

**BEFORE THE
ANTITRUST MODERNIZATION COMMISSION**

JOINT COMMENTS BY

**ALLIANCE FOR RAIL COMPETITION
AMERICAN CHEMISTRY COUNCIL
CHLORINE CHEMISTRY COUNCIL
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
CONSUMERS UNITED FOR RAIL EQUITY
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
MONTANA WHEAT & BARLEY COMMITTEE
NATIONAL ASSOCIATION OF WHEAT GROWERS
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
NEBRASKA WHEAT COMMISSION
NORTH DAKOTA GRAIN DEALERS ASSOCIATION
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
TEXAS WHEAT PRODUCERS ASSOCIATION
WASHINGTON WHEAT COMMISSION
WESTERN COAL TRAFFIC LEAGUE**

In response to the Antitrust Modernization Commission's Request for Public Comment (70 Fed. Reg. 28902) on matters related to its study of "whether the need exists to modernize the antitrust laws and to identify and study related issues," the following associations, including Alliance for Rail Competition, American Chemistry Council, Chlorine Chemistry Council, Colorado Wheat Administrative Committee, Consumers United for Rail Equity, Idaho Barley Commission, Idaho Wheat Commission, Montana Wheat & Barley Committee, National Association of Wheat Growers, National Rural Electric Cooperative Association, Nebraska Wheat Commission, North Dakota Grain Dealers Association, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Association, Washington Wheat Commission, and

Western Coal Traffic League (collectively, "Subscribing Shippers") whose members collectively ship and receive hundreds of millions of dollars of freight by rail annually, hereby submit the appended Subscribing Shippers' Joint Statement of Principles as to Railroad Antitrust Immunities and Exemptions Issues Being Considered by the Antitrust Modernization Commission.

Respectfully submitted,

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American Chemistry Council
Chlorine Chemistry Council
Colorado Wheat Administrative Committee
Consumers United for Rail Equity
Idaho Barley Commission
Idaho Wheat Commission
Montana Wheat & Barley Committee
National Association of Wheat Growers
National Rural Electric Cooperative Association
Nebraska Wheat Commission
North Dakota Grain Dealers Association
Oklahoma Wheat Commission
South Dakota Wheat Commission
Texas Wheat Producers Association
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Dated: July 15, 2005

**SUBSCRIBING SHIPPERS' JOINT STATEMENT OF PRINCIPLES
AS TO RAILROAD ANTITRUST IMMUNITIES AND EXEMPTIONS ISSUES
BEING CONSIDERED BY
THE ANTITRUST MODERNIZATION COMMISSION**

- America's farmers, electric utilities, manufacturing and intermodal transportation industries that rely on rail transportation service to move their goods are being harmed by the lack of direct competition among railroads and the lack of reliable transportation service. Unlike almost all other transportation modes and industries that freely compete, the railroads enjoy special regulatory protections and antitrust law immunities that are adversely impacting marketplace competition and service.
- The railroad industry enjoys immunities from private antitrust actions for treble damages in certain instances where common carrier rates are involved under the longstanding "Keogh" doctrine and railroads are generally exempt from private antitrust actions for injunctive relief (15 U.S.C. § 26). The Keogh doctrine was rendered 80+ years ago in a bygone era of pervasive railroad rate regulation and filed rates. The railroads have been operating in a deregulated environment for 25 years, but notwithstanding the dramatic changes in regulation (e.g., no filed rates, limited STB jurisdiction over rates, etc.) and new policies disfavoring antitrust exemptions, railroad antitrust immunities remain.
- In 1980, there were over 40 major "Class I" railroads in the nation. Because of massive industry concentration, today only 2 major carriers remain in the West and only 2 major carriers remain in the East. This industry consolidation, combined with the railroads' antitrust exemptions and regulatory decisions protecting the railroads from full marketplace competition, have helped foster a range of anticompetitive practices (e.g., refusing to provide rates for "bottleneck" segments of rail movements, imposing "paper barriers" suppressing competition by short-line carriers, restricting access to service/dictating to the market compulsory service requirements, and instituting new public pricing practices comprised of higher rates and inferior service).
- In other major network industries that have undergone deregulation (e.g., trucking, telecommunications, airlines, and natural gas pipelines), Congress has correctly concluded that for free markets to work as intended, and to preserve and promote competition, the removal of antitrust immunities should accompany the removal of regulation.
- The railroads do not need special competitive protections in the modern era. It is in the public interest to remove the antitrust immunities enjoyed by the railroads.