



National Association of Chemical Distributors

Key Issues

2009 Washington Fly-In

111th Congress

Chemical^(RE)Actions[★]

NACD KEY ISSUE: CHEMICAL FACILITY SECURITY

NACD ISSUE

Allowing the new Chemical Facility Anti-Terrorism Standards to be fully implemented and assessed before rewriting the rules.

BACKGROUND

More than five years after the 9/11 terrorist attacks on New York and Washington, legislation was signed into law in October 2006 to give the Department of Homeland Security (DHS) authority to regulate security at chemical facilities. Enacted as part of the fiscal year 2007 Homeland Security Appropriations bill, the law authorizes DHS to require chemical facilities to conduct security vulnerability assessments (SVAs) and to implement site security plans (SSPs), based on risk. It includes penalties for non-compliance, including authority for DHS to shut down facilities that fail to comply with the requirements. The major problem with the law is that it sunsets in October of this year.

The Chemical Facility Anti-Terrorism Standards (CFATS), to implement the requirements of the 2006 legislation, took effect in June of 2007. Under the CFATS rule, virtually all chemical facilities and other facilities with specified quantities of an extensive list of chemicals on site were required to submit a completed “Top Screen” consequence assessment to DHS. To date, over 36,000 facilities have submitted Top Screens. DHS has notified these facilities about their Top Screen results, specifically, whether or not they pose enough risk to be required to go on to the next step, and, if so, their initial risk tier assignments. The more than 6400 facilities assigned to risk tiers were then required to complete SVAs. DHS is in the process of evaluating these SVAs and is beginning to notify facilities of their final risk tier assignments, beginning with the highest risk tier. Facilities will then be required to implement SSPs with increasingly stringent performance standards based on risk. DHS will then inspect covered facilities to ensure that they have implemented their SSPs, and will have authority to impose penalties, including shutting down facilities that fail to comply.

Although CFATS is an extensive new regulation that is still in the process of implementation, Congress is already considering legislation that would make significant changes to the program.

LEGISLATIVE UPDATE

Last year, the House Homeland Security Committee approved the Chemical Facility Anti-Terrorism Act, sponsored by Committee Chairman Bennie Thompson (D-MS). This legislation, H.R. 5577, made several changes to the current law and CFATS program. Neither the full House of Representatives nor the Senate considered H.R. 5577. The legislation has not yet been reintroduced in the 111th Congress, but a draft bill is circulating, which is similar to H.R. 5577.

There are several major differences between the draft chemical security bill and the current law. Overall, the draft bill is **much more prescriptive** than the current law. Under the current CFATS program, facilities must address risk-based performance standards (RBPS), but DHS cannot mandate specific security measures for facilities. In meeting the RBPSs, facilities are able to adopt measures that are appropriate for their own security issues. In contrast, the draft bill contains several specific “one-size-fits-all” requirements. One of the most problematic mandates

would require all facilities to conduct an assessment of the use of inherently safer technologies (ISTs) and would further give DHS the authority to mandate facilities in risk tiers 1 and 2 to implement these ISTs. The draft bill also includes a requirement for facilities to conduct annual drills and exercises with the participation of local officials and emergency responders, sets out specific criteria for employee training and procedures for background checks, and mandates that union representatives be involved in the development of SVAs and SSPs.

Another major difference is that the draft gives explicit authority for states and localities to adopt more stringent standards than those in the federal program.

The House Homeland Security and Energy and Commerce Committees are working together on the draft legislation and could introduce and move it through the two committees by Memorial Day. The Senate will likely consider the bill after the House of Representatives approves it. With the October 1, 2009, expiration date just a few months away, pressure is on to move the bill quickly.

NACD POSITION

NACD was the first chemical trade association to approve new security measures, as part of its management program, the Responsible Distribution ProcessSM (RDP), and has developed a security vulnerability assessment that specifically addresses security issues relevant to chemical distribution facilities. NACD members have invested millions of dollars and substantial resources to safeguard their facilities and the transportation of their products.

