period is needed to minimize the economic and operational impacts on CTMV operators and ensure realistic progress in implementing these safety enhancements.

Comment Summary

We received fifteen comments in response to the ANPRM. They were submitted by petroleum industry representatives, carriers, cargo tank manufacturers, and companies that manufacture cargo tank accessories. A detailed discussion of the comments follows. Note that, as appropriate, we used specific data and information provided in the comments to develop the regulatory evaluation that supports this NPRM.

A. Wetlines Accidents

The ANPRM stated that, since 1992, there have been seven fatal accidents, resulting in eight fatalities, where unprotected wetlines were damaged and gasoline released. These fatal accidents primarily involved collisions with passenger vehicles. Our experience indicates that there is a degree of under-reporting of hazardous materials transportation accidents of all types. In addition, prior to October 1, 1998, certain intrastate highway carriers were not required to report hazardous materials releases to RSPA. Therefore, our accident database probably does not include all accidents involving damage to wetlines on cargo tank motor vehicles. The ANPRM asked commenters whether our accident statistics are accurate.

One commenter, Cargo Tank Concepts (CTC), suggests that there are at least 21 accidents involving flammable liquids in unprotected wetlines that we did not include in our discussion in the ANPRM. CTC also provided a detailed analysis of the accidents it identified. This comment indicates that, as we noted in the ANPRM, our accident database is not inclusive of all wetlines incidents. We agree with CTC that in estimating the potential benefits of any proposed regulatory changes we should make an effort to account for all relevant accidents in order to accurately quantity the benefits of the proposed change. The regulatory evaluation developed in support of this ANPRM includes a detailed accident analysis.

B. Alternatives for Addressing the Safety Problem

For purposes of assessing the costs that industry might incur to comply with a performance standard, such as is proposed in this NPRM, the ANPRM identified two systems that could be used to meet the performance standard: (1) A purging system; and (2) short loading lines. In addition, the ANPRM asked commenters to address alternative strategies for reducing the risks associated with carriage of flammable liquids in unprotected wetlines, including improved vehicle conspicuity, modified accident damage protection systems, and non-regulatory alternatives.

1. Purging System

The purging system is an onboard system that evacuates the wetlines by forcing the lading out of the product piping and into the cargo tank body. After loading is complete and the main cargo compartment valves are closed, the system introduces compressed air from an auxiliary tank into the product piping under low pressure and at a low flow rate. Lading in the product piping is displaced by air and flows through separate purging lines into the cargo tank body. This purging process is controlled automatically and lasts approximately six minutes. The system is also capable of detecting and automatically purging any leakage of product through the cargo tank's internal shutoff valve into the product piping, thereby eliminating a potential wetline condition during transportation. In the ANPRM we asked if such a system would effectively reduce the risks posed by unprotected wetlines.

In response to our question, the American Petroleum Institute (API) said, ''In theory, a properly operating purging system should be very effective because the lines and equipment would be dry.'' Other commenters, however, state that such a safety system would generate more concerns than it averts. The Petroleum Transportation and Storage Association (PTSA) notes that anywhere from one half to a full gallon of gasoline would be left in the hoses after purging. PTSA states that the trapped gasoline, while reducing the risk of ignition due to accidental impact, could send vapors back to an otherwise empty and purged compartment, creating a significant risk of explosion.

CTC suggests that the purging system has already been proven to be very effective. In one instance a tanker equipped with a purging system ran over a discarded drive shaft that was then propelled into the outlet piping and tore a hole in the thin schedule 10 aluminum. No product spilled from the piping because it had been purged. CTC reports another incident that occurred when a woman driving a passenger vehicle hit and damaged the outlet piping, trapping her vehicle beneath the cargo tank. Although the tanker was empty, the owner of the tanker stated that several gallons of gasoline would have poured onto the hood of her car if the lines had not been purged.

We agree with API and CTC that a properly operating purging system will be effective in reducing the risks associated with unprotected wetlines. We disagree with PTSA. A purged wetline will not send a larger quantity of vapors back to an otherwise empty and purged compartment than would be sent by a saturated wetline. The residue remaining in the wetline after it has been purged will not pose a significant risk of explosion.

In the ANPRM we asked if a purging system would be practicable for installation on new and/or existing CTMVs. Nearly all the commenters believe that any future wetlines requirement should apply to newly manufactured equipment and that it should be phased in over a period of years as existing equipment is taken out of service. Most commenters believe that retrofit is not practicable; however, NTTC indicates that retrofit would be practicable so long as the purging equipment can be installed without welding. CTC suggests that ''it is more than obvious that our system is practicable for installation on both new and existing equipment. Over the last five years more than 130 fully automated systems have been installed nationwide and have been on the road for an average of three years. More than half of these systems were installed as retrofits.''

