Executive Summary

The American Chemistry Council (ACC) commissioned Veris Consulting, Inc. (Veris), an independent third party, to conduct a survey of ACC member companies and other chemical shippers and receivers. The survey was designed to assess the extent to which companies rely on rail service, their access to competitive service and the rail issues they confront. Veris conducted the survey during June and July 2012.

Eighty-two companies responded to the survey, seventy-six of which indicated that they either shipped chemicals by rail or received raw materials by rail in 2011 and thus, completed the survey. Their aggregated answers, along with their comments, are provided in this report. Key survey findings are reported here in the Executive Summary.

Responding Companies Represent a Large Number of Facilities that Utilize Rail Service
Together, the 76 companies that completed the survey operate 677 chemical production facilities in the U.S. About three-quarters of these facilities rely on rail. Out of these rail-served facilities, 92% receive raw materials by rail and 71% ship out chemical products by rail. In addition, the survey requested specific information related to shipments of Toxic Inhalation Hazard (TIH) products. Over one-third of companies shipped TIH products from their facilities and two-thirds received TIH products by rail.

A Majority of Chemical Facilities Have Limited Access to Competitive Service and as a Result Pay a Higher Premium for Rail Service
Chemical producers report, on average, that 73% of their facilities with inbound rail transportation are captive to a single railroad. Furthermore, nearly half of respondents report that all (100%) inbound rail transportation to their chemical production facilities is captive. Chemical producers also face captivity as they ship out chemical products. Respondents report, on average, that 65% of their facilities with outbound transportation are captive to a single railroad.

When companies compared their captive and non-captive facilities and considered comparable volumes, distances, and service, they estimate that on average rail rates for their captive production facilities are 30% higher.

Railroads Leverage Their Market Dominance in Terms of Rates, Surcharges, and Service
The survey measured the effects of railroad market dominance experienced by shippers. These effects include higher costs through rates and ancillary charges, inability to access competitive service and burdensome requirements on shipments of certain products. When companies were asked to indicate the service condition issues they've been confronted with over the past five years, the following top issues emerged:

- Rail freight rates increasing more than rates for other modes of transportation [74%]
- Substantial increases in other ancillary charges (storage, demurrage, etc.) [59%]
- Railroad fuel surcharges over and above the underlying freight rates [57%]
- Efforts to shift liability from the railroad to the shipper for incidents involving specific materials [43%]
- Rate levels that led your company to consider filing a complaint at the Surface Transportation Board [36%]
- One railroad effectively choosing not to compete with another for your business [26%]
- Refusal to quote rates over a "bottleneck" segment to reach another carrier for onward service when only the bottleneck part of an origin-to-destination route is captive [24%]

Companies provided additional information and examples of these effects. Illustrating rail rate increases above those for other modes, one company reported, "Annual rail rate increases are near 5% versus a trend of flat fixed rates with truck." Numerous comments highlight significant changes in ancillary fees for TIH products, with one noting a "200% increase for in-yard switches" and another reporting that "demurrage charges increased 3,000% overnight."

In addition to the respondents reporting railroads' refusal to quote rates over a "bottleneck segment," one company noted that it has not attempted to request such rates "since the railroads have made it clear for years they have no intention of doing so." As another example of anti-competitive practices, one company reported that a railroad "refused to quote on a TIH chemical rate from Louisiana across the southeast, inasmuch as we had another route option. We thus lost competitive leverage."

Companies that ship and/or receive TIH materials report particular rate and service issues on these products. The majority of these companies report their rates paid to ship TIH products had increased more rapidly than rates to ship other products. In fact, on average, they pay 221% more to ship TIH products. One company reported that it pays 2,400% more to ship TIH products.

Over half of respondents that ship or receive TIH materials report that they've had a Class I railroad impose (or attempt to impose) liability indemnification requirements. Companies have also had rail carriers impose (or attempt to impose) requirements for TIH train operations such as dedicated train and speed limits and they report that this is more common with the short line railroads. Multiple companies provided comments on liability requirements with one stating that a railroad "requested that we sign an agreement indemnifying [the railroad] for all liability in the event of an incident involving a TIH product, regardless of whether they were clearly at fault or not."

Shippers Face Significant Barriers to Challenge Uncompetitive Rail Rates

Only 9% of respondents said they have filed a formal complaint with the Surface Transportation Board (STB) over the past five years. Thirty-four percent (34%) of companies have chosen not to file a STB complaint due to the costs or other barriers.

The survey results pointed to some of the reasons why they have chosen not to file an STB complaint, with one reporting "the volumes on these lanes do not justify the expense of filing a rate case," and another citing "the potential cost and length of time to go through the rate case process." Several companies noted the possibility of "retaliation" or "retribution" from the railroad. In addition, nearly a quarter of companies report that railroads have "bundled" shipping lanes under a single "all or nothing" contract and refused to quote a tariff rate for an individual lane. As noted in the comments, by signing the bundled contract a company cannot go to the STB.

Lack of Competition Negatively Impacts Domestic Investments and Other Business Decisions for U.S. Chemical Producers

Rail issues are significant to companies and their investment decisions. They have caused companies to source raw material from off-shore as well as to site new production facilities based on access to competitive rail service. Rail rates and service conditions have influenced some companies to make decisions including to forego US capacity expansion, to shut a line of production and even to close a production facility. One company reported that "expansion is being planned in other parts of the world due to rail freight rates."

Companies were asked a series of questions regarding whether captivity and associated rail rates and service problems hurt the company's ability to meet customer demand or their ability to make investment decisions.

- 69% of companies reported that captivity and associated rail rates and service problems hurt their ability to meet customer demand;
- 27% reported captivity and associated rail rates and service problems hindered their company from making domestic investments;
- 54% of TIH companies that reported rates and/or tariff requirements impacted production/investment decisions.

In their comments, companies explained how captivity and associated rail rates and service conditions impact on their business decisions. One respondent commented, "Since rail rates to and from our captive plants are higher than our

TIH shippers and receivers provided additional comments. One TIH shipper reported that for shipments of a TIH chemical, "greater than 30% has ended as production has been switched to India v. the USA." Another company stated that its production facilities utilizing inbound shipments of TIH materials "are at a competitive disadvantage vs. our plants overseas."