NACD was pleased that Congress enacted legislation in 2006 to give DHS the authority to regulate chemical facilities in the area of security. **NACD supports legislation to simply make the CFATS regulations permanent and believes that it is premature to make programmatic changes at this point.** CFATS is still in the implementation process; facilities will just now soon receive final risk tier assignments and will then write and implement their SSPs. DHS will then begin inspecting these facilities. Therefore, it will take a while longer to find out if there are any gaps in the program. CFATS is a major new regulatory program, and DHS has done a commendable job with limited resources in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards. Because of these efforts, real security measures are being implemented at facilities around the nation. Requiring DHS to go back and rework the regulations at this time would be counterproductive. NACD strongly urges Congress to give CFATS more time to be fully implemented and tested before making changes to this important program.

In addition to the general concern about premature enactment of new chemical security rules, NACD has significant concerns with the prescriptive nature of the draft chemical security bill.

First, NACD is concerned with the requirement that all covered facilities conduct assessments of “methods to reduce the consequences of a terrorist attack,” otherwise known as “inherently safer technologies” (ISTs), and that facilities in tiers 1 and 2 adopt these measures. The appropriate role of security laws and regulations is not to dictate industrial processes. Significant regulations and incentives already exist for facilities to use the safest materials and methods possible in their operations.

The mandate for each covered facility to conduct an IST assessment is vague; and most chemical distributors would need to hire consultants familiar with IST methods, their likelihood of reducing risk, and their costs in order to complete these assessments. In addition, chemical distributors maintain specific inventories of products in order to respond to the needs of their customers. A requirement to reduce inventories of certain products would prevent these distributors from effectively addressing their customers' needs. This type of requirement could also lead to increased transportation activities, which would increase the likelihood of loading, unloading, or in-transit incidents, including potential security incidents.

NACD is also concerned about the specific mandates in the draft bill including those that would require facilities to conduct annual drills and exercises with the participation of local officials and emergency responders, set out specific criteria for employee training and procedures for background checks, and require that union representatives be involved in the development of SVAs and SSPs. These specific measures may not be appropriate for every covered facility. For example, the requirement to conduct yearly drills and exercises that include local law enforcement and emergency responders could place facilities in the position of being out-of-compliance with the regulations because the emergency responders in many locales do not always have the time and resources to spend on these exercises and cannot be forced to participate. NACD strongly supports the concept of such drills and exercises, but urges Congress to allow for flexibility in this area in order to recognize the resource limitations of the local organizations.

Finally, NACD is concerned about the provision of the bill that allows states and localities to adopt and enforce standards more stringent than the federal law. Because the protection of chemical facilities is a national security issue, NACD believes that federal preemption is an important element of an effective chemical security program. There is precedent for federal preemption in the areas of aviation, nuclear, port, and hazardous materials transportation security. Lack of a strong national standard will result in a patchwork of different chemical security rules throughout the nation, which would make compliance confusing for any company that does business across state lines, which is the industry norm, and would not be in the best interest of national security, the very objective that chemical security legislation is meant to promote.

In closing, NACD again urges Congress to enact straightforward legislation to give DHS permanent authority to regulate chemical facilities, which would allow for the continued implementation and evaluation of the CFATS regulation.

NACD KEY ISSUE: THE “EMPLOYEE FREE CHOICE ACT”

NACD ISSUE

Protecting the right of workers to have a private ballot election on the question of union representation.

BACKGROUND

The Employee Free Choice Act (EFCA) does three main things:

1. Amends the National Labor Relations Act (NLRA) to allow union certification based upon signed employee authorizations, effectively eliminating an employer’s right to call for a federally supervised election by secret ballot for employees to decide the matter.
2. Provides a new process for bargaining of labor agreements.
3. Prescribes new penalties for unfair labor practices.

