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BEFORE THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

UNITED STATES DEPARTMENT OF TRANSPORTATION

In the matter of:
Docket No. FMCSA—97—2350 - 22260
Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

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Clifford J. Harvison, President

December 1, 2000

Before the Administrator:

National Tank Truck Carriers, Inc. (NTTC) is a trade association, the 200 corporate members of which specialize in the nationwide transportation of a variety of commodities in cargo tank motor vehicles. As transporters of hazardous materials, hazardous substances and hazardous wastes, as well as a variety of non-hazardous products, our interest in this docket is substantial.

A Brief Description of the Tank Truck Industry

For the sake of editorial brevity, we invite the Administrator to view the tank truck industry as one performing three basic types of operations: 1) the distribution of middle distillate petroleum products; 2) the distribution of chemicals and food products; and, 3) the distribution of "other" products (such as dry bulk materials, industrial gases, asphalt, etc.). Because of corporate merger and purchase activity within the tank truck sector during the past decade it is reasonable to assume that the "average" tank truck carrier will be involved in (at least) two of the three operational types described above.

WITH REGARD TO MIDDLE DISTILLATE PETROLEUM PRODUCTS -- With the exception of rural areas, the bulk transportation of liquid petroleum products would be characterized as "short haul", yet involving considerable work on weekends and during nighttime hours. Drivers are directly involved in both loading and unloading, and their hours are reasonably predictable. Driver "shifts" will (generally) encompass between 11 and 12 hours total "on duty" time; and (particularly in urban and suburban areas) the driver may transport multiple loads during a single shift. In the context of the Administrator's proposal, most "petroleum" drivers would fall into the "Type IV category".

WITH REGARD TO CHEMICAL AND FOOD GRADE PRODUCT DELIVERIES -- Unlike the "petroleum" segment, most cargo tank distribution of chemicals and food grade products would be considered "medium to long haul". Because of environmental and (shipper) quality control considerations, driver involvement in loading and unloading is changing rapidly. Today, when the driver and vehicle enter a plantsite, (often) the driver cedes control of the vehicle to a shipper employee. The vehicle is then taken to another area (within the plantsite) for loading (and/or unloading) by plant personnel. If product sampling and analysis is performed, this operation may take up to 4 hours before the vehicle is returned to the control of the driver. During the hiatus, the driver may spend his/her time at a rest or transition area within the plantsite.

The chemical/food grade segment is susceptible to so-called "just in time" controls. Essentially, this means that the shipper and/or consignee will specify (to the carrier) precise times of day when the vehicle is to be present at a designated facility for loading and/or unloading. These precise time "windows" dictate to the carrier the times of dispatch and whether single drivers, driver teams, sleeper units or "slip seat" will be used.

Another factor influencing this decision is that of product temperature. Many chemicals (such as adhesives, waxes and some acids) and food products are transported in insulated cargo tanks and must arrive at their destination at a temperature (generally) above ambient temperature. If, for example, there is an unexpected delay or interruption in transportation, a temperature controlled adhesive might congeal (or "set up") rendering the product unusable. Thus, the ability of the carrier to maximize driver productivity (both on a daily and a weekly basis) is a critical factor in serving the customer.

Yet another important aspect of chemical/food grade transportation -- which influences driver selection and productivity -- is the fact that most cargo tanks must be cleaned (internally) between loads. For example, let's assume that a load of solvent is transported from Wilmington, DE to Houston, TX. Following unloading, the cargo tank will be taken to a specialized cleaning facility, at which point the driver will relinquish control of the vehicle (he/she will not be involved in the cleaning operation). On the average, it will be (typically) a 6-10 hour period before the cargo tank is available for dispatch and reloading. The "load last hauled" will generally dictate the time spent in internal cleaning operations. For example, a load of solvent might be considered an "easy clean" because the solvent (itself) is a cleaning agent. Conversely, a load of latex would be considered a "difficult clean" because the product will adhere to the tank shell thus complicating the cleaning operation.

