



July 12, 2012

Docket Management System
U.S Department of Transportation
Ground Floor, Room W12-140
1200 New Jersey Ave., SE
Washington, DC 20590-0001

Via Electronic Submission: dms.dot.gov

RE: Incorporation by Reference Workshop Testimony July 13, 2012
Docket No. PHMSA-2012-0142

Dear Administrator:

NTTC is a trade association composed of approximately 210 trucking companies specializing in the transportation and distribution of a wide variety of bulk commodities in DOT specification cargo tank motor vehicles. Our associate membership includes companies that manufacture, test, inspect and repair specification cargo tanks. A majority of our members meet the definitions of small businesses. Our members have significant operational, compliance and financial interest in the adoption of Incorporation by Reference by the Department of Transportation, a practice that we believe is in conflict with good public policy.

National Tank Truck Carriers, Inc. congratulates and thanks the U.S Congress for passing and President Barack Obama for signing The Pipeline Act with Section 24. That Act and similar language to limit the use of Incorporation by Reference in the HB7 that passed the House Transportation and Infrastructure Committee in the current Congress will improve regulatory compliance, enhance safety, and increase the access to the regulatory process for commercial companies and law enforcement agencies at every level.

Given the brief public comment period today, I will address just a few issues. However, I do invite the Administrator's attention to the extensive comments filed by National Tank Truck Carriers, the Truck Trailer Manufacturers Association, and the Commercial Vehicle Safety Alliance on HM-241 which I will reference shortly. I also encourage the Administrator to discuss with her counterpart Anne Ferro at the Federal Motor Carrier Safety Administration the negative impact the further use of Incorporation by Reference will have on the enforcement and education efforts of her agency.

NTTC recognizes that there should be an option for the Secretary of Transportation to utilize Incorporation by Reference in rare and extremely technical situations where the expertise to

develop information required to ensure transportation safety is beyond the capability of DOT employees and cannot be obtained through an open bid process to assist the Department in developing regulations through the established regulatory process. In this case, we probably are talking about rocket science, but nothing that impacts trucks, trains, airplanes or pipelines.

In the interests of good public policy, the Secretary should avoid mandating that the regulated public purchase from a no-bid provider publications or services in which that public has limited opportunity for development of the materials short of joining the issuing organization.

The aforementioned HM-241 is an example of the concept of Incorporation by Reference gone wild. In that case, two organizations, the American Society of Mechanical Engineers and the National Board of Pressure Vessel Inspectors are actually taking IBR one step further. They are petitioning the Department to turn over key regulatory writing responsibility to their private entities and to incorporate by reference as regulations whatever they develop. They offer no safety reason for why they should be given by federal fiat the opportunity to replace a regulatory process that has produced cargo tank regulations that have resulted in an outstanding safety record.

Of course, both organizations will copyright whatever they develop through their own closed systems and the regulated public and enforcement community will have to pay to play. The organizations do stand to make millions of dollars if their bold audacity is rewarded and HM-241 finds its way into Title 49. Such a development will have a negative impact on transportation safety.

In short, Incorporation by Reference is contrary to the open policy of regulation development that has served our country well. It should only be used as a last resort. We again urge the Administrator to review our comments on HM-241 which are most relevant to the topic under discussion today. I would be happy to answer any questions and thank you for your attention. We also would be happy to further address in writing the issues raised in the June 21 notice of this meeting.

John L. Conley, President
National Tank Truck Carriers Inc.