



New England Fuel Institute

NEW ENGLAND FUEL INSTITUTE

4200 Wisconsin Ave, N.W., Suite 106

Washington, D.C. 20016

(202) 364-6767

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VIA ELECTRONIC SUBMISSION

INTRODUCTION

NEFI, based just outside of Boston, Massachusetts, is the largest heating oil trade association in the country. For over 60 years, NEFI has represented the true essence of small business – our nation’s second and third generation home heating fuel dealers. Today, NEFI represents nearly 1,000 marketers of quality heating oil, kerosene, diesel fuel, propane and other petroleum products in the Northeast. NEFI members are private carriers who transport both combustible and flammable liquids in U.S. DOT specification cargo tank vehicles – including transport trailers. NEFI members distribute petroleum products from terminal facilities to intermediate bulk plants and end users including retail sites, commercial fleets, airports, farmers and most importantly to residents for home heating use across New England. NEFI members keep American families warm each winter by delivering more than 40 percent of our nation’s heating oil and propane. Because our member companies are by nature small community-oriented businesses, new or expanded regulations affect them and their consumers more deeply than large businesses - both financially and logistically.

NEFI appreciates the opportunity to submit the following written comments on HM-213D

COMMENTS

NEFI opposes PHMSA’s proposal to ban flammable product in the wetlines of transport cargo tank trailers. NEFI believes PHMSA made the appropriate and correct decision 2006 when it withdrew a similar rule stating “further regulation would not produce the level of benefits we originally expected and that the quantifiable benefits of proposed regulatory approaches would not justify the corresponding costs.” NEFI does not believe that circumstances have changed in the intervening period since the withdrawal of the 2006 rule that would justify a different conclusion today. In fact, in its most recent regulatory analysis for the current NPRM, PHMSA again found that the costs associated with a wetlines prohibition still outweigh the benefits gained. Yet, PHMSA is proceeding with the NPRM despite this conclusion. NEFI believes the current NPRM HM-213D should be withdrawn as well.

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However, NEFI commends PHMSA for moving in the right direction by excluding straight trucks and combustible materials from the proposed wetline ban. Incident reports involving wetlines clearly eliminate both straight trucks and combustible materials as a cause for concern in side impact events. On the surface at least, the narrowing of the current NPRM to straight trucks and combustibles would seem to eliminate heating oil dealers from the wetline retrofit. However, this is not the case. The current NPRM may potentially lessen the impact on heating oil dealers but does not eliminate the compliance burden altogether. In addition to hauling combustible materials in straight trucks, NEFI members also haul split loads of flammable liquids (gasoline) and combustible liquids (diesel fuel, kerosene, heating oil) in compartmented transport trailers. Moreover, should PHMSA in the future harmonize the Hazardous Materials Regulations (HMR) with the UN Recommendations, heating oil dealers could find themselves fully subject to the wetline prohibition. Harmonization would effectively eliminate combustibles as a hazard class in the HMR as there is no corresponding classification under the UN Recommendations. This would result in the reclassification of combustible liquids such as kerosene, heating oil and diesel fuel, to flammable liquids and bring small business heating oil dealers under the proposed wetline retrofit requirement.

However, the most compelling reason to oppose the NPRM is due to what NEFI believes is a fundamentally flawed regulatory analysis conducted by PHMSA which calls into question PHMSA's justification for the proposed wetline prohibition.

PHMSA's REGULATORY ANALYSIS IS FUDAMENTALLY FLAWED

NEFI is concerned that PHMSA's regulatory analysis is fundamentally flawed. NEFI believes PHMSA failed to justify the need for wetline retrofit because the agency used incorrect incident data which resulted in a seriously flawed regulatory cost benefit analysis. Wetline incidents are rare and do not justify the enormous compliance costs imposed on small business heating oil dealers.

PHMSA Underestimates Equipment and Labor Costs:

PHMSA's regulatory impact analysis for the NPRM measures costs and benefits based on a reduction in the number of wet line "incidents" due to imposition of a mandatory purge system retro-fit for cargo tank transport trailers in flammable service. However, PHMSA failed to accurately calculate the actual regulatory costs associated with a mandatory retro-fit of the more than 20,000 gasoline and split load cargo tank transports currently in service. NEFI believes the actual costs to be much higher than PHMSA estimates.

