



Wetlines

In re: HM-213D

BEFORE THE ADMINISTRATOR:

National Tank Truck Carriers (NTTC) is a trade association representing over 200 motor carriers specializing in the nationwide transportation and distribution of a variety of bulk commodities in cargo tank motor vehicles. Approximately 75% of those members combine to operate more than 15,000 petroleum cargo tanks that will be affected by the proposed rulemaking. In addition, those same NTTC members combine to operate more than another several thousand non-petroleum specification cargo tanks that could be impacted by the proposal because they can be used in flammable liquids transportation. Roughly 75% of NTTC members are small businesses as designated by the Small Business Administration (\$25.5 million revenue for trucking) many primarily engaged in petroleum transportation.

NTTC associate members include manufacturers of cargo tanks and cargo tank loading and unloading equipment, as well as private fleets and petroleum marketers that transport petroleum products and other materials covered by this proposed rule. Again, most petroleum marketers would be classified as small businesses. This membership group also includes the cargo tank test, inspection and repair shops that would be covered by the proposed regulations and would have to determine if they would take on the increased risk exposure to their workers that would result from a retrofit mandate.

Clearly, our membership and the rest of the tank truck industry have significant interest in this proposal.

NTTC POSITION: For the reasons set forth below, NTTC stands in strong opposition to the mandated installation of so-called “wetlines purging systems” or other non-tested and yet-to be-developed alternatives on either newly-manufactured or existing cargo tank motor vehicles. As her agency has appropriately done twice before, we urge the Administrator to reject this ill-conceived initiative and to withdraw this proposed rulemaking.

While we will argue against this proposal partly on economic grounds, our primary objection is that no real safety need exists for the proposal and that it actually could have a negative impact on safety. As it is written, NTTC firmly believes that the proposal with its retrofit requirements will kill or injure far more shop workers than it ever will save motorists from the very rare wetlines incident. As a segment of the industry with an outstanding safety record and long history of working with PHMSA to promote safe hazardous materials transportation, NTTC notes that if “wetlines” posed a true safety issue, the tank truck carriers and the shippers we serve would have addressed it many years ago.

We will address this issue in three sections. The first section will address some of the reasons we are now revisiting a third wetlines ban proposal from PHMSA, where we believe this proposal has significant flaws in the data and reasoning presented, and other issues of concern in summary fashion.

The second section will include economic analysis of some of the cost and benefit numbers used in an attempt to justify this proposed regulation. As a small association, our staff does not have the financial expertise to address some of the creative methodology used and conclusions reached by agency personnel who somehow had to use the same numbers cited by the agency in the past to reject wetlines

ban efforts to now make those numbers justify the proposal. We thus have spent considerable association finances to employ the services of Edgeworth Economics, 1225 19th Street NW, 8th Floor, Washington, D.C. 20036. Many of Edgeworth's findings are presented in the second section. Those comments were filed as a separate submission to the Docket.

The third section will again raise a number of the issues presented in our filing in response to the 2004 rulemaking which was eventually withdrawn in 2006. Since very little has changed since 2006, most of the data remains relevant. Again, as a small association, we retained the services of an engineering consulting firm, CED – Accident Analysis Inc., 2444 Holly Ave, Annapolis, MD 21401 in preparing our comments on HM231B. While the political environment may have changed since this engineering analysis was performed, the physics of cargo tanks and vehicle crashes have not.

Section One: Overview

“PHMSA is closing this rulemaking proceeding, having considered and declined to adopt proposals for further regulating the transportation of flammable liquids in the product piping on cargo tank motor vehicles.” (Federal Register Withdrawal of notice of proposed rulemaking HM213B. June 7, 2006.)

Why are we here again?

Why are the limited personnel and financial resources of the Pipelines Hazardous Materials Safety Administration and the various and primarily small businesses of the tank truck industry, including carriers, tank trailer manufacturers, and repair facilities again being expended on the twice rejected regulatory proposal to ban the presence of flammable liquids in the loading lines of cargo tanks—wetlines?

What has happened since 2006 when PHMSA withdrew HM213B on sound cost/benefit grounds to bring this questionable concept to life for the third time? As PHMSA itself observes in the preamble to HM213D:

“Although no catastrophic incident has occurred in the recent past, PHMSA and the National Transportation Safety Board contend that incidents similar to the . . . Yonkers incident . . . is likely to occur in the future.”

In short, an incident that occurred in 1997 that *might* have been a wetlines incident is being used to as the reason to all but mandate a purging system that *might* work to prevent incidents that are likely to (*might*) occur in the future.

The answer to these questions lies not in any increase in so-called wetlines incidents or fault in the previous agency data analysis performed that resulted in the withdrawal of HM213B. We are here because of external political pressures from the National Transportation Safety Board (NTSB) and some of its allies in the 111th Congress who opted to include “wetlines” in their unfortunate efforts to demonstrate “incompetence (or worse) at and coziness” between PHMSA and the various industries it has regulated and worked in conjunction with to develop the safest and most imitated hazardous materials transportation system on the planet.

THE YONKERS ACCIDENT – The National Transportation Safety Board is rightfully a much respected agency of safety and engineering professionals. From airline crashes to Metro accidents to serious rail and truck crashes, NTSB investigates significant transportation incidents and makes recommendations to various public and private entities for further action, including more in depth research of the recommendations. NTSB does not have regulatory authority. If it did, it would develop regulations rather than make recommendations. An NTSB recommendation is not *ipso facto* a draft regulation to be adopted by an agency such as PHMSA. The following is from the NTSB website:

In 1974, Congress reestablished the NTSB as a completely separate entity, outside the DOT, reasoning that “...No federal agency can properly perform such (investigatory) functions unless it is totally separate and independent from any other...agency of the United States.” Because the DOT has broad operational and regulatory responsibilities that affect the safety, adequacy, and efficiency of the transportation system, and transportation accidents may suggest deficiencies in that system, the NTSB’s independence was deemed necessary for proper oversight. The NTSB, which has no authority to regulate, fund, or be directly involved in the operation of any mode of transportation, conducts investigations and makes recommendations from an objective viewpoint.

PHMSA has twice considered in great detail NTSB recommendations regarding banning flammable liquids in the loading lines of cargo tanks. First as part of rulemaking HM183 and HM183A and again in 2006 in HM213B, PHMSA has diligently responded to the NTSB recommendations regarding wetlines. PHMSA has not *failed* to give careful consideration, including a separate rulemaking, to NTSB's concerns. It is not that NTSB has not received fact-based responses to its recommendations; it simply is that some present and past NTSB members and staff did not like the answers. Over time, NTSB has changed its characterization of the PHMSA response from "Open-Acceptable Response" to "Open Unacceptable Response." To be fair, while the Department of Transportation has twice elected to not ban wetlines, it also has stated that it is not a fan of wetlines and called on industry to voluntarily develop alternatives.

