

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 762

REVISIONS TO REGULATIONS FOR
EXPEDITED RELIEF FOR SERVICE EMERGENCIES

COMMENTS OF
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's notice of proposed rulemaking to amend its emergency service regulations. NACD appreciates the Board's focus on addressing the critical issue of poor rail service through its April 26-27 Urgent Issues in Freight Rail Service hearing; the new requirement for railroads to submit service recovery plans, additional data, and progress reports to the Board; and this important initiative to make the emergency service regulations more accessible and efficient.

1. Identity and Interest of the National Association of Chemical Distributors

NACD, established in 1971, is an international association of chemical distributors and their supply-chain partners. Member companies process, formulate, blend, re-package, warehouse, market, and transport chemical products for over 750,000 customers across the U.S. The industry that NACD represents is a major economic engine that generates \$7.5 billion in tax revenue. NACD's members range from small family-owned businesses to large national and international organizations. They meet the highest standards in safety and performance through



mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is critical to the chemical distribution industry. NACD members make millions of shipments, moving tens of millions of tons of products each year. In 2020, NACD members delivered products safely every 13.2 seconds. A substantial percentage of NACD members receive products via rail cars and depend on timely shipments from the railroads to meet the needs of their customers.

2. NACD Support for Revisions to the Emergency Service Regulations

NACD strongly supports the Board's proposal to amend its regulations to expedite relief during emergencies. Dependable rail service is absolutely critical to the overall economy and to the health and well-being of individuals, families, and businesses throughout the United States. The need for reliable rail service does not stop in times of emergencies, but becomes even more vital. Chemical distributors must be able to provide essential materials to the industries that need them to make their products. This is even more critical during times of emergency when chemicals are urgently needed to produce energy, food, and water. Dependable rail transportation is needed to deliver these chemical products. Certain critical building block chemicals, including chlorine, ethylene oxide, and propylene oxide, cannot move by truck; so rail is absolutely necessary for the transport of these products at all times and even more so during emergencies.

The Board's proposed amendments are reasonable and would introduce much-needed efficiencies to the process for seeking rail service relief during emergencies. The current process



is too long and cumbersome, which discourages stakeholders from seeking needed relief. A prime example of this is the requirement that a petitioner for relief must secure a commitment from an alternative carrier in advance. This requirement is overly burdensome and impractical, especially in times of crisis. The Board's proposed change to require a petitioner only to submit a list of possible alternative carriers is much more realistic.

NACD also supports the proposed changes to clarify that the Board may direct an incumbent carrier to take particular service actions in addition to directing an alternative carrier to provide service and to clarify that the Board can act on its own initiative as well as pursuant to a petition. In addition to better aligning the regulations with the Board's statutory authority, these changes would open up needed pathways for emergency relief.

The Board's proposed change to shift the burden for explaining whether a proposed remedy would impair a rail carrier's ability to serve its customers and fulfill common carrier obligations from the petitioner to the incumbent and alternate rail carriers is a common sense reform. The rail carriers, not the petitioners, have access to the information needed to demonstrate how a proposed remedy would impact their ability to serve customers and meet common carrier obligations. The current requirement for the petitioners to provide information to which they do not have access is definitely a barrier to seeking relief.

The Board's proposed changes to shorten filing deadlines and establish focused timelines for decisions on petitions and to establish an accelerated process for acute service emergencies where there is a threat to public health and safety or probability of plant shut downs are also important. Emergencies require immediate action, and accelerating these timelines would facilitate needed relief to address these critical situations.



3. Conclusion

NACD supports the proposed amendments to the Expedited Relief for Service Emergencies regulations and encourages the Board to finalize them as soon as possible. Accessible and efficient relief mechanisms are especially needed now in this unprecedented time of supply chain challenges. It is critically important to have the procedures in place in anticipation of future emergencies caused by weather disasters, pandemics, cyberattacks, or other unforeseen events. During these times, rail service will be more critical than ever. NACD appreciates the opportunity to provide input on this important proposal and looks forward to working with the Board on this and other initiatives to improve freight rail service.

Respectfully submitted,



Jennifer C. Gibson
Vice President, Regulatory Affairs
National Association of Chemical Distributors
4201 Wilson Boulevard, Suite 0515
Arlington, VA 22203