As noted, there are a variety of factors which will influence the "type" of driver operations in the transportation of chemicals and food grade products. While such may involve "Type IV" drivers, the vast majority will fall into the "Type I" and "Type II" categories (as proposed in the docket).

WITH REGARD TO "OTHER" BULK OPERATIONS -- Not all of the commodities, commonly transported in cargo tanks, can be categorized into general classifications (such as "petroleum" or "chemicals/food grade"). For example, the industry is heavily involved in hauling petroleum derivatives and industrial gases (e.g. asphalt, propane, butane, anhydrous ammonia fertilizer solutions, refrigerant gases, cryogenics etc.). Much of this transportation is performed on a seasonal basis (e.g. anhydrous ammonia moves during the Spring and Fall agricultural planting seasons; while the bulk of propane moves during the Winter months). As with "chemical/food grade" transportation, this sector of tank truck operations must contend with so-called "just-in-time" strictures.

Highway paving and/or large-scale construction projects serve to illustrate this point. Routinely (at such sites) contractors will locate temporary storage units (commonly referred to as "silos" or "porta-bulks") which may have a capacity approximating 2-3 tank truckloads of raw materials (e.g. cement). To assure maximum productivity at the job site, such temporary storage must be refilled continuously. Yet, if the weather turns inclement or construction is interrupted for any reason, scheduled transportation must be postponed. Likewise, liquid asphalt must be delivered "hot" (so that it can be blended "on site" with aggregate and other materials) to assure continuity in paving operations. Predictability cannot be assumed in this process, and tank truck carriers must be able to accommodate such delays and "surges" in demand for vehicles and drivers.

As one might expect, "length of haul" will vary. For example, there are relatively few production points for the manufacture of refrigerant gases, yet they are used by manufacturers, nationwide. On the other hand, asphalt is an example of seasonal, high volume "short haul" bulk transportation.

In virtually all "other" bulk operations, there is considerable driver involvement in loading and unloading. Likewise, this category is most susceptible to so-called "call and demand" service by the carriers' customers (i.e. the shipper may require transportation services with minimal "lead time"). Resultantly, dispatches are highly unpredictable; and – as in the case of cement and asphalt deliveries -- are directly dependent on daily weather conditions (i.e. rain, snow and/or sub-freezing temperatures will delay or postpone construction and paving operations).

Today's Tank Truck Operations Under Current Hours of Service Regulations

Like the rest of the trucking industry, tank truck carriers use a variety of operational "tools" to comply with today's regulations. In the petroleum sector, carriers attempt to locate terminals (and/or driver dispatch points) proximate to pipeline terminals or other bulk storage facilities. Carriers involved in chemical transportation will generally locate their dispatch points at strategic sites in major traffic lanes (i.e. near Interstate Highway interchanges, tank cleaning facilities, key chemical production facilities, etc.). In this context, NTTC notes that a tank truck "terminal" is a facility primarily used for administration, dispatch, tractor maintenance and (often) interior tank cleaning. Rarely, does a "loaded" cargo tank return to a terminal after initial dispatch.

In addition to terminal location, tank truck carriers (increasingly) have molded their corporate infrastructure to facilitate backhauls. In other words, (after unloading) a tank vehicle (which has been cleaned, internally) and its driver will be held at a location until another revenue load can be found. Under favorable conditions, the "return load" will be dispatched in the general direction of the driver's home terminal.

Lastly, carriers attempt to maximize driver productivity by blending the use of single drivers, sleeper teams and "slip seat" operations. (*Note: For the purposes of this filing, a "slip seat" operation is one in which a driver relinquishes control of the cargo tank motor vehicle sometime prior to the time the unit reaches its destination (consignee); and, he/she is replaced by another driver with minimum delay in the transportation cycle.)* This technique is particularly useful in meeting customer demands relative to "just in time" transportation.