Much of the NTSB motivation for pushing a ban on wetlines, and much of the attempted justification for HM213D, lies in the so-called Yonkers accident that has become the Poster Event for wetlines ban proponents. It is even cited as the catastrophic 20-year accident in PHMSA's proposed rule. (Actually, we should now refer to Yonkers as the 35-year catastrophic accident since gasoline has been hauled in wetlines since the mid-1970s.) In that report on page 9, NTSB found that: "Based on the way in which the vehicle was damaged and on the statement of the witness, the Safety Board believes that the car *probably* struck the cargo tank near the loading lines." Further on the same page: "Therefore, the Safety Board concludes that the car struck and fractured one or more of the loading lines of the cargo tank, thus releasing up to 28 gallons of gasoline."

On page 4, the report states that: "Within several minutes both vehicles were fully engulfed in a massive fire, as was the thruway overpass." From an event where the car "probably" hit the loading lines possibly releasing up to 28 gallons of gasoline, the Board concluded that: Page 9 "The "heat of the fire had partially consumed the cargo tank, melting much of the shell in the upper half of the tank." This conclusion begs further review if this incident where a motorist ran through a red light at fairly high speed and broadsided a gasoline tanker is going to be the basis upon which so much disruption will be caused in the tank truck marketplace.

A few questions beg to be answered:

At what speed would a 4,000 lb. car have to be travelling when it crashes into the side of an aluminum cargo tank to impinge the shell and release product in the compartment? (Our non-engineering estimate would be far below 45 mph - Maybe 25 mph?)

If there are no leaks from the cargo tank compartment, how long would it take a fire several feet below the bottom of an aluminum cargo tank to cause "melting much of the aluminum shell" and causing a loss of product to feed a smaller fire?

What design engineer was involved in analyzing the Yonkers incident to determine the amount of time that rapid and significant destruction of the cargo tank, car, and overpass would have required from only the 24 gallons or less released from the unloading lines?

Is there a significant difference from a fire/explosion standpoint of a pipe with eight gallons of gasoline and a pipe with less than a gallon of gasoline but full of vapors?

National Tank Truck Carriers believes that the NTSB either reached the wrong conclusions or, at the least, reached conclusions that should be carefully reviewed. NTTC has formally requested the NTSB

to either reconsider its findings in NTSB Report PB98-916202 or stop using this report as justification for its recommendations.

NTTC requests that PHMSA not advance to a final rule in HM213D until NTSB completes a review of the Yonkers incident and that it refrain from using that accident as a major source of data in this rulemaking.

Many of the arguments that NTTC advanced in response to HM213B will be repeated in these comments since nothing has changed in the last five years to refute any of those arguments. In fact, we have resubmitted our entire comments to Docket HM213B to be included in Docket HM213D. We will make new observations in response to the almost bizarre attempt by the agency to provide an economic safety benefit justification to refute the sound conclusions of the past from essentially the same data. We also will insist that the agency consider the potential dangers from “hot work” on the current fleet of over 20,000 petroleum trailers that a mandated retrofit will have on shop workers. “Hot work” is any task on or around a cargo tank that could serve as a source of ignition. It includes, but certainly is not limited to, welding on the cargo tank.

Dependence of the agency on the claims of the sole manufacturer of a purging system that dangers to workers are removed by substituting a so-called “manual” system for the “automatic system” promoted in the last rulemaking are troubling and not defensible. Has the agency ever relied on the claims of the sole supplier of any product it hopes to have mandated by regulation on an industry as the basis for the much of its economic and operational conclusions? Older members at the Department of Transportation may recall the troubled history of FMVSS121 where the Supreme Court finally ruled against a standard to be achieved by technology that did not exist. PHMSA seems to be betting a lot on the claims of one obviously vested interest supplier who cannot sell a device for which there is no demand without a government mandate.

1. THE NOTICE OF PROPOSED RULEMAKING DOES NOT INCLUDE A DEFINITION OF A WETLINES INCIDENT. Part of the problem in determining what a true wetlines incident is results from the lack of a definition from PHMSA in its HM213D proposal. The closest language we could find to a definition is on Page 15 of the Regulatory Assessment and Regulatory Flexibility Analysis:

For purposes of this analysis, a wetlines incident is one in which the wetline is ruptured, flammable liquid is released, and the fatalities, injuries, and damages that result are directly attributable to the release of material from the wetline.

National Tank Truck Carriers offers the following definition of a wetlines incident:

A wetlines incident is one where the only product released originates from the loading/unloading lines on the cargo tank and where there would have been no product released if the loading/unloading lines were empty.

2. THE DANGER TO SHOP WORKERS FROM PERFORMING RETROFIT “HOT WORK” ON THOUSANDS OF IN-SERVICE PETROLEUM TRAILERS IS ESSENTIALLY IGNORED. Perhaps the most disheartening and unfortunate language in the entire HM213D proposed rule announcement can be found on Page 13 of the Regulatory Assessment and Regulatory Flexibility Analysis issued with the proposal:

“ . . . on-welded purging systems are available for retrofitting of existing CTMVs, thereby eliminating any potential risks to welders. This analysis therefore excludes any costs related to welding casualties.”

PHMSA appears to be all but promoting the so-called manual purging system under the mistaken perception that it does not require any “hot work” for retrofit installation on existing petroleum tankers. It also appears to be a ploy to avoid the very real potential for deaths and injuries which would escalate the “cost” side of the equation dramatically. While “hot work” on petroleum tankers that have hauled flammable materials can be and is done safely, the reality of shop worker deaths and injuries from not following all safety procedures can be found in the numbers shown below. Most of these unfortunate cases were found by NTTC on a search of the Internet in preparation for opposing the legislative ban on wetlines in the last Congress. We also filed a Freedom of Information Act request to review OSHA data and found more cases. We note that these tragic events occurred in work that did not involve retrofitting trailers since there has been no requirement for such service.

We firmly believe that the numbers shown below will grow significantly if HM213D mandates a retrofit of existing petroleum trailers. We do not question that qualified shops that understand how to properly degas a tanker and monitor that tanker during service could do so safely. However, we are concerned that too many fleets will decide to save money by doing the work themselves or take it to shops that do not have proper procedures and well-trained workers.

We note that even Cargo Tank Concepts, the sole commercial provider today of a purging system, raises concerns in the literature NTTC downloaded from its website on April 26, 2011:

THE WETLINES PURGING SYSTEM

INSTALLATION INSTRUCTIONS

- I) Authorized Installer. Installation should only be performed by an authorized installer, Any hot work must be done by an authorized installer who is also properly registered with the USDOT and in possession of an ASME U Stamp or a National Board R Stamp.
- II) Gas Free. Before beginning any installation the tank should be properly freed of all hazardous product and vapors.
- III) Hot Work. If the cargo tank did not have couplings installed for The Wet Line Purging System when it was manufactured, three weld couplings will have to be installed in each outlet pipe and one weld coupling in each compartment.
- IV) Mark positions for all weld couplings.

