Testimony of

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On Behalf of
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Before the
United States Senate
Committee on Small Business & Entrepreneurship

Field Hearing on
“How Small Businesses Benefit from Smart Shipping Regulation”

November 16, 2018

Senator Kennedy, and members of the Committee, thank you for inviting me to testify today. My name is Lyra Gulfo. I am the Rail Category Manager for Transportation at Solvay America, Inc. and we are a member and immediate past chair of the National Industrial Transportation League (NITL) Rail Transportation Committee. I have worked in logistics and supply chain for 20 years.

Solvay is a multi-specialty advanced materials and chemical company, committed to developing chemistry that addresses key societal challenges. We were started by 2 entrepreneurs in 1863 and first operated in the U.S. in the early 1890's. Solvay innovates and partners with customers in diverse global end markets. Its products and solutions are used in planes, cars, smart and medical devices, batteries, in mineral and oil extraction, among many other applications promoting sustainability. Its lightweighting materials enhance cleaner mobility, its formulations optimize the use of resources and its performance chemicals improve air and water quality. In the United States, Solvay employs 6,400 people in over 44 major industrial sites, eight Formulation Centers, seven Research and Innovation Centers (R&I) and three North American headquarters in Alpharetta, Georgia; Houston, Texas; and Princeton, New Jersey. We have 22 union sites and are a net exporter in the U.S. Here in Louisiana our footprint includes two facilities; one in Shreveport and one in Baton Rouge with a total of 144 employees.

For many years, the U.S. chemicals industry was challenged by high cost inputs. The availability of, and inexpensive price for, U.S. shale gas since 2010, has created a renaissance for the U.S. chemical industry. In fact, the U.S. is currently the most attractive place in the world to invest in chemical manufacturing, transforming the U.S. economy into a stronger growth market and new jobs. To put some numbers to this - 333 chemical industry projects cumulatively valued at $202.4 billion have been announced, with 53% of the investment completed/under construction, and 41% in the planning phase. Fully 68% of the total is direct foreign investment or includes a foreign partner, the American Chemistry Council (ACC) reported. Project types include new facilities and capacity expansions, which are long-term investments that we seek in the U.S. ACC analysis shows $202.4 billion in capital spending could lead to $292 billion annually in new chemical and plastics industry output and support 786,000 jobs across the economy by 2025.

While this is a very positive story, companies such as Solvay face increasingly high rail transport costs. Rail transportation is a critical component of U.S. industrial competitiveness. However, the current regulatory environment stifles this growth by reducing access to transport, non-competitive pricing, and technical rules that disproportionately affect the chemical industry.

For small and medium sized enterprises, this has direct impacts. High transport costs and inconsistent availability of raw materials due to lack of capacity in the American rail network make it very hard to manage supply chains and product costs. Since chemicals serve as key components to consumer products including electronics, home cleaning products, personal care and automobiles, the impacts of these challenges trickle through the U.S. economy and are ultimately felt in our wallets.

That is why I believe smart shipping regulation is needed to enable the continued growth of this dynamic and sustainable industry.

Massive consolidation within the rail industry has left just four railroads in control of 90 percent of the rail traffic in the U.S. As a result, freight rail rates have doubled – more than three times the rate of inflation over the past decade —even though the volume of freight carried by the railroads has barely increased. Shippers currently do not have a viable option for challenging these rates. Currently, rate cases take an average of three and half years and cost more than $5 million to complete. That is not viable for small and medium sized enterprises. Even the STB has acknowledged that the Board's rate review process is broken and has established a Rate Review Task Force to address this important issue by streamlining and improving the rate review methodology for large and small rate cases. Congress should continue to provide oversight of this issue and press the STB to make meaningful reforms after the Task Force has concluded.

Congress took an important step by passing legislation to help improve how the STB operates, and now the STB is pursuing much needed changes to adopt free market principles and do a better job resolving long-standing freight rail problems. Congress must prioritize confirmation of the three pending STB nominees and encourage the Board to keep moving forward on these common sense reforms that will get freight rail polices back on track and back to work for the entire U.S. economy.

Shippers further face bureaucratic barriers in the form of the reliance on the American Association of Railroads (AAR) Tank Car Committee (TCC) in technical rulemaking in which railroads have a disproportionate impact on regulatory development to the exclusion of the shippers that have to ultimately implement these directives.