Some Commentary About Data

Since the Spring, 2000 publication of the Administrator's proposal, there has been considerable commentary (both written and oral), sourced to industry and government representatives alike, concerning the need for relevant data to be submitted for evaluation and consideration by the Administrator. In context, however, NTTC believes that the

record should reflect the reality that, while there is considerable "hard data" on operations conducted under today's rules, there is no way that comparable empirical information could be developed relative to a proposal (which has not been implemented in the real world).

For example, the trucking industry posits that implementation of the proposal will prompt productivity losses and will have a negative impact relative to safety and environmental concerns. On the other hand, the Department suggests the HOS implementation will save lives and reduce injuries and property damage. However well intended, all such "data" -- by nature -- are hypothetical and must be evaluated in this context.

Absent industry-wide implementation of the proposal (or, relevant demonstration projects), the best that either industry or government can do is make "educated guesses" as to the outcome. We cannot measure the unknown.

Within this filing, NTTC will utilize various statistical references in support of (or in opposition to) elements of the HOS proposal. However, we wish to make clear that – for the reasons stated above -- our "data" are neither better nor worse than that entered into the docket by other responding parties and the Department.

Organization of NTTC's Substantive Comments

Most recently, the Administrator has completed a series of public hearings and (so-called) "roundtable" discussions. These sessions featured both "open ended" presentations and more specific "agendas" for commentary. Frankly, not all of the individual elements of the docket are of significance to the tank truck industry, and we will refrain from reference to those issues.

Conversely, many elements of the proposal are of substantial importance to tank truck carriers. Therefore, NTTC will focus our comments on the following:

1) Elements supported by NTTC;
2) "Fatal Flaws" in the proposal which impact all tank truck operations;
3) Potential impacts of the proposal on each segment of the tank truck industry (petroleum, chemical/food grade and "other" (to include: end of work week rest periods, daily hours of work; communications during rest periods, and, "restart" proposals);
4) Equipment Related Impacts;
5) Electronic On Board Recorders;
6) Enforcement; and,
7) Recommended Amendments

ELEMENTS SUPPORTED BY NTTC -- Without elaboration, NTTC supports the use of the so-called "24 hour clock" (as the basis for computing work/rest cycles) and the elimination of any regulatory distinction between "on duty/driving" and "on duty/not driving".

ASSUMPTIONS IN THE PROPOSAL, WHICH IMPACT ALL TANK TRUCK OPERATIONS -- In reviewing the rulemaking in its entirety, NTTC believes that some pivotal elements of the proposal are founded upon two questionable assumptions.

First, the proposal ascribes to the tank truck industry an "operational predictability" which does not exist in the real world. For example, factors such as weather, delayed or rerouted rail shipments, a mechanical malfunction or a labor dispute at a plantsite may prompt the cancellation of scheduled deliveries of raw materials. Once such issues are resolved, that same plantsite may require deliveries of those same materials on an expedited or irregular basis. The basic economics of that plantsite (and its employees) demand that the tank truck industry respond to such circumstances.

Second, while it is a "given" that the Administrator cannot "regulate" drivers' off-duty activities, NTTC believes that the Department errs in proposing regulations which would limit individual drivers' flexibility (and life-style choices) related to the performance of their professional obligations and duties.

Examples abound. For instance, the mandatory "end of workweek" rest periods will trap (otherwise rested) drivers at motels and truck stops. The proposed rules will rob those drivers of choice and compel them to seek rest under less than optimum circumstances. An individual, whose professional judgement tells him/her that they are rested and fit to drive, will have that judgement mooted.

The same is true with regard to the "communications" provision. Drivers (particularly those engaged in long haul operations) want to know about their work assignments. They want time to plan, and they want as much time as possible to complete that planning. Professional drivers know that dispatch scheduling is an imprecise science largely dependent on factors beyond the control of his/her employer (e.g. customer specifications, pick-up and delivery times, weather, etc.). To prohibit carriers from notifying drivers of work schedules and dispatch times (and changes thereto) for lengthy periods of time unduly complicate carrier operations and is a disservice to the driver corps.