(The complete publication on installing, operating and troubleshooting the CTC system can be found at:

<http://cargotankconcepts.webs.com/Wet%20Line%20Purging%20System%20Owners%20Manual.pdf>)

The following information was submitted to the House Transportation and Infrastructure Committee in the fall of 2009.

Worker deaths resulting from welding on cargo tank trucks that were not properly evacuated of vapors:

Date	Location	Deaths	Injuries	Details
6/27/09	Stirling County TX	1	0	Tanker exploded during welding. Death due to trauma to head.
12/3/08	Doral FL	1	0	Worker killed when welding on fuel oil tanker when fumes ignited.
6/30/08	North Salt Lake City UT	1	0	One worker killed when welding on oil tanker and vapors exploded
5/30/08	Licking County OH	2	0	Two workers killed when using torch on tanker and fumes ignited
10/12/07	Birmingham AL	1	0	Welder in cargo tank killed in flash fire
9/12/07	Indianapolis IN	1	0	Worker killed with vapors in gasoline tank he was working on exploded
11/16/06	Muskegon MI	1	0	Worker welding inside 13,000 gal cargo tank killed by explosion
4/20/06	Evadale TX	1	1	Worker killed when welding torch ignited residue in tanker truck
8/30/05	Sykesville MD	1	0	Worker killed when welding old fuel tanker that still contained fumes.
9/19/03	Edmonton AB	1	0	Worker killed when welding on oil tanker internal wall.
12/17/01	Worcester MA	1	0	Worker welding on fuel oil tanker when it exploded.
3/31/01	Paterson NJ	1	1	Worker killed when his welding ignited vapors in fuel truck
1/22/01	West Memphis AR	1	0	Worker killed when vapors in weld space exploded during welding
10/17/00	Kilgore TX	1	3	One worker killed and three injured when welding on oil tanker
10/2/00	Taylor MI	1	2	Worker killed working on gasoline tank when vapors ignited.
2/1/00	Inver Heights MN	1	0	Welder killed working on gasoline tanker
8/18/98	Eustis FL	3	0	Tanker exploded when welder attempted to fix attachment. Petroleum vapors.
Total		20	7	

The above deaths and injuries were found through a search of the Internet.

NTTC submitted a FOIA request to OSHA for deaths relating to welding on cargo tanks. The agency provided a list of which included two additional deaths which do not appear on the above list. They occurred on Sept 13, 2003 and May 20, 1999. There also have been shop deaths involving hot work on cargo tanks with petroleum vapors since 2009 when this information was provided to Congress.

The OSHA information included four deaths from cargo tank welding incidents which did not include dates, so we can not determine at this point if those deaths were included in the above list.

There was one death from a welder working on a tank when vapors exploded, but it is not clear what type of tank the worker was servicing. *Let's Not Add to This List*

Of course, concerns by the Department of Transportation and industry did not begin with HM213D. The following *ON GUARD* was developed by the Federal Highway Administration Office of Motor Carriers in 1997. National Tank Truck Carriers worked with DOT to disseminate this information which is an important in 2011 as it was in 1997.

**MAN KILLED IN CALIFORNIA CARGO TANK WELDING ACCIDENT!
SHOP WORKER KILLED IN NEW JERSEY EXPLOSION!
SERIOUS INJURY IN MIDWESTERN TANK REPAIR SHOP**



On Guard

U.S. Department of Transportation
FEDERAL HIGHWAY ADMINISTRATION

THESE ARE EXAMPLES of what is becoming a pattern of cargo tank incidents throughout the country. Recently an MC306 cargo tank exploded while repair work was being completed at a Midwestern cargo tank inspection and repair facility. The inspector was on top of the tank performing repairs at the time of the explosion and was seriously injured. The four-compartmented tank trailer last contained gasoline and apparently had not been adequately cleaned and purged prior to the repair work being performed. The explosion completely opened up the tank from front to back, blowing out all the baffles and bulkheads.

The U.S. Department of Transportation reminds all transportation industries of the potential danger posed by transporting hazardous materials in cargo tanks. When conducting repair work or testing of these vessels, particular care needs to be given in determining what the tank contains or what it last contained, and ensuring that the tank is sufficiently cleaned and purged of all hazardous materials. In addition, special care needs to be taken to ensure that void spaces between compartments and vapor recovery systems are cleared of flammable gases before conducting repair work.

To reduce the possibility of having an incident, employees performing inspection, testing, or repair of cargo tanks must receive proper hazardous materials training including:

- (1) General hazardous materials awareness training to enable the employees to recognize and identify a hazardous material by its placard or other hazard communication;
- (2) Function-specific training on the requirements of their job such as ensuring tanks are cleaned and purged before conducting repairs; and
- (3) Safety training on emergency response information, measures of protection against hazardous materials, and ways to avoid accidents.

PHMSA must review its cost/benefit analysis to account for the costs of shop deaths and benefits. Perhaps it can utilize the “sensitivity analysis” approach used to increase the number of deaths that would occur in a wetlines incident due to increased car pooling. It is not sufficient to take the approach that increased deaths and injuries to tanker shop workers due to a mandated retrofit is an Occupational Health and Safety Agency (OSHA) problem when PHMSA will be the source of the increased risk exposure.

For the sake of worker safety, if PHMSA insists on mandating a retrofit of the existing fleet of petroleum trailers with some type of wetlines prevention device or structure, then it should require that the work be performed in a shop holding the “R” stamp issued by the National Board of Pressure Vessel Inspectors. NTTC realizes this will increase the costs of such service to our members, but lives are worth more than dollars.

PHMSA also should recalculate its costs analysis to include the higher charges that will be incurred at an R-Stamp shop. It also should add considerable downtime calculations for trailers requiring retrofit as many companies will have to travel significant distances to locate an R-stamp shop and there likely will be significant delays in scheduling service. A review of the February 2011 Cargo Tank Repair Directory issue of *Bulk Transporter* magazine lists just **234** commercial tank trailer service facilities in the entire United States that hold an R-Stamp or a U-Stamp (issued by the American Society of Mechanical Engineers) required to do the kind of retrofit work HM213D appears to mandate. Some states have no R-Stamp or U-Stamp shops.