The ANPRM noted our understanding that one major oil company, representing less than one percent of the potentially affected cargo tank population, has chosen to outfit its entire fleet with a system that purges product from unprotected external piping. Two additional carriers installed the same purging system on a small portion of their fleets as part of a successful field evaluation and expressed interest in equipping their entire fleets. To verify our understanding we asked if any carriers were installing the systems on their

tanks and, if so, we asked for the costs associated with installation and maintenance.

Most commenters know of only one carrier, Sun Oil Co. (Sunoco), currently operating a purging system on its cargo tanks. Sunoco worked with CTC to develop a purging system that is reliable and easy to understand and operate. According to CTC, Sunoco's experience demonstrates that vapor does not escape from a purged wetline, enter an empty compartment, and create a more volatile atmosphere than if the wetline contained a greater quantity of the flammable liquid. Further, Sunoco has indicated to CTC that it is confident that the outcome of an accident will be less serious because gasoline will have been purged from the product piping. According to CTC, British Petroleum (BP)/AMOCO/ARCO, Getty, and Motiva/Shell have each installed a CTC purging system on one of its units. Carriers that have installed the CTC purging system indicate that they are satisfied with the purging system, but they are postponing further purchases pending the issuance of a RSPA regulation. The regulatory evaluation includes a more complete discussion of the costs involved with installation of a purging system on both new and existing CTMVs.

2. Short Loading Lines

The installation of short, or independent, loading lines involves adding a set of short lines for loading that are independent of the unloading lines. These short-loading lines, placed on the lower part of the cargo tank, are accessible and are not exposed to damage in case of rollover. Each short four-inch inside diameter pipe extends from the cargo tank wall and contains approximately one gallon of hazardous material rather than the 30 to 50 gallons contained in a typical product piping system. In the ANPRM we voiced our concern regarding the effectiveness of such a design and whether it might adversely impact the structural integrity of the cargo tank. We were interested in obtaining the industry's thoughts on the practicality of installing independent loading lines on new and/or existing tanks. We also asked if any carriers are currently installing the systems on their tanks and, if so, we asked for the costs associated with installation and maintenance.

The commenters state that short and recessed loading lines are not practicable options for installation on new or existing cargo tanks. They state that recessed loading lines will be more difficult for drivers and terminal workers to access, increasing accidents and OSHA claims. Also, commenters suggest that such a requirement would require loading rack modifications, cause increased splashing and concern for static ignition, and require a longer flow period. Commenters agree that the installation of short or recessed loading lines may be unrealistic because substantial modifications to existing loading racks may be necessary or loading times may increase. API suggests that such a substantial change to the loading rack would cost $1 million per loading lane. Commenters also assert that if the product flow were reversed at the rack and the lines were purged, there would be problems with the fuel tax accounting system, fuel blends due to mixing at the rack, and the mixing of flammable liquids in slop tanks. All of the commenters agree that draining the product at the rack is neither a feasible nor cost-effective option.

We agree with the commenters. Our analysis of short or recessed loading lines indicates that the system would not be a cost-effective means of mitigating the risks associated with unprotected wetlines. Due to the high cost of facility modification and the potential for greater risks to workers, the public, and the environment, implementation of an independent loading line requirement is not feasible at this time.

3. Accident Damage Protection

In the ANPRM, we stated that we are aware of at least one cargo tank operator that has installed under-ride protection on its cargo tank motor vehicles. Although this protection may not meet the bottom damage protection requirements in § 178.345–8(b), we invited comments on whether this may or may not substantially reduce the risks posed by unprotected product piping. We also asked if there were cost-effective designs that would provide a level of protection that would sufficiently reduce the risks associated with unprotected wetlines.

Commenters agree that there are designs for accident damage protection that would protect the wetlines from rupture during a collision, but both API and the Society of Independent Gasoline Marketers of America (SIGMA) suggest that the same structure could puncture the shell of the tank due to the impact of a collision. Also, the weight of accident damage protection rigid enough to protect the wetlines in a side impact situation would be approximately 1,100 to 1,200 pounds, which would significantly reduce the amount of product hauled per trip. API states that accident damage protection would cost between $3,000 and $5,000 for ''light duty,'' which would most likely be insufficient in a side impact, or $11,000 and $12,000 for ''heavy duty,'' which would be adequate protection. Commenters suggest that accident damage protection capable of protecting the wetlines in a side impact situation is not cost-effective at this time.