POTENTIAL IMPACTS ON EACH SEGMENT OF THE TANK TRUCK INDUSTRY -- **"Petroleum Only"** -- It is reasonable to assume that -- from the standpoint of "daily hours of work" (only) -- drivers solely involved in the distribution of liquid petroleum products will be minimally impacted by the proposed change in total hours "on duty" per day. However, such is not the case with respect to "end of work week rest periods" and "communications during rest periods". *Note: According to a November, 1998 NTTC membership survey, the average length of haul for a load of petroleum products is 126.3 round trip miles; the "average" driver (in a single shift) will spend 7.58 hours in "on duty/driving" status versus 3.70 hours in "on duty/not driving"; the "average" time for tank loading is 35.6 minutes and 43.4 minutes for unloading; and, on average, each cargo tank is loaded 4.03 times per day (this may involve more than one shift and more than one driver).*

Under today's HOS regulations, carriers typically schedule drivers on a "six day" basis. While it is acknowledged that a 60 hour (per week) limit could be met in five days (12 hours each day), the sixth day is scheduled to accommodate the reality that factors such as weather, traffic congestion, vacations, sick days, etc. may interfere with "perfect" scheduling. Under the proposal, this flexibility (which serves both the driver and the carrier) would disappear primarily because of the requirement for two consecutive "midnight to six a.m." sleep periods. In other words, if a driver's work cycle began at 7 a.m. Monday, and that driver worked any time during normal daylight hours on the following Saturday, he/she could not return to duty until the following Monday (at 7 a.m.).

Thus, both the carrier and the driver are in a quandary. If the carrier schedules the driver to work on Saturday, his/her services are lost until 7 a.m. the following Monday. However, if the carrier instructs the driver to go "off duty" at the end of the Friday workday, the driver may be required to report back to work on a Sunday, and such may impact negatively on the driver's lifestyle and income. Moreover, the carrier will have to hire another driver to complete the Saturday dispatches.

Chemical/Food Grade -- As noted above, most tank truck drivers transporting chemicals and food grade products will be categorized as either "Type I" or "Type II" (as denoted in the proposal). NTTC believes that the greatest loss of driver productivity will occur in this sector of the industry. To illustrate, we offer (below) a comparison of the restrictions in today's HOS regulatory scheme versus those in the proposal for typical loads.

Example #1 = A cargo tank, laden with solvent, travels from Freeport, Texas to Joliet, IL, (an "actual miles" distance of 1,080 miles (assume an "average" speed of 55 mph)). Note: We have not included times for loading and/or unloading since such would be the same in both examples.

Under Today's Regulations	**Under The Proposal**
Day #1: 10 hours driving = 550 miles 8 hours = "off duty" (Subtotal = 18 hours)	Day #1: 12 hours driving = 660 miles 12 hours "off duty' (Subtotal = 24 hours)
Day #2: 9.82 hours driving to dest.	Day#2: 7.63 hours driving to dest.
Total = 27.82 hours	Total = 31.63 hours

Driver Productivity Loss = 10 %

It is important to note that the example, above, demonstrates more than a productivity loss by a single driver. It also illustrates how the proposal can complicate typical operational and dispatch practices. For example, "under today's regulations" a carrier could select and dispatch a driver with 30 "available hours" and have a reasonable

assurance that the trip will be "legal" (in terms of HOS compliance). Conversely, that driver "under the proposal" would not be eligible for dispatch for that haul.

Moreover, if the carrier (operating under the proposal's "weekend restrictions") had scheduled the same driver for duty on a Monday, and the Freeport load was available for dispatch at mid-afternoon on the previous Thursday, the carrier would be faced with three undesirable alternatives: 1) find another driver; 2) lose the driver's services on the following Monday (and find a replacement driver); or, 3) refuse the load.

Under any of these alternatives, it is obvious that a given driver will suffer economic loss.