We invite current PHMSA personnel to study the history of their agency where, again, they will find that NTTC’s concerns about impact of bringing thousands more petroleum into service shops for mandated retrofit and attendant “hot work” is not new. In the July 3, 2001 edition of the *Federal Register*, PHMSA’s predecessor agency, the Research & Special Programs Administration, told the public

“The Federal Motor Carrier Safety Administration (FMCSA) has notified RSPA of several fatalities that have occurred in registered cargo tank facilities during inspection and repair of DOT specification cargo tanks. In most cases, the cause of the incident was a failure to comply with the HMR requirements applicable to such operations (inadequate training programs, failing to clean and purge a tank before repair, etc.). Over the course of the last several years, FMCSA has attempted to gather anecdotal evidence to determine the frequency of these events. It appears that up to 10 fatalities a year may occur due to work on DOT specification cargo tanks.”

- 3. THE AGENCY HAS VASTLY OVERESTIMATED THE NUMBER OF “WETLINES” ACCIDENTS AND THE SOCIETAL COSTS.** In calculating the benefit to society that will be achieved as a result of implementing the proposal, the Administrator has relied upon data from 172 accidents occurring over a 10-year period that it contends could have been avoided if the wetlines had been empty. However, NTTC’s analysis of the Administrator’s data indicates that only half of the accidents included spills that were inarguably related to wetlines. The other accidents either clearly did not include true “wetlines incidents,” or at least are inconclusive. As a result, PHMSA’s estimates for societal gains related to reductions in product losses, fatalities, injuries, lost product value and cleanup costs that have resulted from wetlines failures are each grossly exaggerated.

Our detailed review of the 172 incidents published by PHMSA is included in the Edgeworth Report that is part of our comments to this Docket. Most of the incidents were quickly eliminated using the elimination factors presented but not employed as PHMSA in its Regulatory Analysis.

We do want to call attention to the tragic death of a motorist who drove into the side of a cargo tank in Altoona PA on August 2, 2000. According to the Death Certificate issued by the Commonwealth of Pennsylvania on August 7, 2000, the cause of death was “blunt force trauma.” Regrettably, PHMSA opted to include this fatality in its economic analysis and we request that the agency recalculate its results as a result of this evidence. NTTC does have a copy of the death certificate which it will make available if necessary, but has chosen to not include with this report out of consideration to the deceased’s family.

NTTC’s conservative analysis of the incidents is included in the Edgeworth Report at the end of these comments.

- 4. NO SERIOUS CONSIDERATION IS GIVEN TO DEALING WITH THE LOADING LINES PRODUCT RETENTION ISSUE AT THE LOADING RACK RATHER THAN ON THE TRAILER.** It would appear from the virtual non-consideration of addressing the issue of product in the loading line at the point of origin that the engineering challenge of removing 8 to 12 gallons of liquid from a pipe is insurmountable. From taxes, to blending to “we just don’t want to do it,” it seems as though the petroleum shipper industry has successfully constructed a mental block to managing the product it places into the transportation system.

Has PHMSA given any consideration to requiring a purging system or other option to be located on a stand at the loading rack rather than mounted on the tank trailer? Could not the purging system the agency appears so eager to place on thousands of tank trailers just as easily be installed at hundreds of loading racks? Would that approach be more economical, less subject to the wear and tear of highway and weather, and most importantly, safer at a stationary location than on mobile equipment?

While NTTC strongly maintains that no wetlines system is needed, we do believe that the agency has perhaps focused too much on a highway rather than a plant solution. Clearly, options to the trailer-mounted approach would be a valid area of research in an independent study.

Has the agency compared the safety advantages of placing the same purging system?

- 5. NO EXISTING SIDE DAMAGE PROTECTION IN EXISTING FLEET FOR AUTOMOBILES.** On Page 4849, PHMSA states that:

“In addition (to the purging system used by Sunoco) another large gasoline distributor has installed damage protection equipment on its CTMVs which could help to mitigate the consequences of a collision with a motor vehicle.”

NTTC assumes PHMSA is referring to the Exxon Mobile “world truck” gasoline trailer which has side guards on the street side of the trailer. Those guards were developed to deflect bicycles in parts of the world where the company operates and bicycles are a major form of transportation. They were not constructed to “mitigate” collisions with motor vehicles. In fact, in one case of which we are aware, an automobile in the United States hit the bicycle guard and nearly drove it into the cargo tank compartment and causing a major release of product. (see below)



Our discussions with cargo tank manufacturers indicate that true side protection devices to meet the requirements of Section 178.345-8(b) (2) would add at least one thousand pounds of protective device to the standard cargo tank. If gasoline weighs an average 6.2 pounds per gallon, it would reduce payload in the standard petroleum tanker by about 162 gallons. Thus to haul the same amount as product as a trailer without the protective device, it would take another tanker for every 50 loads to haul the same amount of product hauled by the current fleet. We strongly suspect that the additional crash exposure of two more tankers per 100 loads of gasoline would be more of a risk than the potential reduction in death or injuries prevented by installing side protection. The side protection “option” is not a realistic option.

- 6. THE PROPOSED REGULATION COVERS ALL CLASS 3 FLAMMABLE LIQUIDS IN ALL SPECIFICATION CARGO TANKS.** To our knowledge, none of the cited in the docket involves products other than gasoline in DOT406 or MC306 cargo tanks. Likewise, the cost benefit analysis appears to focus strictly on flammable petroleum products. PHMSA has failed to demonstrate that it has considered whether the product purging system can safely be operated on a chemical CTMV transporting the broad range of non-petroleum flammable products. These products can bear physical characteristics potentially capable of damaging any product purging system, such as corrosivity or viscosity. Further, these CTMVs are routinely cleaned with highly caustic cleaning solutions, which could also potentially damage the product purging device.

As NTTC interprets HM-213D, any cargo tank with unprotected product piping carrying more than one liter of any flammable liquid would have to be fitted (or retrofitted) with a product purging system. In this context, we ask that PHMSA take administrative notice of the fact that both the Federal Environmental Protection Agency (EPA) and certain states, such as Texas and Louisiana, have imposed regulations aimed at controlling Volatile Organic Compound (VOC) emissions during the loading and unloading of cargo tank motor vehicles. As is the case with gasoline (and other middle distillate petroleum products), such regulatory actions have compelled the use of bottom loading/vapor recovery technologies on cargo tanks in chemical transportation that is virtually identical to those used in gasoline distribution.

Via membership questionnaire, NTTC has learned that our members do operate cargo tank motor vehicles (mostly of the MC 307/DOT407 specification) that: (a) transport flammable liquids; and, (b) have exposed product piping with a liquid capacity of greater than one liter. It is important to note that (with rare exceptions) the total liquid capacity of the product piping on such units is but a fraction of the equivalent capacity on a typical four-compartment gasoline trailer. The majority of these units are not compartmented (so-called "clean bore") thus there is only one product transfer "pipe" and no manifold. Nonetheless, a portion of the piping is exposed, and the liquid capacity is greater than one liter. We can only assume that they would be included within the scope of the docket. These vehicles are often referred to as "general chemical tanks" and are usually constructed of stainless steel or other carbon steel alloys.