We agree with the commenters. Adequate accident damage protection is available, but we realize that there are some valid concerns regarding rigid tubing puncturing the tank shell during an accident situation and the costs involved with installation of systems that would be effective in reducing accidents involving unprotected wetlines.

4. Conspicuity

In the ANPRM, we suggested that perhaps marking or other systems that increase vehicle conspicuity could be effective in reducing collisions between cargo tank motor vehicles and automobiles. All commenters agree that improved conspicuity or lighting requirements would not reduce the risk of wetlines incidents. The current conspicuity requirements make cargo tanks highly visible. Commenters further suggest that the accidents that resulted in wetlines incidents were not a result of impaired visibility.

We agree with the commenters that the conspicuity requirements currently in place are sufficient and we have decided not to propose any changes to the conspicuity features already required on cargo tank motor vehicles.

5. Non-Regulatory Alternatives

In the ANPRM, we asked if an awareness campaign might be a successful means of reducing the risk associated with unprotected wetlines. Most commenters do not see this as a reasonable approach for reducing the number of wetlines accidents. Indeed, the Petroleum Marketers Association of America (PMAA) suggests that a public awareness campaign ''might cause unnecessary alarm among the public over a risk that we see as so minimal.'' On the other hand CTC states that ''the public has every right to be alerted to the fact that cargo tank outlet piping, designed to fail if impacted in an accident, is being used to transport up to 50 gallons of gasoline located underneath a cargo tank that carries thousands of gallons of flammable liquids.'' Further, CTC indicated that the frequency and accuracy of wetlines incidents being reported would increase as the public becomes more aware of the situation.

We agree that the public should understand the risks involved with the transportation of flammable liquids and be sure to utilize safe driving techniques, but an awareness campaign would not solve the safety problem associated with the retention of flammable liquids in unprotected wetlines. We agree with CTC that an awareness campaign could help to expand data collected on wetlines incidents, but making the public aware of this situation does not eliminate the inherent safety problem.

In the ANPRM, we asked for comments on additional safety practices that the industry is currently utilizing to minimize the safety risk associated with the retention of flammable liquids in unprotected wetlines. Commenters suggest that the driver training they provide constitutes an adequate safety practice and sufficiently mitigates the risks associated with unprotected wetlines. They state that motor carriers train cargo tank motor vehicle drivers on the dangers associated with flammable liquids in wetlines and some even provide defensive driver training. Commenters did not provide any definitive costs associated with the wetlines training the industry provides. The Society of Independent Gasoline Marketers of America (SIGMA), states that ''in the past, SIGMA members have estimated their per-employee hazmat training costs at approximately $4,000 per employee.'' Other commenters indicate that significant resources were dedicated to safety training.

We agree that providing drivers with defensive driver training is beneficial to both the driver and the public, but the wetlines accidents that have occurred indicate that this type of training does not adequately alleviate the safety risk associated with the retention of flammable liquids in unprotected wetlines. We are encouraged that carriers realize the dangers associated with unprotected wetlines and are searching for a safety solution. We do not agree that training alone is an adequate solution; we note, however, that training is essential to the success of any proposed safety practice.

In the ANPRM we asked if an industry or an industry/government research initiative to explore new methods to address the wetlines safety problem would be of value. Commenters disagree as to the value of such research. SIGMA states that ''a research initiative would be valuable if potential methods of enhancing safety of wetlines were identified.'' On the other hand, PMAA's view is that ''the risk is so low, we do not believe further research is warranted.''

We continue to believe that the risks associated with unprotected wetlines are significant. At this time, we do not believe that an industry/government research initiative is necessary to identify potential solutions to the safety problem because, in our view, a purging system reduces the risks associated with unprotected wetlines in a cost-effective manner. We will keep abreast of technological advances that affect the safe transportation of hazardous materials and, as necessary, conduct or participate in research projects that might provide information about new technologies or innovative ideas that could increase hazmat safety.

6. Other

In the ANPRM, we suggested that there might be other cost-effective solutions that could significantly reduce or eliminate the current level of risk. We asked commenters to identify other possible approaches to reducing or eliminating the risks posed by the transportation of flammable liquids in unprotected wetlines. We asked them to provide information on the costs, effectiveness, phase of development, or any other concepts, either facility- or vehicle-related, that might reduce the risks posed by unprotected wetlines.