"Other" Tank Truck Operations -- Again, operational comparisons can best illustrate productivity losses. Assume, for example, that a driver is assigned to transport asphalt to a highway paving job (involving a "Type IV" driver). Under today's regulations, the driver may work 4 consecutive days of 15 hours "on duty"/9 hours "off duty" accumulating 60 hours of productivity. However, under the proposal, that same driver in the same 4 day period would suffer an approximate 20% loss in productivity (and wages) because he/she would be limited to 48 "on duty" hours in the same 4 day period.

A similar scenario illustrates how the proposal will negatively impact drivers and their lifestyles (if one assumes that the average driver wants to return home as quickly as possible). In this context, we submit another "real world" haul from Geismar, LA to Valdosta, GA and return to Geismar. Under today's HOS rules, and including all time for breaks, sleep, loading and unloading, the driver is away from home for 38 hours. However, under the proposal (for a Type II driver), that same trip will take 48 hours.

A third example illustrates the impact of the proposal on a "multi-leg" trip (with the same driver and including time for interior tank cleaning). Leg #1 involves a load from Geismar, LA to Valdosta, GA; thence to Covington, GA for internal cleaning. Leg #2 involves a subsequent move to Fairburn, GA for loading; thence to Taft, LA for delivery; thence to a return to the home terminal at Geismar. By comparison, the proposed HOS regulations would extend this multi-leg trip by 9 hours and 45 minutes.

EQUIPMENT RELATED IMPACTS -- Like other elements of the trucking industry, the tank truck sector relies heavily on equipment and services provided by independent contractors (i.e. "owner operators"). These contractors utilize their own power units (tractors), exclusively. In other words, when the contractor is "off duty", his/her tractor is not available for dispatch (or for use by other contractors or employees).

It is axiomatic that any loss of owner operator productivity will mean a corresponding net loss of tractor availability for the motor carrier. This "net loss" of equipment and personnel must be replaced if the carrier is to service customers and/or remain financially viable.

To illustrate this fact, NTTC member carriers have produced a scenario based on "real world" numbers. The scenario is based on the following "constants":

1) Loads transported = 1,257
2) Average Length of Haul (round trip miles) = 1,128
3) Average Speed = 45 mph
4) Total Days Operated = 91
5) Gross Revenue per Linehaul Mile = $2.10
6) Annualized Revenue per Tractor = $103,825

Under today's HOS regulations, the carrier would meet these parameters with 57 tractors. However, under the FMCA's proposal, the carrier would have to add 10 tractors to its fleet in order to produce equivalent service and revenue levels. Basically, the need for new equipment (and drivers) would be triggered by the proposal's requirement that an independent contractor (and his/her equipment) will be "off duty" after 60 hours in any 7 day period (the proposal) versus 70 hours in any 8 day period (current HOS).

In this context, we ask the Administrator to note that, while tank truck carriers and "dry freight" carriers will pay (basically) the same amount for power equipment, such is not the case with trailers. Typically, cargo tanks will range from $55,000 (aluminum petroleum units) to over $200,000 for cryogenic and other "specialty" trailers.

ELECTRONIC ON BOARD RECORDERS -- As we interpret the proposal, NTTC believes that any such device (or combination of devices) must conform to the following: *a) be read, directly or remotely, at the driver's home terminal; b) record the date, engine on or off, vehicle speed, miles driven per day, and have a "continuous time scale"; c) be capable of maintenance and calibration; d) be tamperproof; e) prohibit drivers from editing data; f) warn the driver in the event of system failure; g) identify sensor failures and data edited by anyone when reproduced in printed form; and h) permit duty status to be updated only when the commercial vehicle is at rest (except when registering the time that the vehicle crosses a state, Provincial or national boundary).*

Should our interpretation be correct, we hold that any such device(s) must incorporate satellite-tracking capability. As of the date of this filing, NTTC's membership is unaware of any provider who advertises, markets or avers that their product will comply with all of the elements of the proposal. NTTC has contacted every major supplier of satellite tracking equipment and services. None of these suppliers purport to offer equipment and or services that would meet all of the proposed requirements. These same suppliers note that, in order to assure compliance with the proposal, their equipment would have to be melded with "some other device on the truck". For example, one major supplier volunteered the fact that relevant equipment mounted in the vehicle had insufficient data storage to meet the "continuous time scale" requirement, and that implementation of that requirement would mean a "retrofit" of hundreds of thousands of vehicles (current users) and also require costly upgrades of computers in the carriers' monitoring facilities.