Under current law, the National Labor Relations Act (NLRA) allows employees to decide whether they wish to be represented by a particular union through a federally supervised private ballot election process. Once a certain number of employees have signed their name authorizing an election, the National Labor Relations Board (NLRB) oversees these elections and provides detailed procedures to ensure that they are fair and free of fraud. This process also ensures that employees are able to cast their votes confidentially without pressure from union representatives or other employees. It also protects employees from adverse actions resulting from their votes.

EFCA would remove the federally supervised ballot election process. Signatures from a simple majority of employees would immediately make a union the legal representative of employees and give the union collective bargaining rights for all of the employees. If no contract agreement between union and management can be reached, both sides must accept third-party binding arbitration.

LEGISLATIVE UPDATE

In 2007 the House of Representatives passed the “Employee Free Choice Act” by a vote of 241-185. Because of the controversial nature of the bill, 60 votes were needed in the Senate; and the Senate failed to achieve this 60-vote threshold on a 51 to 48 vote. The bill expired at the end of 2008, creating the need for reintroduction in the new Congress in 2009.

Congressman George Miller (D-CA) reintroduced the Employee Free Choice Act, H.R. 1409 on March 10, 2009. As of April 8 the bill had 224 cosponsors. It is a virtual certainty that the bill will pass the House again with ease once brought up for a vote.

Senator Ted Kennedy (D-MA), Chairman of the Health, Education, Labor, and Pensions Committee, introduced the Senate version of the “Employee Free Choice Act,” S. 560, on March 10, 2009. The bill has 39 cosponsors, and once again the fate of the bill is in the hands of the Senate to reach the 60-vote threshold.

This bill is a top priority of both the Democratic Leadership and the Obama White House. Given the increased Democrat majority in the Senate, the formula for passage in 2009 had been simply to retain the 59 Democrats and the one previous Republican supporter, Senator Arlen Specter (R-

PA). However, the still empty MN seat, which is likely to be filled by Al Franken (D-MN), and the defections of two prior supporters, Senators Specter and Blanche Lincoln (D-AR), has left the bill three votes short of the 60 needed for cloture, or to proceed with consideration.

Despite the 3-vote shortage, this issue is far from over for the 111th Congress. Interest groups are pouring money into marketing and grassroots campaigns around the country, and candidates up for reelection in union-friendly states in 2010 are specifically being targeted. This issue may be the most hotly contested policy debate over the next year and a half with significant implications on Senate races throughout the country.

NACD POSITION

NACD strongly opposes the “Employee Free Choice Act.” By replacing private ballots with a card check procedure, this legislation would strip workers of their privacy in making a decision on whether or not they want to be represented by a union. Rather than having the right to a confidential ballot, workers would have their signatures or non-signatures of the union organizing cards made public to union organizers, their employers, and their co-workers, leaving them vulnerable to threats and intimidation from union leaders, management, or both.

Federal courts have repeatedly ruled that private ballot elections are the fairest and most foolproof method to determine whether a union has the support of a majority of employees. For example, the Second Circuit Court of Appeals stated that “It is beyond dispute that the secret ballot election is a more accurate reflection of the employees’ true desires than a check of authorization cards collected at the behest of a union organizer.”

If the American electoral process for choosing its President is based upon the principle of a private ballot, why shouldn’t the same philosophy extend to other personal choices made by American citizens?

The only way to guarantee worker protection from coercion and intimidation is through the continued use of federally supervised private ballot elections in order to protect the confidentiality of personal decisions about whether or not to join a union. NACD urges Congress to protect the rights of workers by rejecting the “Employee Free Choice Act.”

NACD KEY ISSUE: CHEMICALS MANAGEMENT / TSCA REFORM

NACD ISSUE

Modernizing the Toxic Substances Control Act without disturbing the delicate balance between protection of human health and the environment, and sustainment of a vital industry and its customers.