Two commenters indicated that there is a new technology that could reduce the safety risks associated with wetlines. These commenters are marketing two versions of a double-poppeted emergency valve that allows the external link to rotate if the valve is sheared during an accident situation, thereby closing the valve and trapping the product in the wetline. The commenters suggest that the installation of this valve requires no modification to the existing cargo tank, except for installation of the valve, and that it is easily retrofitted onto the cargo tank in place of the current emergency valve.

While we agree that a double-poppeted emergency valve could be of some value in reducing the potential consequences of an accident involving unprotected wetlines, we note that the valve's external link operates only in the event that the valve is sheared from the piping; this limitation means that for accidents that do not shear the valve from the piping, the valve's utility in mitigating the consequences of the accident is limited. In our view, a regulatory solution must comprehensively address the underlying safety risks associated with the retention of flammable liquids in unprotected wetlines.

C. Costs Associated With Regulations

In the ANPRM, we stated that we are aware of two systems that may be used to meet the performance standard proposed in this NPRM—a manual onboard purging system and short or recessed loading lines. We estimated that the manual onboard purging system could be installed on a newly constructed CTMV for around $2,120 (welded) or $2,256 (non-welded) (2002 dollars). A short loading line system can be installed for $1,540 per cargo tank motor vehicle (2002 dollars). Equipment and installation costs are the same for the retrofit of existing CTMVs; however, additional costs in the form of lost profit or risks to technicians installing new equipment may be incurred when systems are installed on existing CTMVs. We invited comments on the accuracy of the data that we used in the ANPRM. Specifically, we asked for information on the costs for the purging system and short and recessed loading lines.

Several commenters provided figures for the costs associated with retrofitting tanks with purging systems and short loading lines. The American Petroleum Institute (API) and the Petroleum Transportation & Storage Association (PTSA) both indicate that the hardware and installation costs of retrofitting a cargo tank with a wetline purging system could total as much as $5,000 per tank. These commenters suggest that adding in the costs associated with cleaning and purging the tank and the losses due to the time out of service for the retrofit suggests that the actual cost of the retrofit could be well over $5,000 dollars per tank. PTSA estimates the cost for installing short loading lines on a CTMV to be approximately $2,000 per tank.

Another commenter, CTC, states that it sells both automatic and manual purging systems. CTC indicates that a semi-manual system, a system that does not include optical sensors, solenoids and LEDs, would be consistent with the costs used in the ANPRM, that is $2,100 to $2,300. CTC further states that, depending on the options chosen, prices range from $3,000 to $4,000 for a fully automatic wetlines purging system; on average, according to CTC, the cost for a fully automated system, either new or retrofit, averages $3,800.

We agree with PTSA that the cost of retrofitting a tank with short lines would be approximately $2,000. However, in our view both PTSA and API are overestimating the cost of retrofitting a tank with a wetlines purging system. CTC has manufactured and installed over 130 wetline purging

systems. Given CTC's experience, we believe that its estimate of the costs of installing a purging system is more accurate than the estimates provided by PTSA and API. Therefore, in the regulatory evaluation, we use the CTC cost estimates in our analysis of the costs associated with the performance standard proposed in this NPRM.

In the ANPRM we asked commenters if reductions in the costs associated with purging systems would stem from economies of scale. Most commenters indicate that economies of scale would not be applicable because there are not a sufficient number of tanks affected to provide the benefits associated with economies of scale. CTC states that over the past five years it has sold 130 systems nationwide. This does not indicate a market that could benefit from economies of scale. However, CTC suggests that if demand for its purging system were to reach 1,000 units per year, then the cost of the system would be substantially reduced. Because of the conflicting information provided by commenters, we do not include potential economies of scale in the analysis of system costs in the regulatory evaluation. However, we invite commenters to provide data and information concerning cost reductions that would be achieved as a result of economies of scale.

D. Cargo Tank Population

Based on information in the U.S. Census Bureau's 1997 Vehicle Inventory and Use Survey, we estimated in the ANPRM that the population of vehicles that would be affected by any regulatory action to address the safety risks associated with the retention of flammable liquids in unprotected wetlines is approximately 63,000. Commenters to the ANPRM indicate that there are actually between 10,000 and 50,000 vehicles that will be affected. For example, PTSA states that there are ''more than 50,000 cargo tank vehicles in flammable [liquid] service nationwide'' that ''deliver approximately 42,000 shipments per day.'' The National Tank Truck Carriers, Inc. (NTTC) states, ''respondents to NTTC's membership survey reported a total fleet of 10,648 cargo tank motor vehicles designed, primarily, for the transportation of petroleum products (*i.e.*, Specifications MC 306, DOT 406 and older equivalents).''