As noted, if NTTC's assumption (regarding the need for satellite tracking) is correct, it is folly to suggest that such can be obtained for between $500 and $1,000 per vehicle. We

respectfully submit that the Administrator's research into this area (as reflected in the proposal and preamble) is inadequate and incomplete. Furthermore, we suggest that a truly accurate and comprehensive economic analysis of electronic on-board recorders would dramatically restructure the docket's cost/benefit calculations (as published).

The Administrator should note that, in the tank truck industry, it is reasonable to assume that -- only carriers exclusively involved in petroleum transportation (Type IV operations) -- would be exempt from the requirement to install and utilize recorders. Like other sectors of the trucking industry, tank truck carriers do not "dedicate" power units to specific hauls on a continuing basis. Factors such as maintenance schedules, weather, location, driver availability, "just in time", etc. dictate the reality that a given tractor will be in Type IV service, today, and in Type II service tomorrow. Therefore, most carriers would have to install electronic on board recorders on all of their power equipment should the relevant portions of the rulemaking be implemented.

ENFORCEMENT -- Respectfully, NTTC suggests that uniform and comprehensive enforcement of the HOS regulations (as proposed) cannot be accomplished with the traditional resources available to the Administrator. In this regard (and, again, for the sake of editorial brevity) we direct the Administrator to the comments of representatives of the Commercial Vehicle Safety Alliance (CVSA) relevant to the topic of enforcement.

As noted, above, tank truck carriers will routinely switch drivers and vehicles between Type I, Type II and Type IV schedules (often) in the middle of work cycles. How is a roadside inspector to know the status of the driver in determining compliance? How is the inspector to know whether or not the vehicle is to be equipped with an on-board recorder? Admittedly, these are rhetorical questions, but the proposal contains no guidance on these important issues.

RECOMMENDED AMENDMENTS -- NTTC is both sensitive to and responsive to the Administrator's oft-repeated admonition to interested parties to suggest alternatives to the concepts and specifics presented in the proposal. In accordance therewith, we offer the following:

1) **RETAIN THE CURRENT HOS REGULATIONS AS AN OPTION FOR CARRIERS AND DRIVERS ENGAGED IN "TYPE IV" OPERATIONS** -- NTTC has combed the docket (including relevant research) for any evidence that "fatigue" plays a significant role with respect to accident causation in "local" operations. We can find no such evidence.

   In fact, the Administrator's own statistics, presented in the Notice of Proposed Rulemaking points to the contrary. As noted above, the "average" Type IV tank truck driver (in a single shift) will spend 7.58 hours in "on duty/driving". In this context, we refer to "Chart 5" (page 25544, *Federal Register,* May 2, 2000) which documents the fact that the "Relative Risk of Fatigue Crash" in the first 8 hours of driving is minimal.

As noted in this filing, "Type IV" tank truck drivers (primarily in petroleum service) work regular shifts. They are "at home" daily and have the flexibility to construct work/rest cycles that accommodate their life styles.

By the same token, carriers have so located their terminals (and other dispatch points) in such a manner as to facilitate compliance with today's HOS regulations. There is, simply, no "science-based" reason to force carriers and their employees to alter today's personal and corporate arrangements. We suggest that, for "Type IV" operations, the current regulations "ain't broke".

2) **REMOVE "ELECTRONIC ON BOARD RECORDERS" FROM THE SCOPE OF THE RULEMAKING** -- Entries in the docket, including written comments, transcripts of the public hearings and "roundtable" discussions, etc. all point to one relevant fact, to wit: There is no "stand alone" device, available for purchase and installation (today), which will meet the EOBR criteria proposed by the Administrator.