BACKGROUND

The U.S. Environmental Protection Agency (EPA) regulates chemicals through authority granted by a number of federal statutes, most notably the 1976 Toxic Substances Control Act (TSCA.) Over the years, EPA has used TSCA to review more than 47,000 new chemical submissions and lists 83,000 chemicals on its current TSCA Inventory. Since 2007, EPA has been working to enhance TSCA through the Chemical Assessment and Management Program (ChAMP). ChAMP was created to implement commitments that the United States made at the Security and Prosperity Partnership of North America (SPP) Leaders Summit to complete screening-level chemical prioritizations and initiate action as appropriate on an estimated 6,750 chemicals being produced or imported in high and moderate volume quantities. **Despite these efforts, the current legislative climate and action taken by other governments worldwide have driven some in Congress to re-examine the authority and scope of TSCA** and potentially expand its power to “better protect the public from chemicals.”

Based on weak scientific data, individual states and Congress have taken action to ban certain types of chemicals in the name of consumer safety. In September of 2008, California became the first state to enact a comprehensive chemicals management program. As individual states take action, a major concern is that federal and state programs may be duplicative or conflicting. This could make chemical distribution across state lines extremely difficult. In July 2008, Congress overwhelmingly approved a measure to ban certain types of phthalates from children’s products. This legislation, as well as other legislation being introduced, has called for use of the “precautionary principle,” which is the basis for the European Union REACH regulation.

Registration, Evaluation, Authorization and restriction of Chemicals (REACH) is a 2006 European Union (EU) regulation that addresses the production and use of chemical substances, and their potential impacts on both human health and the environment. It took seven years to pass and has been described as the most complex and strictest legislation in EU history and will impact industries throughout the world. When REACH is fully in force, it will require all companies manufacturing or importing chemical substances into the EU in quantities of one ton or more per year to register these substances with a European chemicals agency in Helsinki, Finland. Because REACH applies to some substances that are contained within other products, any company importing goods into Europe could be affected.

LEGISLATIVE UPDATE

Last year, Senator Frank Lautenberg (D-NJ) introduced the Kids-Safe Chemical Act of 2008, S. 3040. Congresswoman Hilda Solis (D-CA,) also introduced the measure for consideration, H.R. 6100. The bill was cosponsored by Henry Waxman (D-CA,) now the Chairman of the House Energy and Commerce Committee with jurisdiction over EPA. The existence of REACH and the

chemical ban proposals pending in Congress and the states along with the new Chairmanship for Mr. Waxman have pushed this issue higher on the priority list for the 111th Congress.

While TSCA reform has yet to solidify into real legislative proposals in the current Congress, Senator Lautenberg has indicated that he will reintroduce the Kids Safe Chemicals Act in 2009. This legislation would inject the “precautionary principle” into the chemicals management process and shift the burden of proof away from the government and to the chemical company. Critics say this approach is like altering our judicial system toward the philosophy that a defendant is “guilty until proven innocent.”

Meanwhile, on February 26, 2009 the House Subcommittee on Commerce, Trade, and Consumer Protection held the first of what is expected to be a series of hearings on the potential overhaul of TSCA. Committee Members and their witnesses expressed a strong desire to explore the possibility of REACH as an appropriate model for the U.S. while industry witnesses criticized REACH and similar programs, favoring instead a “true risk-based system” to align economic and regulatory regimes. However, even the chemical industry has indicated it is not opposed to updating or modernizing TSCA. American Chemistry Council (ACC) and Society of Chemical Manufacturers and Affiliates (SOCMA) testimony echoed this point but were very clear on the principle that the U.S. should not go the route of Europe and completely change its philosophy regarding chemicals management.

NACD POSITION

In considering TSCA reform, NACD urges Congress to support approaches like ChAMP, which has the potential to quickly test and provide public information on more chemicals than a REACH type of framework. NACD is concerned with approaches such as REACH which follow the “precautionary principle,” create a cumbersome bureaucracy, and stifle innovation. In addition, NACD believes that there should be one uniform federal system for chemicals management rather than a patchwork of 50 different state standards.

NACD members are committed to the distribution of products that can be used safely and without harm to the environment as well as meeting or exceeding governmental safety requirements. Any evaluation of TSCA must recognize that the chemical industry’s innovation has played an integral role in the U.S. economy, and that sweeping revisions could prove highly detrimental to Americans’ way of life with no measurable benefit.