A May 2003 editorial entitled *Fuel haulers find the key,* published in *Modern Bulk Transporter,* reports an industry estimate of the number of petroleum trailers in service to be 15,000 units. The article states: ''A surprising result of the research was the finding that the number of petroleum trailers in service today may be less than half of what was estimated 10 years ago. The new estimate suggests a total petroleum fleet of around 15,000 units, down significantly from the 48,000-unit figure that has been quoted since the mid 1990s.'' The article indicates that this decline can be attributed in large part to 24-hour loading and delivery operations. Based on the information in this article, increases in productivity achieved by the industry over the past decade, and the inconclusive nature of the comments provided by the industry in response to the ANPRM, we believe that 15,000 vehicles is a reasonably accurate estimate for the population of CTMVs that would be affected by regulatory action to address the wetlines safety issue. A more detailed analysis of the population of vehicles that will be affected by this proposal can be found in the regulatory evaluation.

E. Cargo Tank Useful Life

The ANPRM stated our understanding that the useful life of a cargo tank is at least 20 years and may extend to 30 years. The American Petroleum Institute (API) suggests that the useful life of a cargo tank is between five and twelve years, after which time the tanks must be upgraded or replaced. Other commenters, notably NTTC and PMAA, agree that the average useful life for a cargo tank in flammable liquid service is about 20 years and that 25-year-old cargo tanks are not uncommon. For the regulatory evaluation, we used a 20-year useful life estimate to evaluate the costs to the industry of the performance standard proposed in this NPRM.

F. Maximum Weight Limits

The ANPRM asked commenters to estimate the percentage of CTMVs in flammable liquid service that are operated at maximum weight limits. Several commenters indicate that virtually all CTMVs are loaded to the maximum weight limit permitted by state or Federal regulations, whichever is greater. Commenters also suggest that for every six pounds added to the tare weight of a cargo tank, one gallon of gasoline is displaced from each load. We agree that the added weight of a system designed to reduce or eliminate lading from wetlines would have a negative impact on the amount of product that can be transported and that this cost must be addressed as part of any proposed regulatory changes. In addition, the additional risk to the general public that results from more frequent deliveries to compensate for any added weight must be addressed. The regulatory evaluation includes a more complete analysis of this issue in the discussion of costs that may be incurred by the industry to comply with the proposals in this NPRM.

G. Average Distance Traveled

In the ANPRM, we asked for an estimate of the average distance traveled by a typical CTMV during a delivery route. Most commenters indicate that the average round trip falls somewhere between 40 and 60 miles. However, some commenters suggest that the average distance per trip varies greatly depending on the areas within which deliveries are made. For example, some commenters note that tankers operating in rural areas travel significantly higher round-trip distances than tankers operating in urban areas. These commenters estimate a range of from 25 miles for an urban round-trip to 100 miles for a round-trip completed in a rural area.

Based on comments received to the ANPRM, in the regulatory evaluation, we estimate that the average round trip should fall somewhere between 40 and 60 miles. While commenters are correct that an urban route is, on average, significantly shorter than a rural route, because the demand for flammable liquids, especially gasoline, is higher in urban areas, suppliers will make far more urban delivery trips than rural delivery trips. A weighted average takes account of the larger number of short round-trips and results in an average distance per trip of between 40 and 60 miles.

H. Additional Benefits

In the ANPRM we asked if additional benefits, either measurable or otherwise, would result from the implementation of requirements established to reduce the safety risks associated with unprotected wetlines. Only one commenter addressed this question. CTC suggests that one of the additional benefits of an automatic wetlines purging system is that the system provides a continual means to detect leaking or malfunctioning emergency valves. Under the bottom loading system the outlet piping is filled with the flammable liquid that is in the cargo tank. CTC states ''[a] recent installation of a purging system for a major oil company revealed that all five emergency valves were stuck open, despite their procedures for periodic inspections. A wetlines incident in this case would have caused the loss of the entire contents of the affected compartments.''

As we noted in the ANPRM, we are aware that the automatic purging system is also capable of detecting and purging

any leakage of product through the cargo tank's internal shutoff valve into the product piping, thereby eliminating a potentially serious safety condition during transportation. We agree with CTC that this should be included as an additional benefit of the automatic purging system.