There is a reason that such vehicles are constructed of materials other than aluminum. More often than not, they transport flammable commodities that may also be aggressively corrosive and/or have other physical characteristics (such as high viscosity) capable of damaging (or rendering inoperable) any product line purging system. In the same vein, and unlike gasoline trailers, these tanks -- and all piping and product transfer devices -- are routinely cleaned using highly caustic materials.

Commonly, these cargo tanks haul products such as those listed below along with relevant data from *Hawley's Condensed Chemical Dictionary*:

- Acrylonitrile is "Flammable" with a flash point of -83C and is a solvent;
- Acetonitrile is "Flammable" with a flash point of 5.56C and is a solvent;
- Acetone is "Flammable" with a flash point of -9.4C;
- Heptane comes in several "flavors", 1-Heptane, 2-Heptane, 3-Heptane, and are "Flammable" with flash points of -10C, -2.2C, and -6.1C, respectively, and are solvents;
- Styrene is "Flammable" with a flash point of -30.63C and is a solvent;
- Some of the Ethyl family that are "Flammable" include: Ethylethlene (aka butene-1), Ethyl ether, and Ethyl formate;
- Flammable Methyl family includes Methyl alcohol, Methylallyl acetate, Methylallyl chloride, and Methylamyl acetate.

Importantly, compared to gasoline and other middle distillates, some of the above products may fall within a relatively high viscosity range.

Simply stated, neither the docket nor field experience gives NTTC (or any other interested party) a clue as to the functionality of any "product line purging system" when exposed to such commodities. Will the air pressures exerted by the CTC System be sufficient to evacuate the product from the lines? Will the electronics, evacuation lines, etc. of the system(s) be compromised by the corrosivity of the products? Will the introduction of air pressure possibly cause a violation of Section 173.33(b)(3)? These are questions that must be evaluated and answered prior to the mandated installation of any such devices.

- 7. THE PROPOSED RULE SEEMS TO ASSUME THAT ALL CARGO TANKS ARE TWO-AXLE SEMI-TRAILERS AND DOES NOT ACCOUNT FOR OTHER TRUCK AND TRAILER COMBINATIONS OR "MICHIGAN TANKERS."** The information below should be of value to both those writing the regulations and those commenting on the regulations. NTTC developed this information for a presentation on the impact of HM213D to staff at the Office of Management and Budget.

Potential Effects of Banning Flammable Products in Cargo Tank External Piping on Various Types of Tank Truck Equipment.

There are a wide variety of flammable products carried in cargo tank equipment of various configurations. This section will illustrate the types of equipment that could be impacted by a ban on flammable materials in cargo tank external piping.

Title 49 Section defines flammable liquid as:

(a) Flammable liquid. For the purpose of this subchapter, a flammable liquid (Class 3) means a liquid having a flash point of not more than 60 [deg]C (140 [deg]F), or any material in a liquid phase with a flash point at or above 37.8 [deg]C (100 [deg]F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging, with the following exceptions: (exceptions not included here.)

The Department of Transportation authorizes the transportation of flammable liquids in specification cargo tanks. Certain flammable liquids can be reclassified as combustible and hauled in non-specification cargo tanks in U. S. domestic transportation.

The most common product hauled in cargo tanks is gasoline which is primarily hauled in MC306 or DOT406 cargo tanks. Depending on the number of loading lines, the external piping in a DOT406 cargo tank could hold up to 50 gallons total for all lines. If an incident involves a loss of product of more than 50 gallons, then the product came from sources other than and including the lines.



DOT 406 semi-trailer. Typically up to 9,000 gallon capacity with four to five compartments to allow transportation of different grades of gasoline or petroleum products.



DOT 406 External loading lines.



DOT406 trailer with just one compartment. Used for such things as crude oil and jet fuel.

Flammable liquids such as gasoline and diesel fuel also are transported in straight trucks where the tank sits on the truck chassis. The capacity of these tanks ranges from 1,500 to 4,500 gallons. The external piping is much shorter on these tanks and will hold less product. HM213D exempts most straight trucks from the wetlines ban.



DOT406 Straight truck



External loading lines on DOT406 straight truck.



This is a Michigan style DOT406 trailer which can haul up to 12,000 gallons because of the extra axles. The axles provide a protective barrier to all but a direct impact on the external piping.



This is a typical truck and trailer combination which is commonly used on the West Coast. The external piping on the pull or pup trailer is more exposed than the piping on the truck mounted tank. It would appear that this unit would need a purging system on the pull trailer but not on the tank truck.



Flammable liquids chemicals and solvents also are hauled in cargo tanks. The most common type tank for these products is the MC307 or DOT407 with capacities of from 5,000 to 7,000 gallons.

- 8. THERE IS NO INDICATION THAT THIS PROPOSED RULE WAS DISCUSSED WITH CARRIERS FROM CANADA OR MEXICO. WHAT ARE THE TRANS-BORDER IMPLICATIONS OF THIS RULE?** PHMSA and Transport Canada have worked well the past few years to ease the flow of traffic across the US and Canada border. DOT specification tank trailers from the United States and Transport Canada (TC) specification tank trailers from Canada can now be used to transport hazardous materials/dangerous goods in our respective countries. Harmonization of tank trailer specifications and regulations benefit carriers and the economies of both countries.

Would the U.S. Department of Transportation require carriers bringing Class 3 Flammable materials into the United States from Canada or Mexico to comply with the mandates of HM213D? Remember, as written the proposed rule goes far beyond gasoline trailers.

Was any consideration given to the impact of imposing these requirements on international carriers or on the additional enforcement attention that would be required at the border?

- 9. THE LAW OF UNINTENDED CONSEQUENCES” (I.E. FACTORS IMPACTING SAFETY NOT RAISED BY PHMSA IN ITS PROPOSAL).** At page 14 of the “Regulatory Assessment”, the public is told that:

“PHMSA expects the purging system evaluated in this analysis will completely eliminate all causalities and other damages caused by wetlines spills because it eliminates the flammable liquid that currently remains exposed in product piping once every CTMV is equipped with such a system.”

That is quite an endorsement and commitment to the public from a government agency. Of course, the system advocated does not “eliminate” the flammable liquid in the loading line, it reduces it to one liter. Has PHMSA done any research to indicate that a pipe with one liter of gasoline and loaded with vapors presents no risk when broken open in a crash?