Equipment Costs - NEFI contends that PHMSA underestimates the cost of equipment and installation of purging devices for wetlines. PHMSA assumes that the majority of transporters will meet the 33 ounce flammable purge standard in the NPRM by installation of manual purging devices at a cost of \$2300 per system. NEFI believes the costs for equipment and labor for retrofit will be higher. First, PHMSA fails to recognize that there is only one manufacturer of purge devices able to meet the 33 ounce standard proposed in the NPRM. This manufacturer owns proprietary rights over the device and the technology behind it. This will likely prevent other manufacturers from entering what is essentially a finite market for wetline retrofits. In the absence of any competition among manufacturers for purge systems equipment costs will be higher than PHMSA estimates. Second, PHMSA assumes in the regulatory analysis that transport owners will select automatic purge devices, which is likely correct. However, PHMSA incorrectly uses the cost of manual purge devices in its analysis. The cost of an automatic purge unit costs \$1600 more than a manual device – an added and significant industry wide cost which is not included in PHMSA's cost benefit analysis. It is imperative that PHMSA accurately calculate these costs when determining the overall economic burden imposed by the NPRM.

Labor Costs - NEFI also believes PHMSA underestimates actual labor costs for installation work associated with wetline retrofit. PHMSA assumes that labor costs for installation will be \$23.75 per hour

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@12 hours. NEFI believes labor costs for installation will be much higher. According to the U.S. Bureau of Labor Statistics, wage rates for production workers in the motor vehicle and parts manufacturing industry is \$33.23 per hour. This is an appropriate starting point to measure installation costs, though PHMSA missed the mark by \$10 per hour. However, in reality, installation work on DOT specification cargo tanks is significantly higher than both PHMSA's estimate and the average rate established by the Bureau of Labor Statistics. Installation of in-line purge systems requires skilled repair technicians whose labor costs are approximately \$70 per hour, based on actual charges by repair centers that perform such work – triple the hourly rate used by PHMSA in its regulatory analysis.

Driver Delay Costs - In addition, the regulatory analysis fails to include costs associated with driver delay attributable to manual operation of purging systems. Manual purging devices require 3.5 minutes of driver attention to operate subsequent to loading transport at the terminal rack. The added costs associated with this delay, in terms of driver pay, reduced cargo tank operational time and longer waiting times to load at terminals is significant. According to a recent report by Edgeworth Economics and contained in the docket, the cost of lost driver time alone is estimated to be \$61.6 million per year.

PHMSA fails to consider driver delay costs because it assumes that transporters will install automatic purging devices rather than manual systems. Even where automatic purge devices are used, driver delay remains a cost factor to be considered. The proposed rule would in effect require external piping to be purged before the cargo tank vehicle travels onto a public highway. This means purging must take place at the terminal rack. Liability concerns alone mandate that drivers verify that automatic purging devices are fully operational when deployed and external piping is sufficiently purged of product before leaving the terminal. Terminal operators will not assume the cost or liability of providing "field operations personnel" to accomplish this task as anticipated in the NPRM. This job will be left to drivers. NEFI believes PHMSA must account for driver delay costs regardless of whether manual or automatic purge systems are used.

Cargo Tank Out of Service Costs - The PHMSA regulatory analysis also fails to consider costs attributable to out-of-service time for cargo tank vehicles undergoing purging system installation. PHMSA dismisses these costs by assuming that installation would occur when cargo tank vehicles are already out of service for regularly scheduled maintenance or inspections. The assumption that installation would take place during regularly scheduled maintenance and inspections may be correct. However, PHMSA ignores the fact that installation will *increase the length* of time a cargo tank is removed from service by 12 hours according to PHMSA's own labor cost estimates. Since cargo tank pressure test procedures require 10 to 14 hours including degasification time, the additional 12 hours needed for installation of external piping purge systems represents a two-fold increase in total out-of-service time. The cost for these additional 12 hours must be calculated to accurately measure costs imposed by the NPRM on small business petroleum marketers.

Purge Equipment Maintenance Costs - NEFI is also concerned with the adequacy of PHMSA's estimate for purge equipment maintenance costs. PHMSA assumes in its analysis that maintenance costs would amount to \$3 per year. Yet there is no evidence or data to support this assumption other than PHMSA reliance on maintenance costs provided by the single manufacturer of purging devices. Moreover, PHMSA provides no empirical data or information in the analysis regarding equipment reliability, operational life, or repair/replacement costs. NEFI believes that this data must be reliably obtained and costs accurately calculated in order to produce a valid regulatory impact analysis

Injury, Disability and Death Costs - PHMSA does not consider the cost of injury, disability or death of equipment installers in its cost estimates. The cost of such incidents was a key factor in PHMSA's decision to withdraw HM213-B in 2006. Evidently, PHMSA believes that those costs are far less today as new technology supposedly eliminates the need for welding on the estimated 20,000 gasoline cargo tank vehicles affected by the NPRM. However, there is nothing in the proposed rule that would mandate use of non-welded devices. In addition, even non-welded purge devices require drilling or cutting, thus creating

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the same risk of explosion and fire as welded devices. Evidence of the continuing risk from installation of non-welded purge devices are well documented in recent testimony provided by the National Tank Truck Association to the House Transportation and Infrastructure Committee and submitted into the HM-213D docket.