We would urge your Committee's leadership in quickly addressing the following areas of concern:

Press STB for modernized regulatory frameworks that emphasize competition: Federal regulations shield railroads from competing with each other and from transparent pricing mechanisms. Many shippers are left with no effective competition for rail service and no meaningful process to challenge unreasonable rail rates.

As part of the Staggers Rail Act, Congress envisioned a process that would allow shippers served by a single railroad to have their cargo switched to another nearby carrier as a way to promote rail competition. But due to antiquated rules adopted by the STB, no shipper has been able to successfully request the transfer of their cargo from one railroad to another. When shippers lack access to rail competition, there must be a meaningful path to challenge unreasonable rates. However, under the STB's Stand-Alone-Cost (SAC) standard, to successfully challenge a rate, a shipper must design, on paper, an entire railroad business, and prove that it could serve the same traffic at a lower cost than the rates charged by the existing railroad. This process is widely recognized as too complex, too costly, and too time consuming.

Congress should press for two specific regulatory updates that would address these underlying non-competitive approaches:

1. **Competitive switching:** The STB is considering a proposal that provides a practical blueprint for competitive switching. The proposal would simply allow certain rail customers to request that their freight be moved to another major railroad only if another rail line is reasonably accessible. If the switch is shown to be unsafe or harmful to other customers, the railroad can block it. And there is no "free lunch" for the shipper—they would have to pay an appropriate "access" fee to cover the railroad's costs.

2. **Alternative Rate Review Methodologies:** STB Chairman Ann Begeman has stated that finding an alternative to the SAC process must be a top Board priority. One approach, competitive rate benchmarking, offers a market-based alternative for STB rate reviews. This would bring more transparency and likely reasonable costs to captive shippers.

Mandate that DOT establish rulemakings through transparent and public process: The AAR's Tank Car Committee (TCC), which is comprised of railroads, tank car builders, and tank car owners/shippers, oversees the industry standards for those assets. The rail shippers who own or lease these transportation assets comprise only a small portion of the TCC's voting members while railroad members of the TCC constitute a voting majority. This has given the rail industry a disproportionate voice and influence regarding issues impacting all stakeholders. More than two years ago, a group of trade associations representing rail shippers petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) to initiate a rulemaking to more clearly define the role of TCC in development of tank car standards. This petition remains pending before DOT.

The Department of Transportation continually cedes delegation of authority to the rail industry, via the TCC, giving the industry a central role in the implementation of rail tank car standards and regulations. This regulatory authority comes without the requirements of federal rulemaking procedures such as cost benefit analysis, safety reviews, public comment, etc. Because of the lack of due process, the voting majority of the rail industry is able to push through their desired outcome, many times to the detriment of the tank car owners and builders who bear the consequences of those outcomes. As a result, the TCC can unilaterally prohibit the use of tank cars that meet all applicable DOT requirements, requiring owners to replace tank cars long before the end of their useful service life and imposing hundreds of millions of dollars in unwarranted burdens on U.S. manufacturers.

DOT must clarify that the TCC's delegated authority does not include the power to impose new requirements unilaterally while disregarding stakeholder input and dismissing DOT authority. DOT should grant the rail shippers' petition to initiate a rulemaking that would allow for an open and transparent discussion on TCC reform. We are strongly committed to safety and believe that a more transparent approach will create an environment that develops both safe and economic regulatory frameworks for our industry.

As the Agency with sole authority to impose tank car requirements, DOT must also finalize pending rules related to cars used to transport toxic-inhalation-hazard (TIH) materials. The Association of American Railroads, the American Chemistry Council, the Chlorine Institute, and the Fertilizer Institute have jointly asked DOT to establish a phase-out date of December 31, 2027 for tank cars not meeting PHMSA's HM-246 specification for the transportation of TIH materials. All stakeholders agree that the HM-246 design provides the most feasible means to achieve increased safety and accident survivability.

It is important to all parties for DOT to establish an appropriate phase out deadline through federal regulation. A timely final DOT rule will give car owners and lessees the regulatory certainty needed to facilitate long-term capital planning. Compared to the July 2023 phase out deadline previously established unilaterally through AAR's interchange standards, the 2027 deadline reduces the cost to shippers and tank car owners by $92 million to $133 million. DOT should also move forward as quickly as possible to finalize related rules to designate the HM-246 specifications as a "final" standard for TIH tank cars. This would bolster fleet modernization and provide continued safety improvement in hazardous materials transportation.

I am pleased the committee has been able to take the time focus on small businesses benefitting from smart regulations. Thank you for the opportunity to speak to you today and I welcome any questions you may have.