NACD Government Affairs staff will continue to participate in the discussions with industry groups as well as Capitol Hill and Committee staff as this issue continues to develop in the 111th Congress with an eye toward chemicals management policies based on sound scientific data and an adherence to the risk-based approach which has served the public well.

NACD KEY ISSUE: RAIL COMPETITION

NACD ISSUE

Addressing the problem of shippers that are dependent on rail service being subject to unreasonable prices and conditions from railroads that have monopolies in key areas.

BACKGROUND

Over the past 30 years, there has been major consolidation throughout the railroad industry. Today, there are only 7 major freight railroads operating in the United States, down from 40 in 1980, when the Staggers Rail Act was enacted into law. The purpose of the Staggers Act was to deregulate the rail industry in order to strengthen it and make it more financially viable. At the time, the Interstate Commerce Commission (ICC) was charged with protecting captive customers, or customers served by only one railroad. In 1995, Congress abolished the ICC and established the Surface Transportation Board (STB) as an agency within the Department of Transportation to review all railroad mergers, rates, and service issues.

Unfortunately, both the ICC and the STB have made several rulings in favor of railroads over the years that have resulted in very little to no competition throughout the rail industry. During the 1980s, the ICC adopted an extremely expensive and unworkable rate challenge process for shippers and also allowed rail consolidation and the abandonment of tracks. Throughout the 1980s and 1990s, both the ICC and the STB approved the creation of short line railroads that were allowed to lease track from major railroads under the condition that they delivered and received traffic only from that railroad. In 1996, the STB ruled that railroads have the right to deny their captive customers access to a competing railroad, a ruling now known as the “bottleneck” decision.

Today, with only seven major freight railroads and a situation where these railroads have monopolies in their areas, freight rail customers in a variety of industries, including the chemical industry, are subject to exorbitant prices, unfavorable terms, and poor service. **To address this problem, legislation is pending in Congress to eliminate the antitrust exemption** that the railroads currently enjoy. Legislation was also introduced in the last Congress to reform the STB so that competition in the industry is promoted and rail customers are protected from monopoly power.

LEGISLATIVE UPDATE

On March 5, 2009, the Senate Judiciary Committee approved S. 146, the Railroad Antitrust Enforcement Act, sponsored by Senator Herb Kohl (D-WI). This legislation would bring railroad mergers and acquisitions under the purview of the Clayton Act, which would allow the federal government, state attorneys general, and private parties to file suit to enjoin anti-competitive mergers and acquisitions. It would also restore the review of these mergers to the Justice Department and the Federal Trade Commission (FTC). It would also eliminate the exemption that prevents FTC scrutiny of railroad common carriers and the antitrust exemption for railroad collective ratemaking. It would allow state attorneys general and other private parties to sue railroads for treble damages and injunctive relief for violations of the antitrust laws, including collusion that leads to excessive and unreasonable rates. A companion House bill, H.R. 233,

sponsored by Representative Tammy Baldwin (D-WI), is pending in the House Judiciary and Transportation and Infrastructure Committees.

In the last Congress, Senator John Rockefeller (D-WV) and Representative James Oberstar (D-MN) introduced S. 953/H.R. 2125, the Railroad Competition Service and Improvement Act to direct the STB to establish policies to promote effective competition among rail carriers and reliable rail transportation service for rail customers. Specifically, it would require rail carriers to establish rates and provide requested service between any two points on the carrier's system, upon a shipper's request; prohibit the STB from issuing certificates authorizing construction and operation of railroad lines; prescribe procedures for STB review of any activity alleged to have resulted in a restriction of competition; mandate rail carrier entry into reciprocal switching agreements where the STB finds it is practicable and in the public interest, or where such agreements are needed to provide competitive rail service; require the STB to designate any state or substantial part of a state as an area of inadequate rail competition after making certain findings; require the STB to post rail service complaints on its Web site; establish time limits for the STB to act on complaints regarding new or revised rail rates, rules, or practices; establish an Office of Rail Customer Advocacy; grant rail customers access to a process for determining rail rate reasonableness in railroad market dominance cases; authorize the STB to investigate rail carrier violations on its own initiative; and require the STB Board to initiate investigations upon receiving complaints alleging rail carrier violations. This legislation has not yet been reintroduced in the current Congress.

