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U.S. Department of Homeland Security

Office of the Chief Counsel
601 South 12th Street
Arlington, VA 20598-6002



**Transportation
Security
Administration**

March 20, 2009

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

RE: Union Pacific Railroad Company
Petition for Declaratory Order
STB Finance Docket No. 35219

Dear Ms. Quinlan:

Enclosed for filing in the above referenced matter is a "Motion of the Transportation Security Administration for an Extension of Time to File Written Comments" in response to the Surface Transportation Board's institution of a declaratory order proceeding on March 10, 2009. Please direct any questions about this filing to me at 571-227-2728 or Mardi.Thompson@dhs.gov

Thank you for your assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mardi Ruth Thompson".

Mardi Ruth Thompson
Deputy Chief Counsel
for Regulations & Security Standards

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 35219:
Petition of Union Pacific Railroad Company
for a Declaratory Order**

**MOTION OF THE TRANSPORTATION SECURITY ADMINISTRATION
FOR AN EXTENSION OF TIME TO FILE WRITTEN COMMENTS**

On February 18, 2009, the Union Pacific Railroad Company (UP) filed a motion with the Surface Transportation Board (STB or the Board) requesting the Board to issue an order clarifying the extent of the common carrier obligation when requested transportation would involve transporting chlorine. Petitioner claims that transporting chlorine by rail over long distances “appears to conflict with TSA and FRA policies” and encourages the Board to “consult with those agencies before ruling on this petition ” Redacted Petition, “Conclusion.” On March 13, 2009, the Board published its institution of declaratory order proceeding and invited comments on the Petition. 74 FR 10991. Comments are now due by March 31, 2009 By letter dated March 10, 2009, the Board invited and encouraged the Transportation Security Administration (TSA) to submit comments in this proceeding.

“The Secretary of Homeland Security is the principal Federal official responsible for transportation security ”¹ The Department of Transportation also has

¹ Implementing Recommendations of the 9/11 Commission Act of 2007, Pub L. 110-53 (August 3, 2007) (9/11 Act), section 1310, codified at 6 U S C § 1117

various roles as articulated in certain statutes and agreements between the two departments. Under the Aviation and Transportation Security Act (ATSA)² and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for “security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.”³ TSA has exercised this authority over rail transportation security by issuing regulations and guidance to the industry. See 73 FR 72130, TSA’s final rule on Rail Transportation Security, issued November 26, 2008. TSA will be pleased to provide comments to the Board in connection with this proceeding. However, for the reasons presented below, TSA seeks an extension of time *within which to submit comments*.

The issues the petition raises are complex and require a review of how they relate to TSA regulations and policies. It will be difficult to complete TSA’s analysis and coordinate our comments with other components within the Department of Homeland Security, and submit the comments to the Board by March 31, 2009. In accordance with 49 CFR 1104.7(b), TSA respectfully requests a brief extension to April 10, 2009.

² Pub. L. 107-71, 115 Stat. 597 (November 19, 2001).

³ See 49 U.S.C. 114(d). The TSA Assistant Secretary’s current authorities under ATSA have been delegated by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Pub. L. 107-296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060 2, the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary’s guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

EXPEDITED HANDLING REQUESTED

Respectfully submitted,



**Mard Ruth Thompson
Deputy Chief Counsel
for Regulations & Security Standards
Office of the Chief Counsel
Transportation Security Administration
601 S. 12th Street
Arlington, VA 20598-6002
Telephone: 571-227-2728**

Dated. March 20, 2009

Certificate of Service

I hereby certify that I have on this 20th day of March 2009 served a copy of the foregoing Motion for Extension of Time on Tonya W. Conley, Union Pacific Railroad Company, 1400 Douglas Street, Omaha, NE 68179, via first class and via email at twconley@up.com.