I. Low-Frequency/High-Consequence Events

In the ANPRM, we asked if a cost-benefit analysis developed to support a regulatory change should include a reduction in risks associated with low-frequency, high-consequence events. Commenters suggest that any cost-benefit analysis should include all relevant events, regardless of their frequency or magnitude. CTC gives the following example: ''Much attention has been given lately to regulations that might reduce the risk of gasoline cargo tanks being hijacked by terrorists, but a cargo tank does not need to be hijacked, nor does it need to be rigged with explosives to create a catastrophe.'' CTC suggests that if terrorists decide to cause intentional accidents involving wetlines, then low-frequency, high-consequence events could rapidly become common and more than a threat to public safety. CTC argues that the benefits for addressing this vulnerability would be substantial.

We agree with the commenters that all relevant events should be included in a cost-benefit analysis. We also agree with CTC's comments regarding security concerns associated with the transportation of hazardous materials, specifically a cargo tank filled with gasoline. However, the intention of this rulemaking is to identify a cost-effective solution to the safety risks associated with the transportation of flammable liquids in unprotected product piping. We are addressing the security risks associated with hazardous materials transportation in several other rulemaking projects. Although CTC's points are valid, we do not agree that attaching security concerns to our search for a cost-effective solution to the wetlines issue would be appropriate.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. The proposed rule is also a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket. This regulatory evaluation makes a number of key assumptions, as follows: (1) The estimated number of CTMVs affected by our proposal is 15,000 units; (2) the lowest-cost solution identified in our proposal is 100% effective in eliminating the risk posed by wetlines; (3) for retrofit of existing CTMVs, equipment downtime would be limited to time already accounted for during DOT-mandated qualification testing; (4) affected parties will select the lowest-cost alternative available (the non-welded purging system); and (5) the benefits identified in our regulatory evaluation are from actual wetlines-related incidents.

Number of CTMVs. In our regulatory evaluation we estimate the number of affected CTMVs to be 15,000. We arrived at this conclusion using several different methodologies. For example, the daily consumption of gasoline in the United States is 7,900,000 barrels or 332,000,000 gallons. Shipment of this amount, together with the subsequent daily reshipment of gasoline from bulk storage to intermediate or jobber storage, results in 43,824 (88%) bulk shipments in 8,000 gallon CTMVs and 23,904 (12%) bulk shipments in 2,000 gallon CTMVs. Based on an average of five trips per day per CTMV and 12% of CTMVs out of service at any time, the total number of CTMVs required to transport the gasoline is 9,817 8,000-gallon cargo tanks and 5,737 2,000-gallon cargo tanks, or, a total of 15,554 CTMVs. This figure is consistent with industry estimates on the number of CTMVs currently in petroleum service (15,000). This proposed rule would except truck-mounted cargo tanks, which are typically in the 2,000–3,500 gallon range, from the wetlines prohibition; this exception would apply to a total of 5,737 CTMVs. Our regulatory evaluation assumes that 15,000 CTMVs will be affected under this NPRM. This total includes about 5,183 CTMVs that transport flammable liquids other than petroleum products that may be subject to the requirements of this NPRM. We invite comments to provide us with additional data concerning the number of CTMVs that may be affected by the provisions of this NPRM.

Effectiveness of technology solutions. The intent of this proposed rule is to eliminate the risks posed by unprotected product piping containing flammable liquids during transportation. To evaluate the benefits and costs of the proposal to prohibit the carriage of flammable liquids in wetlines, we identified several technologies that would permit operators of CTMVs to meet the proposed performance standard. The system used for our regulatory analysis is the lowest-cost system currently available—a purging system that can be installed on a CTMV without welding. A purging system evacuates the loading/unloading lines by forcing the flammable liquid out of the product lines and into the cargo tank body. After loading is complete and the main cargo compartment valves are closed, the system introduces compressed air from an auxiliary tank through an air filter and regulator into the lines. We agree with most commenters to the ANPRM that the purging-system technology that currently exists will eliminate the risks posed by wetlines and, therefore, would be 100% effective whether installed in newly manufactured CTMVs or retrofitted on existing CTMVs. We welcome additional comments on whether a purging system would be 100% effective in eliminating the risk posed by wetlines.