NACD POSITION

NACD members depend on rail service to send and to receive shipments and are increasingly facing the problems of frequent substantial price hikes and undependable service. Many chemical distributors depend on rail service to safely and effectively transport large quantities of hazardous materials and have no choice but to accept the terms demanded by the railroads. Because there is only one rail carrier in many areas, companies do not have the option of choosing another carrier. In addition, for certain materials, it would be impractical and would increase the opportunity for loading and unloading incidents to use trucks as an alternative. The increased costs and shipment delays caused by the current rail situation are ultimately passed down the supply chain, raising prices to the consumer level.

NACD supports both S. 146/H.R. 233, the Railroad Antitrust Enforcement Act and the yet-to-be-reintroduced Railroad Competition Service and Improvement Act. All of these bills would provide needed recourse to freight rail customers that have been subject to increasingly high prices and poor service because of the railroads' monopoly in so many service areas. Removing the railroads' antitrust exemption and reforming the STB to address the needs of rail consumers would lead to more competitive pricing and reliable service.

NACD KEY ISSUE: RAILROAD COMMON CARRIER OBLIGATION

NACD ISSUE

Maintaining the railroads' common carrier obligation to transport hazardous materials.

BACKGROUND

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.

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 to Congress and the Surface Transportation Board (STB) that they should either receive liability relief or be relieved of their common carrier obligation to transport TIH materials.

STATUS UPDATE

On April 24-25, 2008, the STB held a public hearing on the Common Carrier Obligation of Railroads (STB Ex Parte No. 677). On July 22, 2008, the STB held a second hearing specifically on the Common Carrier Obligation of Railroads to Transport Hazardous Materials. NACD submitted written testimony for both of these hearings, urging the STB to maintain the common carrier obligation and to refrain from shifting liability to shippers.

On February 18, 2009, Union Pacific Railroad Company (UP) filed a petition with the STB requesting limits on railroads' common carrier obligation. Specifically, UP requested the STB to determine the extent of the common carrier obligation to quote rates for the movement of chlorine, where this transportation would require movement through High Threat Urban Areas (HTUAs), to destinations where an ample supply of chlorine is available from nearby sources, according to the railroad. In response, the STB issued a declaratory order proceeding and invited comments from interested parties. On March 31, NACD submitted comments in opposition to UP's request, arguing that if the railroad is granted this exception, the entire common carrier obligation to transport TIH materials will be threatened.

NACD POSITION

NACD urges the federal government to maintain the railroads' common carrier obligation to transport hazardous materials and to refrain from shifting their potential liability to the shippers. 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 shippers have to ensure the availability of rail service needed to efficiently transport products, particularly hazardous materials.

For TIH materials 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 cost of transportation, 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, states, "Railroads continue to be the safest mode of ground transportation for transporting hazardous materials. For every billion ton-miles of hazardous materials transported, trucks (which operate over inherently more dangerous public highways) 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. Ammonia is also a critical material power plants use to reduce their emissions, minimize pollution, and even operate within their air permit limits. 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.

Proposals to transfer liability to 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.

NACD also opposes specific limits on the common carrier obligation, such as the one proposed in the February 2009 UP petition. Such an exception would be a threat to the entire common carrier obligation to transport TIH materials. If granted, this would set a precedent for many additional grants of service denials in the future, which would ultimately make the common carrier obligation meaningless. The common carrier obligation exists for the specific purpose of requiring the railroads to provide service to shippers when they would otherwise choose not to do so because it would be unprofitable or inconvenient. Such exceptions could also cause major market disruptions.

NACD urges the federal government to fully 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.