We call the Administrator’s attention to Page 81 of the Regulatory Analysis and Report #2008080526. The tank trailer involved in that August 6, 2008 accident in Claymont DE was equipped with a Cargo Tank Concepts purging system. The trailer was struck by a car and 15 gallons of gasoline spilled from the loading lines. The driver had turned off the purging system. PHMSA may want to temper is 100% failsafe guarantee to the public.

This raises another regulatory question of great importance in the era of FMCSA’s Compliance, Safety Analysis (CSA) Program. Would a driver who turns off the purging system be cited for a hazardous materials violation? If a system is found (by whatever means as yet to be determined) that the trailer has product in one of the lines, is the carrier, the loading facility or the driver subject to enforcement action? If a tank trailer is found to have product in the line at roadside due to an inoperable purging system, is that tanker now “out of service?” Would the load have to be transferred or could the product be drained at roadside? These questions do need to be addressed unless this purging system truly is not capable of failure.

Despite PHMSA’s claim that the purging system will be 100 percent effective, NTTC contends that PHMSA has failed to consider certain very realistic possibilities. For one thing, such a system may fail if ice accumulates in the low points of piping and unloading valves, as often occurs in northern climates during winter. For another, NTTC fears for the likelihood that an impacting vehicle will tear the product return lines out, which will in turn either tear the attaching assembly out of the tank belly or damage the emergency valve. Should such occur, a substantial product loss will surely

result. A third point of concern is that there is no proven way to check for the presence of flammable product or vapors in the purge system itself, nor is there a way to purge the system's product return tubing. Flammables trapped in the purge system can create an explosive atmosphere inside the tank. We are hopeful that most specialists in cargo tank repairs will be aware of this potential hazard and take actions to eliminate it. However, these same vehicles are often serviced at facilities where welding or other "hot work" is done on chassis, undercarriages, brakes, etc., by personnel who may not realize the dangers involved because they are not specifically working on the tank, itself.

Additionally, NTTC alerts the Administrator to concerns related to loading. Although CTC's literature states that carriers and loading racks will not suffer losses in productivity because the purging process will only take approximately six minutes to complete while a driver addresses paperwork requirements away from the vehicle, NTTC notes that the 49 CFR 177.834 (i) driver attendance requirements require the driver to remain within 25 feet of the cargo tank and have an "unobstructed view" of both the tank and the loading/unloading lines. Therefore, because the line purging will be part of the loading process, the driver will not be able to leave the scene as CTC has suggested without violating the HMR, which means the six minutes purging time equates to lost productivity. The Administrator must bear in mind that this loading process is replicated several times each day, day-after-day, by thousands of drivers. Again, as elsewhere, PHMSA has failed to consider this lost productivity compliance cost when performing its "Regulatory Assessment." A final concern is for the possibility that overfill protection systems for each compartment on a considerable number of trailers will have to be recalibrated and reconfigured to ensure the exact "gallon capacity" of each compartment is achieved for billing and tax purposes.

Another concern is the purge system product return lines themselves. The concern is based on the following: It is common knowledge that many so-called wet lines accidents really involve the impacting vehicle snagging the emergency (belly/internal) valve cable that goes from the operating handles to the emergency valves mounted in the belly of each compartment. The resulting forces pull the emergency valve into the "open" position allowing the escape of large volumes of product from the compartment." The product return lines that we have seen are made of a strong stainless steel braid reinforced hose. They are connected to the belly of the tank (or up through the flange of the emergency valve). There is genuine concern that -- should an impacting vehicle "snag" this hose(s) - - there will be sufficient forces to tear the attaching assembly out of the belly of the tank or damage the emergency valve. Should such occur, a substantial product loss will surely result.

In effect, a typical four-compartment tank (post installation of the product purging system) will have eight potential sources of failure in a "snagging" underride accident (four "cable" lines, plus four product transfer lines serving the purging system). Mandated installation of the product purging system, described in the proposal, will increase by 100 percent the risk of product release from the compartments in thousands of cargo tanks, nationwide. This increase in risk is totally ignored in the docket. Importantly, the Administrator should note that this same enhanced risk is present regardless of whether the purging system was installed via "retrofit" or by the CTMV manufacturer.

Yet another concern centers on the reality that there is no proven way to check for the presence of flammable product or vapors in the purge system itself, nor is there a way to purge the system's product return tubing. The tank may have been degassed prior to testing and/or repairs, but flammables trapped in the purge system can create an explosive atmosphere inside the tank. We are hopeful that most specialists in cargo tank repairs will be aware of this potential hazard and take actions to eliminate it. However, these same vehicles are often serviced at facilities where welding or

other “hot work” is done on chassis, undercarriages, brakes, etc. Will these other facilities (who generally work on all types of commercial motor vehicles) be aware of this hazard?

Issues arise with respect to loading. CTC’s literature notes that, while it is estimated that it will take approximately six minutes to “purge the lines”, such time is not really “lost time” because the driver can activate the system then (presumably) go into the loading rack’s offices to “...complete his/her paperwork.” Of course, such a scenario would automatically trigger a violation of the HMR. Therein, (at 49 CFR 177.834 (i)) driver attendance requirements at loading are quite specific. Since the line purging will be part of the loading process, the driver will have to be within 25 feet of the cargo tank and have an “unobstructed view” of both the tank and the loading/unloading lines. Therefore, if we are to assume that any given driver loads a vehicle five times in a given work shift, monitoring the purging function for six minutes equates to a subtraction of one-half hour, per shift, from his/her “on duty” time. If that same driver replicates this daily activity for five days in a week the productivity loss amounts to two and one-half hours. Herein, NTTC assumes that the product purging must be done at the loading rack, since entering a public highway with more than one liter of product in the lines would presumably trigger a violation of the HMR. None of these costs are included in the PHMSA “Regulatory Assessment”.

On still another matter, PHMSA should note that modern cargo tanks and loading facilities are equipped with electronic “overflow” systems designed to prevent (either) product overflows (through the top of the compartment) and/or impinging on the required ullage space (i.e. the space between the top of the liquid in the compartment to the top of the compartment’s shell. To accommodate today’s 600-750 gallon per minute loading rates, these devices are quite sophisticated. One of the main elements of overflow protection is a sensor (also referred to as a “probe”) mounted in a precise point in each compartment. While (admittedly) oversimplifying the mechanics involved, suffice to say that when the liquid level (during loading) rises to the level of the bottom of the probe (and the liquid contacts the probe) product loading ceases.

Given the fact that each compartment in every cargo tank has variations in terms of total volume (less ullage) precise placement of the probe is critical. Too much product in a compartment increases the threat of overflow or violation of the HMR’s ullage (“outage”) requirements; while too little product translates to a loss of productivity. In the industry, the process of “pin-pointing” placement of the probe is referred to as “calibration” (a process that also involves determining the exact “gallon capacity” of each compartment for billing and tax purposes).