Compounding this controversy is the fact that a core element of the Administrator's cost/benefit analysis concerns EOBR's. On the one hand, the Administrator says that, "The cost of EOBR's built only for HOS compliance is unclear". On the other hand, the public is told, "This analysis uses a purchase price of $1,000, with annual costs (for maintenance, training, etc.) of $100 per unit."

Frankly, we sympathize with the Administrator in that the docket contains little "marketplace" information as to the costs of EOBR's. Resultantly, NTTC believes that FMCSA has "low balled" the potential cost of compliance. NTTC interprets the docket commentary as acknowledgement of the fact that compliance with the proposal would require **both** satellite tracking and some other device (to include, at a minimum, data storage (including satellite tracking data) and display/printout capability).

There is no evidence in this docket that such an electronic "package" can be installed for $1,000 per unit. Indeed, all of the evidence points to the reality that such a "package" would cost thousands more to install and maintain. Specifically, we direct the Administrator to the docket submission of Grammer Industries, Inc. at the October 6, 2000 "roundtable" which details the costs of the installation of satellite tracking for a relatively small fleet.

The following facts dominate this element of the proposal: 1) No manufacturer has a compliant device on the market; 2) Given today's technology, compliance (with the proposal) will require satellite tracking; 3) The Administrator is "unclear" as to the costs of compliance; and, 4) The Administrator's estimate of "$1,000 per unit" grossly understates the "cost factor" in the cost/benefit relationship.

Given these realities, the only legitimate course for the Administrator is to withdraw EOBR's from the scope of the rulemaking.

3) **ALLOW MORE FLEXIBLE "RESTART" PROVISIONS --** As we have argued, herein, NTTC believes that the Administrator has ascribed to the tank truck industry a presumption of "predictability" (in terms of dispatch scheduling and vehicle and driver utilization) that does not exist in the real world. In the "chemical/food grade" and "other" sectors of the industry, scheduling is irregular. Specifically, we have demonstrated that the proposed "weekend" restrictions can (and will) unduly restrict drivers in both their professional and personal pursuits. Weighed against these considerations is the fact that the final regulations must operate to keep fatigued drivers off the road.

   In view of the above, NTTC suggests the following "restart" provision: *If a driver has accumulated 36 hours "on duty", or less, in any work week, that driver will be eligible to restart his/her workweek if he/she has been "off duty" for 24 consecutive hours or more. This restart provision cannot be repeated in any two consecutive workweeks.*

   NTTC believes that our restart proposal does no violence to the "fatigue-related" findings in the research, because it would "kick in" at (or sometime prior to) the end of the third day of a normal workweek. Furthermore, it would protect against abuse by allowing only one such restart in a two week period. On the benefit side of the equation, our proposal would address issues caused by weather and other scheduling irregularities. Moreover, the proposal would allow drivers to better plan their personal and professional activities.

4) **ALLOW CARRIERS AND DRIVERS TO COMPENSATE FOR LOADING AND UNLOADING DELAYS --** As we have noted, above, tank truck drivers often find themselves in situations wherein they are "on duty", but performing no physical activities (which would cause or exacerbate fatigue).

   Therefore, NTTC suggests the following amendment to the proposal: *For Type I, Type II and Type IV drivers, and excluding the (proposed) mandatory breaks to total 2 hours, those who are relieved from all responsibility for the vehicle for more than 30 consecutive minutes, , such time shall be considered "off duty". Except that under such circumstances, a driver's total work period shall not exceed 14 hours in any workday.*

   Again, NTTC believes that this suggested amendment does accommodate the research findings with respect to fatigue. Our proposal addresses (and provides relief for) drivers in circumstances where they are "on duty" but performing no physical activity (such as when they cede control of the vehicle for loading and/or unloading by shipper or consignee personnel). As stated,

our proposal would not impact the Administrator's call for mandatory "breaks" totaling 2 hours per 14 hour work cycle; nor would it extend the proposal's call for a 14 hour limit on daily "on duty" time for Types I and II drivers.