Operator Training Costs, Etc. - PHMSA also fails to consider costs associated with equipment training for drivers, enforcement and inspection costs as well as costs due to an increase in air pollution from the release of volatile organic compounds in cargo tank transport vehicles equipped with purge devices. One or all of these additional costs are significant and must be considered when accurately measuring the economic impact of the NPRM.

Due to the PHMSA's failure to consider the many additional costs associated mandating purging systems for cargo tank transport vehicles in flammable service, the NPRM cannot be finalized at this time and must be withdrawn. A new regulatory analysis must be conducted that accurately reflects economic costs derived from accurate, identifiable and quantitative data.

PHMSA Overestimates Benefits Gained Due to Wetline Retrofit:

The regulatory analysis conducted by PHMSA estimates the potential benefits gained under the NPRM by predicting avoided costs of actual incidents had external piping purge systems be in use. PHMSA established a standard where only the cost of incidents where 50 gallons or less of flammable liquid was released would be used for cost avoidance calculations. Approximately 172 incidents occurring from 1999 through 2008 were used in PHMSA's calculation. Based on this formula, PHMSA calculates that annual benefit in avoidable costs from a purge system mandate would total \$7.7 million dollars.

Incidents Incorrectly Attributed to Wetlines - PHMSA's methodology used for calculating benefits in the regulatory analysis is flawed. In calculating avoidable costs, PHMSA included incidents where less than a gallon of flammable liquid was released from external piping. However, these costs should not be included in the benefit calculation because the NPRM permits less than a gallon of flammable liquid to remain in external piping. In other words, the presence of a purging system that allows less than a gallon of flammable liquid to remain in external piping – as allowed under the NPRM - would not avoid the costs associated with these incidents. The costs would remain the same whether a purging system was present or not. PHMSA also incorrectly included costs from incidents involving the release of more than 50 gallons of flammable liquid where no fire occurred. These incidents should not be counted as an avoidable cost because purge systems are designed to prevent fire and explosion. The fact that no fire or explosion occurred indicates that the use of purge devices is irrelevant with respect to these incidents. Moreover, the release of flammable liquid in an amount greater than 50 gallons indicates a compartment rupture which a purging system cannot mitigate or prevent. Finally, PHMSA incorrectly included in the benefit analysis costs attributable to incidents involving straight trucks, and those transporting combustible liquids, both of which are exempt for the purging system requirement under the NPRM.

In all, out of the 172 incidents occurring during the 1999 through 2008 timeframe cited by PHMSA in its regulatory analysis, there are 90 incidents where the presence of a purging system would not result in avoidable costs. As a result, PHMSA's calculation of benefits gained from a purge system mandate is incorrect and must be reexamined. NEFI refers PHMSA to the Edgeworth Economics report submitted to the docket for a more in-depth analysis of these incidents.

PHMSA Fails to Establish a Genuine Performance Standard

PHMSA states in the NPRM that it is not mandating a specific method to remove flammable liquids from external piping but rather establishing a performance standard that must be met. Specifically, PHMSA is requiring all but 33 ounces of flammable liquid residue be removed from external piping subsequent to loading operations. If there were multiple methods available to achieve this standard,

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PHMSA would have achieved its stated goal. Unfortunately, there is only one method to meet the 33 ounce residue standard – an in line purge device. More troubling, is that this device is manufactured by only one company nationwide. Thus, the performance standard in the NPRM would constrict compliance options to a single method and create a captive market for the sole producer of purging systems. Under such market conditions, there is no incentive to reduce price. In addition, a competitive market place is not likely to take hold for purging systems due to the time and expense necessary to develop proprietary technology for what is a primarily a finite market. As a result, PHMSA falls short of its intention to create a performance standard in the NPRM.

CONCLUSION

NEFI believes that PHMSA failed to justify the need for wetline retrofit because the agency used incorrect incident data which resulted in a seriously flawed regulatory cost benefit analysis. Wetline incidents are rare and do not justify the enormous compliance costs imposed on small business petroleum marketers. Consequently, NEFI opposes the NPRM and requests that it be withdrawn and a more accurate and reliable regulatory analysis of costs and benefits associated with a wetline retrofit be conducted by PHMSA.

Respectfully Submitted,



Mark S. Morgan, Regulatory Counsel
New England Fuel Institute