NTTC believes that the presence of additional external lines and tubing may exacerbate – rather than prevent – product release accidents. In this same context, we have documented that industry experts have raised serious concerns about the overall safety of such purging systems.

10. IMPACT OF POLITICAL PRESSURE. The most frequent question NTTC has been asked regarding HM213D is “Why has this issue come up again?” This waste of government and industry resources for largely political reasons must make the rest of the country wonder what is the Washington, DC water system. We are here because of an unfortunate use of political pressure. Of course, the safety professionals at the Pipeline Hazardous Materials Safety Administration cannot say that, but this is one case where it needs to be part of the record.

While we fully understand why PHMSA would respond to the political attacks waged on it by certain members and staff of the House Transportation and Infrastructure Committee in the 111th

Congress, we urge the agency to not simply “regulate out of self-defense.” It will take some institutional courage to do the right thing and to again conclude that the drastic cure for a very minimal illness does not pass the cost/benefit analysis test.

We urge the Agency to review the comments at the April 7 hearing of the House Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials where both Chairman Bill Shuster (R-PA) and Ranking Member Corrine Brown (D-FL) strongly suggested that PHMSA use its resources in areas other than wetlines as an indication of a welcome change in the political environment that helped spawn this proposed rulemaking.

An example of the hostile environment of tremendous political pressure put on PHMSA and others during the 111th Congress is illustrated by the last second change in its position by the International Brotherhood of Teamsters on proposed wetlines legislation. In early September 2009, Keith Gleason, Director of the Tank Haul Division of the International Brotherhood of Teamsters, wrote to the leadership of the Railroad, Pipelines and Hazardous Materials in strong opposition to proposed legislation (Section 7011) to ban wetlines on new and existing cargo tanks. He wrote (in part):

On behalf of the 1.4 million members of the International Brotherhood of Teamsters, I am writing to urge your reconsideration of section 7011 in the Surface Transportation Reauthorization Act of 2009. It is our belief that section 7011 would have the unintended consequences of hurting the tank haul carrier industry by mandating an expensive purging system and creating more safety hazards for employees.

In addition to retrofitting each vehicle, there would also be the costs of maintenance and training employees on the new system. Adopting a new system would also create delays in delivering services and goods, because loading and unloading times would increase. Implementing such a system would also present safety concerns for employees who retrofit and maintain the system. In 2003, the U.S. Department of Transportation reported that there were 17 cargo tank facility deaths between 1985 and 1997, as a result of workers performing welding and other work around cargo tanks used to haul petroleum and similar products. Obviously, these results are counter to the intent of section 7011.

We urge you to reconsider this provision and to review the possible negative consequences of this proposed policy. Your leadership on this issue is greatly appreciated.

On November 3, 2009, late on the evening before the full committee was scheduled to vote on Section 7011, former Transportation and Infrastructure Chairman Oberstar received a letter from James P. Hoffa, General President of the International Brotherhood of Teamsters which overrode the policy established and communicated by his own Tank Haul Division. He wrote (in part):

Thank you for your recent letter concerning the transportation of hazardous material in external product piping (wet lines) of cargo tank motor vehicles . . . Initially, we had some concerns about the competitive nature of the industry and how some proposed changes might affect the job security of our members, However, we have talked with your committee staff and those issues have been resolved.

Now a cynic might suggest that political expediency perhaps influenced the last second pre-hearing conversion in Teamsters’ policy from its experts in the field’s conclusions to those from Washington DC headquarters. We are happy to submit for this Docket the original comments from the field that we are confident are more reflective of the concerns of the rank and file.

We will conclude these introductory remarks by urging PHMSA to give serious consideration to the comments of both the Republican Chairman the Democratic Ranking Member of the Railroad,

Pipelines and Hazardous Materials Subcommittee of the House Committee on Transportation and Infrastructure at the April 11 public hearing. Both leaders of this key subcommittee urged PHMSA to use its resources in more productive ways than in dredging up the wetlines issue again. HM2123D was the result of a political environment that no longer exists on the Transportation & Infrastructure Committee. The agency will not suffer unfounded accusations of caving into industry by withdrawing this proposed regulation and by standing by the totally valid responses it submitted to National Transportation Safety Board recommendations.

Section Two: Economic Analysis

As we stated in the introduction to our comments, National Tank Truck Carriers engaged the services of Edgeworth Economics, 1225 19th Street NW, 8th Floor, Washington, D.C. 20036 to perform an economic regulatory evaluation of HM213D. The Edgeworth Report will be filed as a separate document to this docket. (National Tank Truck Carriers supports and considers the Edgeworth Economics report as a key element of our filing on this proposal. We felt it might be more convenient to others interested in the docket to have access to the report as an individual document.)

In addition to the Edgeworth Report, NTTC feels compelled to make a few observations on some of the information PHMSA presents to justify its conclusions in the proposal.

Training: The agency did not appear to allow any costs for training time and materials this proposal. Surely, a hazardous materials employee will require training on a new cargo tank loading and unloading procedure. HM126F would seem to require recurrent training, especially if changes are made to the system. Drivers will have to know what actions to take when the purging system fails to operate. Mechanics will have to be trained on the installation and maintenance of the multi-component electrical and mechanical devices. Will federal, state and local roadside inspection personnel need any training on how to determine if a purging system is working and what to do if it is determined that there is more than one liter of product in any of the loading lines?

Maintenance: We suggest that PHMSA would have been better served to simply say that the purging system is such a silver bullet that it will never require any maintenance rather than to “assume(s) the average annual maintenance cost will be \$3 per CTMV . . . as it does on page 17 of its Regulatory Analysis. NTTC is hard pressed to think of anything in a maintenance program that can be done for just \$3 a year. Simply entering data into a computer following inspection of the sophisticated purging systems will cost that much. Will checking purging systems become part of a carrier’s pre-trip inspection? Will there be changes required to Part 180 tests and inspections that will require a mechanic’s time? Will there be a need to print, distribute and update purging system maintenance materials?

Enforcement: On page 4850 of the proposed rule, PHMSA states:

“We believe that compliance with this standard could be monitored by field operations personnel observing loading practices at a terminal or by viewing site (sic) gauges on piping when a CTMV is in transportation. We assume that there will be no additional enforcement costs associated with this monitoring . . .”

National Tank Truck Carriers certainly does hope that the Commercial Vehicle Safety Alliance (CVSA), the Federal Motor Carrier Safety Administration (FMCSA) and other law enforcement organizations and agencies will respond to this contention. Again, PHMSA seems to suggest no training costs will be incurred by the law enforcement community on these new purging systems.

PHMSA does suggest that law enforcement will be able to “monitor compliance” by looking at sight glasses on the loading lines. Unless the sight glass is right at the very end of the loading line, it is hard to see how the officer will see, let alone measure, one liter of product.