5) **SUBSTANTIALLY REVISE THE PROPOSED RESTRICTIONS REGARDING EMPLOYER/DRIVER CONTACTS** -- Just as it is obvious that tank truck drivers need periods of uninterrupted rest, it is equally obvious that the Administrator's proposed restrictions on "off duty" contacts (with driver employees/contractors) will produce unintended and negative consequences.

   In this context, NTTC believes that it is reasonable to assume that drivers and their families want to know all the details about their work schedules and want that information with as much "lead time" as possible. This is patently obvious with respect to professionals in any endeavor. If, for example, a Type IV driver is to be dispatched into a Type I or II operation, common sense dictates that he/she may have to rearrange their personal schedule, accordingly. In such cases, the proposed limitations (and penalties) relevant to "off duty" contacts is both disruptive and counterproductive.

   The proposal (and the attendant fatigue research) suggests that the "rest cycle" hours between midnight and 6 a.m. are critical to gaining restorative rest (for drivers working "daylight" shifts). Such being the case, *NTTC believes that any "prohibited contact" should be limited to the midnight to 6 a.m. periods when the driver is "off duty". In the case of drivers who work "night shifts"(and, normally, sleep during daylight hours) such drivers should be permitted to designate hours during which they should not be contacted.*

6) **RETAIN MAXIUM FLEXIBILITY FOR SLEEPER OPERATIONS** -- As noted in the relevant research, drivers of vehicles with sleeping accommodations develop unique work/rest cycles in that solo drivers tend to adapt to their own needs for rest, while team drivers tend to adjust to each others' needs.

   Given the overall daily limits for Type I and II drivers in the proposal, NTTC believes that the Administrator should refrain from proscribing definitive limits as to when drivers should be in the sleeper berth or riding in the vehicle's passenger seat or driving. Recognition should be given to the fact that some drivers will gain restorative rest by combining time in the berth with naps and other "break" times. We suggest that the final rules permit drivers of vehicles equipped with sleeping accommodations to divide any period of 14 hours "on duty" time into rest periods that the driver(s) determine(s) appropriate to obtain the amount of rest necessary to perform their duties in an alert and safe manner.

SUMMARY

Without doubt, this rulemaking is the most significant governmental action impacting the tank truck industry since Congressional passage and enactment of the Motor Carrier Act in 1980.

It is imperative that the Administrator recognize and appreciate the fact that promulgation of the final regulations will reshape the professional and personal lives of millions involved in freight distribution, supply-chain management as well as the entire "consumer" community.

Given the potential scope of the new rules, factors which appear to be insignificant, today, will become major issues tomorrow. For example, the proposal is constructed in such a fashion as to favor a five-day workweek. Yet most tank truck drivers prefer to maximize their "on duty" hours over six days. The reasons for this may be (as examples): 1) Drivers optimize their income potential ; and 2) their "vacation pay" (generally) is computed on the basis of their average income during the prior 50 weeks. Thus, higher "average weekly income" translates to a higher vacation benefit. Conversely, any reduction in "on duty" time means a cut in income and benefits, alike. Again these are just two examples of a wide variety of reasons why drivers prefer six-day work cycles.

Carrier management faces the same types of transitional issues. Today, carriers are negotiating and signing contracts to provide transportation services with their customers. Typically, these contracts will extend from three to five years; and (presumably) will be "in full force and effect" when the final rules are published. Should the final rules result in a reduction in driver/vehicle productivity, carriers would have three choices: 1) contract forfeiture; or 2) honor the contract at an economic loss; or 3) renegotiate the contract at higher prices. None of these "options" is a positive alternative for the consumer.

In this filing, NTTC has documented its concerns, and has proposed substantive amendments to the proposal for the Administrator's consideration.

Respectfully submitted,

Clifford J. Harvison
President