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National Association of Chemical Distributors

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The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 F Street, S.W.
Washington, DC 20423-0001

**Attention: STB Ex Parte No. 677
Common Carrier Obligation of Railroads**

Dear Secretary Quinlan:

This written testimony is submitted for consideration in conjunction with the April 24-25 public hearing to examine issues related to the common carrier obligations of railroads. The National Association of Chemical Distributors (NACD) appreciates the opportunity to submit testimony on this important issue.

NACD is a trade association headquartered in Arlington, Virginia, with more than 250 chemical distribution companies throughout North America. These companies represent between 80% and 90% of the chemical distribution facilities in the nation and more than 90% of the industry's gross revenue. Members of NACD operate in every region of the country through more than 1500 facilities. The membership includes small businesses as well as regional and national companies. Hazardous materials transportation is an integral part of the chemical distribution business. In 2006, NACD members made 5.6 million chemical distribution shipments, were responsible for 50.7 billion pounds of delivered product, and drove 167.6 million miles while distributing chemicals.

NACD strongly urges the federal government to maintain the common carrier obligation of the railroads. Chemical distributors and manufacturers depend on rail service to send and receive shipments of certain hazardous materials as safely as possible. For some materials, including toxic inhalation hazards (TIH) such as chlorine and anhydrous ammonia, rail is the safest and most efficient mode of transportation because of the large volume capacity of rail cars and a strong rail safety record. A single rail car can hold the same volume as between four and eight tank trucks. If rail service were to become unavailable, transportation of these materials would be shifted to truck, which would not only cause major delays, but would also increase the opportunity for loading and unloading incidents and the volume of hazardous materials on the nation's highways.

The railroads themselves admit that hazardous materials transportation by rail is safer than by truck. On its Web site, Jacksonville, Fla.-based CSX Transportation Inc., a Class I Railroad, says "Railroads continue to be the safest mode of ground transportation for transporting hazardous materials. For every billion ton-miles of hazardous materials transported, trucks are involved in more than 10 times as many accidents as the railroads."

On a large scale, the well-being of the United States economy and health of its citizens depends on rail transportation of TIH materials. For example, not only is chlorine essential to treat water for safe drinking, it is also a basic material needed to produce thousands of products people need ranging from pharmaceuticals to computer chips to everyday household items. Another example is ammonia, which is necessary not only to grow food but also for the refrigeration needed to safely store and transport food products.

Because TIH materials are building blocks for so many products that are essential to Americans' health and well-being, the economic impact of a lack of rail service to transport these materials would be severe. Shifting the transportation of these products to truck would result in the need for more personnel to safely load and unload the products and to drive the tank trucks. It would also require more fuel for all of the additional trucks on the road. With fuel prices continuing to increase, with no signs of dropping any time soon, this would substantially increase the costs of essential goods, ranging from food to medicine to clothing for all Americans. One of the major U.S. railroads advertises that it can carry 2000 pounds of freight for 423 miles on just one gallon of fuel. With fuel prices so high, it would be devastating to remove such an efficient mode of transportation for materials that are essential to so many aspects of the economy and public health.

Another problem with shifting the transportation of these materials from rail to truck is that the nation's highways are becoming more congested, increasing the time the shipments spend in transit. A 2005 Federal Highway Administration report, *An Initial Assessment of Freight Bottlenecks on Highways*, found that 2110 bottlenecks throughout the United States caused more than 243 million hours of delay to truckers annually at a cost of about \$7.8 billion per year. The Department of Transportation (DOT), in a later report to Congress, *2006 Status of the Nation's Highways, Bridges, and Transit. Conditions & Performance*, stated, "Highway congestion affects motorists, freight carriers, and freight shippers. Shippers are affected through an increase in logistics costs made up of transportation costs, inventory costs, and order costs. Slower and more unreliable transportation increases transportation costs directly, but also increases order costs and inventory costs." This problem is only expected to intensify as DOT also states in this report, "Freight tonnage is forecast to increase by 70 percent between 1998 and 2020, and trucking is expected to account for the majority of the projected increase."

The major railroads enjoy monopolies in their service areas and are able to charge high prices and dictate service terms to their customers, including chemical manufacturers and distributors. In recent years, the railroads have increasingly expressed concerns about potential liability exposures involved with the transportation of TIH materials and have argued that without liability relief, they should be relieved of their common carrier obligation to transport TIH materials.

NACD urges the federal government to maintain the railroads' common carrier obligation and to refrain from shifting their potential liability to the shippers. Transferring the liability to the shippers would do nothing to create an incentive for the railroads to run safer operations. While the railroads have a strong safety record, there is room for improvement. The National Transportation Safety Board found that the two most recent rail incidents involving the release of hazardous materials in Minot, ND, and Graniteville, SC, were both the result of railroad infrastructure and operational failures. If liability for this type of incident were to be transferred to the shippers, the railroads would have less incentive to enhance safety.

Even under the common carrier obligation, railroads are making money. Because of their monopoly situation in many areas, railroads have been able to substantially increase prices for their shipper customers. According to the Association of American Railroads Class I Railroad Statistics, net income increased from \$2.9 billion in 2004 to \$6.5 billion in 2006. While the 2007 comprehensive statistics have not yet been published, all indications are that this upward trend will continue, based on individual financial statements of several of the railroads. Just this week, CSX reported a first-quarter profit increase of 46.0%. Chemical transportation is a substantial part of the railroads' business. In 2006, 11.6 percent of the Class I Railroads' gross revenue came from chemicals and allied products, second only to coal.

The common carrier obligation has been in place for generations and has served shippers and the general public well. Given the monopolies that the major railroads enjoy in many areas, the common carrier obligation is the only recourse that shippers have to ensure they are able to receive rail service in order to efficiently transport their products. It is difficult to make a credible case that the common carrier obligation should be removed given the profitability of the railroads, particularly in recent years.

NACD appreciates the opportunity to submit testimony on this important issue and again urges the federal government to maintain the railroads' common carrier obligation that is so essential to the safe transport of materials that all Americans need for their health and well being.

Sincerely,

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