There is no regulatory requirement for sight glasses on petroleum trailers. In some cases, carriers have stopped using sight glasses because of the impact of ethanol and other products on the older style glasses. Some are so clouded as to be useless. If PHMSA intends to require sight glasses on specification trailer loading lines, then it will need to initiate a new rulemaking and include the costs of those sight glasses, installation costs, downtime costs, and exposure of workers to cutting and welding on loading lines in the cost/benefit analysis of HM213D.

Given the very tight state and local budgets in the country today, one must wonder how much time will be allotted for law enforcement officers to observe “loading practices at terminals.” Of course, the trailer would not be out of compliance if it had product in the wetlines until it left terminal property and went onto a public highway. Terminal operators also may have their own training, security, and notification requirements for law enforcement personnel to observe loading operations.

Fatality Sensitivity Analysis: On page 4848, PHMSA states that among its concerns are “the possibility the average motor vehicle occupancy will increase as gasoline prices increase” and cites a 2001 household travel survey. This is part of the process that appears to arrive at yet another number apparently designed to increase the costs of the rare wetlines incidents. As gasoline prices rise, there will be more car pooling and thus the likelihood of more deaths per incident increases, the theory apparently holds. The average number of fatalities per wetlines incident jumps from 1.63 to three for statistical purposes.

For some reason, the theory does not consider the equally indefensible contention that all of that car-pooling, especially in vehicles that get better gas mileage, will actually reduce gasoline consumption and thus the need for as many tank truck loads of gasoline. One wonders what the authors of the 2001 report would think of this use of their data when they saw the prices on this Northern Virginia gasoline station picture taken on the day these comments were filed, April 27, 2011.



Section Three: Engineering Analysis

THE ADMINISTRATOR HAS FAILED TO ACCOUNT FOR THE COSTS OF SUPPLEMENTING THE AIR SUPPLY SYSTEM ON BOTH NEW AND EXISTING CARGO TANKS – With respect to more modern equipment, tank manufacturers typically install two “air tanks” on the semi-trailer (assuming a 5 axle tractor/semi-trailer combination unit). While both are generally rated at 110 psi, one of these air tanks is dedicated to supplying air to the trailer’s braking system; while the other serves as both a “backup” to the prime tank and services various “air operated” safety devices (such as the emergency shut-offs). A so-called “tractor protection valve” functions to assure that the trailer’s braking system is the first priority that will be met. It is important to keep in mind that, in the event of a significant loss of air pressure (however caused), the vehicle’s brakes will be applied automatically. Thus, prudence would suggest that air purging be done only when the combination unit is stopped and the hand brake engaged.

One major tank manufacturer has calculated that – given the CTC System’s demand for 5 psi of air pressure for a duration of 6 minutes (the estimated “purge time”) – would represent a 30% “greater than normal” demand on the air supply system. Given this reality, the manufacturer would recommend to its customers the installation of an additional “air tank”.

The tank manufacturer representative explains the basis for his recommendation as follows:

“The Truck Trailer Manufacturers Association (TTMA) RP-51, Section 7.2 requires the installation of an auxiliary air tank for any system that requires a large amount or constant flow of air. The proposal suggests a typical piping configuration contains 30-50 gallons of product. There are 231 cubic inches per gallon, so the equivalent volume of the piping is 6,930 to 11,550 cubic inches. It is apparent that filling the piping with air in order to evacuate the piping will take a significant volume of air from the air reservoirs.”

The same issues arise with respect to older cargo tank motor vehicle (i.e. those where the “emergency shutoffs” are activated by a cable connection (not air activated)). Again, the 30 percent drain would suggest the addition of another air reservoir. None of the costs attendant to such an installation have been considered by PHMSA.

LACK OF ENGINEERING CONSIDERATIONS

Given that PHMSA has had comments from the HM213B rulemaking to consult in preparing HM213D, it is somewhat surprising that so little attention was given to the engineering issues raised just a few short years ago. We will again submit information developed on key equipment performance topics.

Since the Administrator’s own “5800.1 Report” database demonstrates that vehicular collisions with the sides of CTMVs generally involves damage to components other than the product piping beneath the tank compartments, it becomes apparent that no product purging system would effectively prevent or mitigate a substantial loss of the CTMV’s cargo. It is obvious, for example, that the profile of most typical passenger vehicles involved in a side underride crash with a cargo tank demonstrates that the tank shell would be impacted.

Therefore, this begs such questions of what are those “profiles”; what are the weights of such vehicles; what forces are CTMV’s (and relevant components) designed to withstand; can impact speeds be

calculated to reasonably demonstrate collision damage? Yet, as noted, none of these issues are significantly addressed in the docket.

To fill this regulatory void, NTTC engaged the services of Dr. Clyde Richard and his firm CED Accident Analysis, Inc., Annapolis, Md. His background and qualifications are reproduced in a filing that will be made separate from this filing and the complete text of his report and findings are attached as Exhibit A of this filing.

Conclusion:

NTTC appreciates the opportunity to comment on HM213D which has unnecessarily consumed too much of our small association's and PHMSA's personnel and economic resources. We believe that the staff at PHMSA made its best effort to try to put spoiled old wine in a new bottle to mollify its critics from Capitol Hill and the National Transportation Safety Board.

We have no evidence that President Obama had just read a draft of HM213D prior to issuing his Executive Order (<http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>) on wasteful regulations which he wrote about in the January 18, 2011, *Wall Street Journal*, but it certain is the type of regulatory proposal he must have had in mind. He wrote in part:

Over the past two years, the goal of my administration has been to strike the right balance. And today, I am signing an executive order that makes clear that this is the operating principle of our government.

This order requires that federal agencies ensure that regulations protect our safety, health and environment while promoting economic growth. And it orders a government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive. It's a review that will help bring order to regulations that have become a patchwork of overlapping rules, the result of tinkering by administrations and legislators of both parties and the influence of special interests in Washington over decades.

Where necessary, we won't shy away from addressing obvious gaps: new safety rules for infant formula; procedures to stop preventable infections in hospitals; efforts to target chronic violators of workplace safety laws. But we are also making it our mission to root out regulations that conflict, that are not worth the cost, or that are just plain dumb.

As we have discussed above, the President also could have added that members of his Executive Branch sometimes have to develop such regulations as HM213D because of external forces, such as from Congress. In the interests of safety and effective and intelligent regulation, NTTC requests that the Administrator withdraw HM213D and let us all get back to real safety issues and productive use of our resources.

Respectfully submitted on April 27, 2011

John L Conley, President

National Tank Truck Carriers
950 N. Glebe Rd Suite 520
Arlington, VA 22203
Phone: (703) 838-1960/Fax: (703) 838-8860
Jconley@tanktruck.org