Costs associated with system installation. We believe that systems designed to purge loading lines on CTMVs will be installed at the point of manufacture on newly constructed CTMVs and, therefore, no additional costs would be incurred. For existing CTMVs, we propose to permit retrofits over a five-year period, thereby permitting systems designed to purge loading lines to be installed at the time of a CTMV's required 5-year pressure test. This policy would allow maximum flexibility to CTMV owners and operators when scheduling installation time and is consistent with previous rulemakings requiring the retrofit of existing CTMVs. In our regulatory evaluation we assume that labor man-hour costs are the only additional costs incurred when retrofitting existing CTMVs. Other down-time costs, such as loss of profit, are not taken into account based on our assumption that the CTMV will already be out of service at the time of installation. We welcome comments on whether the down-time costs we quote are either realistic or accurate and if there would be any extenuating circumstances of which we are not aware.

Selection of low-cost alternative. Both ''welded'' and ''non-welded'' systems are equally effective in meeting the performance standard proposed in the NPRM. An automated purging system must be installed by welding; a manual purging system may be installed with or without welding. For new construction, some companies may elect to install a ''welded'' purging system over a ''non-welded'' system, not withstanding the lower per-unit cost of the ''non-welded''

system, based on convenience (installation at the point of manufacture) and the opportunity to install an automated purging system rather than a manual purging system if they so choose. Although unlikely (costs and risk are higher), some companies may elect to retrofit a ''welded'' purging system over a ''non-welded'' purging system for the opportunity to install an automated rather than a manual purging system. In our regulatory analysis we assume that CTMV owners/operators will choose to install the lowest-cost alternative (the non-welded purging system) that satisfies the performance standard proposed in the NPRM for newly constructed and existing CTMVs due to its ease of installation, lower cost, and the elimination of risk posed to welders. We have included a sensitivity analysis in our regulatory evaluation that compares benefits and costs for different scenarios, including two tables highlighting a ''welded'' manual purging system installed on both newly constructed and existing CTMVs. We welcome comments on whether CTMV owners/operators would select the ''welded'' or ''non-welded'' option.

Benefits of proposed rule. We identified 190 reported incidents involving wetlines during the 12-year period from January 1, 1990, through December 31, 2001, which is a rate of about 16 incidents per year. Incidents reported by carriers to RSPA, under §§ 171.15 and 171.16 of the HMR, are a direct result of the hazardous material involved. Therefore, all quantified reported and non-reported costs to society to avoid a wetlines incident accrued in our regulatory evaluation are the direct result of the release of flammable liquids in unprotected product piping during an accident.

In our benefit-cost analysis we determined that achieving compliance with the proposed rule under the lowest cost system of which we are aware, the non-welded purging system, and within an acceptable time frame, would cost industry $39.9 million in present value (discounted 7%) over a period of 20 years, the estimated maximum useful life of a CTMV. The corresponding present-value benefits are $45.3 million, for a benefit-cost ratio of 1.14:1 when discounted by 7%. The benefits include lives saved, injuries prevented, and property damage avoided. In addition, the proposal to prohibit the transportation of flammable liquids in unprotected product lines reduces losses by the private sector (in terms of time and productivity), by government (in terms of allocation of scarce resources, including emergency responders, their support vehicles, and equipment), and by the general public (in terms of time and inconvenience).

Associated Damages Caused by Wetlines That Are Not Reported to RSPA. The damages caused by wetlines incidents are greater than what is reported on Incident Reports submitted to RSPA. Associated damages caused by wetlines incidents include the costs of traffic delays, additional vehicle operating expenses, commercial losses beyond those that may be included in evacuation costs, environmental damage, and emergency services beyond those that may be included in decontamination/cleanup costs. These associated damages are not reported to RSPA; however, they are part of the true costs of the wetlines incidents that are reported. Associated damages are difficult to estimate; however, high profile incidents, such as the Yonkers, New York, incident, provide insight into some of these associated damages. At best, we can provide a range of values for these associated damages that are informed by empirical and other evidence.

