

MEMORANDUM

January 14, 2005

TO: SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA
FROM: COLLIER SHANNON SCOTT, PLLC
RE: RESEARCH & SPECIAL PROGRAMS ADMINISTRATION'S
PROPOSED RULE REGARDING WETLINES

I. Executive Summary

The Research and Special Programs Administration (“RSPA”) of the Department of Transportation (“DOT”) on December 30, 2004 issued a Notice of Proposed Rulemaking (“NPRM”) to amend the hazardous materials regulations (“HMR”) to prohibit the transportation of flammable liquids in unprotected wetlines on cargo tank motor vehicles.¹ The proposal is a performance standard that would allow carriers to choose their method of compliance. The two main options for achieving compliance are: (1) install an accident damage protection device that conforms to the HMR’s specifications; or (2) use a technological device, such as a purging system, that would clear a vehicle’s wetlines.² If the NPRM is implemented, SIGMA members who operate non truck-mounted cargo tankers would have up to seven years to retrofit their trucks at a cost of approximately \$3,800-\$5,000 per truck.

RSPA will accept comments on the NPRM until February 28, 2005. SIGMA counsel will work with other trade associations on filing joint comments in response to the NPRM. This memorandum provides an overview of the NPRM and how it would impact SIGMA members with tanker trucks. The full NPRM can be found at:

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-28561.pdf>

Questions on the information contained in this memorandum should be directed to Gregory M. Scott at (202) 342-8646 or at gscott@colliershannon.com.

¹ 69 Fed. Reg. 78375 (Dec. 30, 2004).

² 49 C.F.R. §§ 178.337-10, 178.345-8(b)(1) (2004).

II. Background

The HMR currently prohibits the retention of certain liquid hazardous materials in a cargo tanker's wetlines unless the tanker is equipped with bottom damage protection devices.³ This regulation does not apply to flammable liquids. On February 10, 2003 RSPA issued an Advance Notice of Proposed Rulemaking ("ANPRM") to solicit comments on the safety risks associated with the transportation of flammable liquids in unprotected wetlines.⁴ The ANPRM reiterated RSPA's long-standing concern that the transportation of flammable liquids in unprotected wetlines is an inherent safety risk. SIGMA filed comments in response to the ANPRM, arguing that the costs of RSPA's proposed measures significantly outweighed their potential benefits, since wetline-related accidents occur so infrequently.⁵ RSPA effectively ignored SIGMA's comments, and the comments of other transporters of hazardous materials, and issued a NPRM which would amend the HMR to prohibit the transportation of flammable liquids in unprotected wetlines.

II. The NPRM Proposal

The NPRM, if adopted, would establish a prohibition on the transportation of more than one liter, about 0.264 gallons, of flammable material in a cargo tanker's unprotected wetline. RSPA proposes a two year phase-in period for this regulation after publication of the final rule. After the two year phase in, all newly manufactured trucks would have to conform with the regulations. All existing trucks would have to be retrofitted in conjunction with their first required five-year pressure retest after the phase-in period. This is a performance standard that allows each individual operator to choose how to comply with the law. A truck operator's two main options for compliance are: (1) install an accident damage protection device to protect the vehicle's wetlines; or (2) use a technological device to remove the flammable liquid from the vehicle's wetlines.

³ 49 C.F.R. § 173.33(e).

⁴ 68 Fed. Reg. 6689 (Feb. 10, 2003).

⁵ Based on the available statistics, SIGMA calculated that there is a 0.00000038% chance that a wetline will be damaged in a given trip. RSPA, however, concluded that the danger is greater than the available data suggests because many wetline incidents go unreported.

RSPA proposed to exempt truck-mounted cargo tankers -- trucks that are constructed with their engine, body and cargo tank permanently mounted to the same chassis-- from the wetline regulations. The protective features of these trucks' chassis makes their risk of a wetline accident significantly less than most trailer and semi-trailer cargo tankers. RSPA asked for comments on this proposed exception and whether it provides an acceptable level of safety.

a. Accident Damage Protection Devices

One of the compliance options that RSPA identifies would require cargo tankers that transport more than one liter of flammable liquid in their truck's wetlines to install accident damage protection devices. The devices must conform to either the accident damage protection requirements or the bottom damage protection requirements in the HMR. Under 49 C.F.R. § 178.337-10, accident damage protection devices must be designed to withstand static loading in any direction equal to twice the weight of the completely loaded cargo tanker and be made out of metal at least 3/16th of an inch thick.⁶ Under 49 C.F.R. 178.345-8(b)(1), bottom damage devices must be able to withstand a force of 155,000lbs from all sides and must extend at least 6 inches beyond the component.⁷ The American Petroleum Institute ("API") in the past has estimate that retrofitting trucks with adequate wetline accident damage protection would cost \$11,000-\$12,000 per truck.

b. Technological Devices

A second compliance option would be the installation of a wetlines purging system to clear their tanker's fill pipes. A purging system is an onboard system that clears a truck's wetlines by using compressed air to force the product out of the piping and into the cargo tank body. API estimates that the installation of a wetline purging system on an existing cargo tanker could cost as much as \$5,000 per truck. Cargo Tank Concepts ("CTC"), a manufacturer of purging systems, estimates that the installation would cost an average of \$3,800 per truck. RSPA used CTC's estimate in their analysis of the costs associated with the performance standard proposed in the NPRM.

⁶ *Id.* at § 178.337-10.

⁷ *Id.* at § 178.345-8(b)(1).