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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB EX Parte No. 681**

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**CLASS I RAILROAD ACCOUNTING AND FINANCIAL REPORTING –  
TRANSPORTATION OF HAZARDOUS MATERIALS**

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**COMMENTS OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**Dated: February 4, 2008**

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SURFACE TRANSPORTATION BOARD**

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Norfolk Southern Railway Company (“NS”) hereby submits these comments in connection with the Advanced Notice of Proposed Rulemaking served by the Surface Transportation Board’s (“STB” or “Board”) on January 5, 2009, in the above proceeding

In its Notice, the Board seeks “public comment on whether and how it should improve its informational tools to better identify and attribute the costs of hazardous - material transportation movements” Notice at 2 In particular, the Board asks “(1) whether it is appropriate to refine URCS to cost hazmat operations better, and (2) how to identify the costs of hazmat operation through our accounting and reporting rules” Notice at 2

NS is ready to work with the Board in an effort to determine how to better identify and allocate the costs of hazardous materials. But refinement of URCS and the use of accounting and reporting rules would take substantial time and effort NS recognizes that determining the true cost of rail transportation of highly hazardous materials is a very difficult task NS has no single, one-size-fits-all solution to propose. In addition, it is not clear how those efforts would address Norfolk Southern’s single

biggest concern, which is the risk associated from railroads being required to transport toxic by inhalation hazards, such as chlorine and anhydrous ammonia

All that we can advocate at this point is that the Board should focus its immediate efforts on ensuring that parties to rate proceedings are permitted to address the risks of a catastrophic accident associated with transporting highly hazardous materials. At the end of the day, the Board should ensure that its process for determining rate reasonableness results in rates substantial enough to account for both the special costs and special risks of transporting highly hazardous materials.

And the Board should do so in a way that recognizes that producers and users of highly hazardous materials are producers and users of their own accord. They are able to make the production or use of highly hazardous materials an economically rational choice and generally have the option to cease the production or use of highly hazardous materials. If making chlorine was not profitable, the chemical company would stop making it. If the water authority thinks an alternative to chlorine is too expensive to implement, so be it. But, neither of those choices has anything to do with the railroad or should mean that the railroad must bear all the risk associated with moving highly hazardous materials. In contrast, the railroads transport highly hazardous materials primarily, if not exclusively, because the common carrier obligation as currently interpreted gives the railroads no choice but to do so.<sup>1</sup>

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<sup>1</sup> The railroads have proposed a solution to this misalignment of risk in their proposal regarding what is a reasonable response to a request for common carrier service. Comments of the Association of American Railroads, Ex Parte 677 (Sub-No. 1) *Common Carrier Obligation of Railroads – Transportation of Hazardous Materials* (July 10, 2008).

This misalignment is similar to the root cause of the mortgage crisis. In that case, lenders did not bear their fair share of the risk of default and accordingly engaged in riskier and riskier lending behavior. Proper alignment of the risk of transporting hazardous materials with those who can actually alter their behavior is needed here just as it was needed in the mortgage situation.

Respectfully submitted,



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February 4, 2009