Because of the difficulty in estimating associated benefits, some of the estimates for the benefits discussed in this section may be over- or understated. For example, the estimate derived for traffic delays is extrapolated from information about delays associated with several wetlines incidents, including the incident in Yonkers that destroyed an overpass section of the New York State Thruway and incidents in Huntsville, Alabama; Mesa, Arizona; and Chatham, Ohio, that resulted in lengthy highway closures. For purposes of this analysis, we assume that these delays are directly attributable to the release of the hazardous materials as a result of the accidents in question. However, it is also true that traffic delays result from accidents that are not related to hazardous materials or where a hazardous material is not released from its packaging during an accident. We did not try to identify the incremental costs of traffic delays resulting from the hazardous materials spill over and above the costs for delays that may have resulted had the hazardous material not been released. For this reason, these costs may be overstated. It is reasonable to assume that most, if not all, of the costs related to traffic delays resulting from wetlines accidents are directly attributable to the release of hazardous materials. Such delays would not have been as severe if a hazardous material were not involved or had not been released. In the Yonkers incident, for example, the overpass section would not have been destroyed had the hazardous material not been released and ignited. In addition, for traffic delays, our extrapolation is based on information concerning 15 of the 190 wetlines-related incidents reported to RSPA. If the full cost of traffic delays were calculated for the remaining 175 wetlines-related incidents, the corresponding associated benefits would be much higher. However, even if only 61% of the cost to society to avoid traffic delays estimated here, when discounted by 7%, are directly attributable to wetlines incidents or, if only 40% of the costs to society to avoid traffic delays estimated here, when discounted by 3%, are directly attributable to wetlines incidents, the measures proposed in the NPRM will result in benefits exceeding costs. We invite comments on whether all associated benefits should be considered in a regulatory analysis or if a range of benefits is more appropriate.

When product piping is damaged, the potential for fire is great and the consequences of such accidents may be substantial. We believe, therefore, that transportation of flammable liquids in unprotected product piping poses an unacceptable risk and continuing to permit this practice is not in the public interest.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt State, local and Indian tribe requirements, but does not propose any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain subjects. These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the

unintentional release in transportation of hazardous material; or

(5) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule covers item 5 and would preempt any State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at 49 U.S.C. § 5125(b)(2) that, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption will be 90 days from publication of a final rule in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. Based on the assessment in the regulatory evaluation, we believe that this NPRM may have a significant impact on a substantial number of small entities. However, many small businesses will not be affected by the proposals in this NPRM because they tend to own single-unit (*i.e.* ''straight'') trucks, which are excepted from the proposals.

The detailed small business analysis is available for review in the docket. We invite commenters to address the impact that the proposals in this NPRM may have on small entities.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. DOT has notified the Small Business Administration's Chief Counsel for Advocacy (SBA) of this draft proposed rule.

E. Paperwork Reduction Act

This proposed rule imposes no new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. An initial environmental assessment is available in the docket.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, packaging and containers, Radioactive materials, Uranium.

In consideration of the foregoing, we propose to amend 49 CFR Part 173 as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 173.33, paragraph (e) is revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(e) *Retention of hazardous materials in external product piping during transportation.*

(1) No person may offer or transport a liquid hazardous material in Division 5.1 (oxidizer), Division 5.2 (organic peroxide), Division 6.1 (toxic), or Class 8 (corrosive which is corrosive to skin only) in the external product piping of a DOT specification cargo tank motor vehicle unless the vehicle is equipped with bottom damage protection devices conforming to the appropriate requirements of § 178.337–10 or § 178.345–8(b)(1) of this subchapter, or the accident damage protection requirements of the specification under which the cargo tank motor vehicle was manufactured. This requirement does not apply to a residue that remains after the external product piping is drained to the maximum extent practicable.

(2) No person may offer or transport a Class 3 (flammable liquid) material in the external product piping of a DOT specification cargo tank motor vehicle on or after [date two years after the effective date of the final rule], unless the cargo tank motor vehicle is protected with bottom damage protection devices conforming to the requirements of § 178.337–10 or § 178.345–8(b)(1) of this subchapter, as appropriate. The requirements of this paragraph (e)(2) do not apply to—

(i) A cargo tank motor vehicle that is marked or certified to a DOT specification before [date two years after the effective date of the final rule], until the date of the first required periodic pressure test occurring after [date two years after the effective date of the final rule];

(ii) A cargo tank motor vehicle designed and constructed with engine, body, and cargo tank permanently mounted on the same chassis with

product piping protected from impact by another motor vehicle by the structural components of the cargo tank motor vehicle, such as damage protection guards, framing members, or wheel assemblies.

(iii) A combustible liquid.

(iv) Flammable liquid residue, not to exceed one liter (0.26 gallons) per line, that may remain in piping after it is drained.

(3) A sacrificial device in accordance with § 178.345–8(b)(2) of this subchapter may not be used to satisfy the bottom damage protection requirements of this paragraph (e) if hazardous material is retained in product piping during transportation.

* * * * *

Issued in Washington, DC, on December 23, 2004 under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–28561 Filed 12–29–04; 8:45 am]

BILLING CODE 4910–60–P