



The
Fertilizer Institute
Nourish, Replenish, Grow

Written Testimony of

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Senate Committee on Commerce, Science, and Transportation

Field Hearing in Sioux Falls, South Dakota, on:

***“Freight Rail Reform: Implementation of the Surface Transportation
Board Reauthorization Act of 2015”***

August 11, 2016

Good afternoon, Chairman Thune, Ranking Member Nelson, and members of the Committee.

My name is Dan Mack. I am Vice President of Transportation and Terminal Operations for CHS Inc., the nation's largest farmer-owned cooperative. Headquartered in Inver Grove Heights, Minnesota, CHS Inc. is owned by more than 600,000 producers and 1,100 member cooperatives from around the United States, including 77,000 direct producer-owners. CHS is governed by a 17-member board of directors elected by our producer and member co-op stockholders. Our directors are all active farmers and ranchers with a broad range of experience in agribusiness.

CHS is a highly diversified Fortune 100 company that supplies energy, crop nutrients, grain marketing services, animal feed, food and food ingredients, as well as a range of financial and risk management services. We're also among the top rail shippers in the United States, and one of the largest agricultural users of both the BNSF and Canadian Pacific rail lines.

As a cooperative, CHS returns cash to our owners every year, based on the company's performance and the amount of business an owner conducts with CHS during the year. During its fiscal year 2016, CHS will distribute about \$519 million to farmers, ranchers and cooperatives across the country. Between fiscal 2012 and 2016 CHS distributed a total of \$2.7 billion in cash, a \$544 million annual average.

CHS currently has nearly 12,500 employees worldwide, including 908 working here in South Dakota. I am proud to work for CHS and proud to serve our owners in rural America and to do our part to help feed the world.

I am here on behalf of The Fertilizer Institute (TFI), which is the national trade association representing the fertilizer industry. TFI represents companies that are engaged in all aspects of the fertilizer supply chain. This includes fertilizer manufacturers, wholesalers, distributors, brokers, and retailers. TFI's members play a key role in producing and distributing vital crop nutrients, such as nitrogen, phosphorus and potassium. These products are used to replenish soils throughout the United States and elsewhere to facilitate the production of healthy and abundant supplies of food, fiber and fuel. Fertilizers make it possible for farmers to grow enough food to feed the world's more than 7 billion people. Research confirms that approximately 50 percent of crop yields are attributable to the use of commercial fertilizers.

The fertilizer industry directly employs nearly 1,500 people in South Dakota with an economic impact in excess of \$1.75 billion. I would be remiss if I did not highlight for the Ranking Member that TFI's members employ nearly 6,000 people in his home State of Florida. TFI maintains information on the impact of the fertilizer industry in each State and Congressional District and we are happy to provide it to members of the Committee.¹

The fertilizer industry depends on a safe and efficient rail transportation network to deliver its products. While fertilizer shippers utilize waterways and motor carriers to move their

¹ <https://www.tfi.org/advocacy/fertilizerjobs/data>

products, the majority of fertilizer moves through the United States by rail.² The reason is simple: freight railroads are safe and a good way to transport our products to our customers. This is not to say there are not challenges from time to time, but the U.S. freight rail industry is an indispensable partner and key to our competitiveness in the global economy.

Given the importance of rail service to our business, CHS has greatly benefited from the collaborative work of TFI's partnership with the Rail Customer Coalition (RCC), which is an assortment of trade associations representing manufacturing, agricultural, and energy industries with operations and employees throughout the United States. Members of the coalition represent the largest users of freight rail that depend on the railroads to deliver reliable and affordable service. TFI and the Coalition are committed to practical reforms to modernize the Surface Transportation Board (STB) so that it works better for both the railroads and their customers.

In fiscal year 2012-2013, 63 million material tons of fertilizer products were sold in the United States. Fertilizer moves year-round by rail, and the timely delivery of fertilizer products is critical to farmers. If farmers do not receive their fertilizer in a timely manner, there are potential consequences for food security and the environment.

In terms of logistics, there are instances where fertilizer travels a short distance from a production facility to the farm. However, fertilizer often travels thousands of miles to its ultimate destination.

As I mentioned previously, fertilizer is critical to crop yields. It also must move year-

² In 2014, approximately 41 percent of fertilizer moved by rail on a per ton, per mile basis

round over great distances. All shippers, including CHS, experience logistical challenges. The added challenges of competing in a global economy underscore the importance of making practical reforms to enhance our nation's distribution system. One such example is the inclusion of fertilizer in the Surface Transportation Board's (STB's) rulemaking on railroad performance service metrics. We are pleased fertilizer is part of this rulemaking and urge that it be part of the reporting requirements when the Board issues a final rule.

Regarding the subject of today's hearing, I want to especially thank Chairman Thune and Ranking Member Nelson and members of the Committee for your bipartisan work passing the STB Reauthorization Act of 2015 (S. 808). This is the first freight rail policy reforms to pass Congress in a generation and the first time the agency was reauthorized since its creation. The rail industry has changed a great deal over the past twenty years, and this law is helping to modernize the STB to better reflect this new reality.

Equally important is the ongoing interest and oversight of Chairman Thune, Ranking Member Nelson, and your staffs. Your efforts are making a big difference, and are vital to ensuring the STB Reauthorization Act is successfully implemented. To their credit, the Commissioners of the Board have a big job in front of them and they have been working in good faith to get the job done in a transparent fashion.

The STB Reauthorization Act makes commonsense changes, perhaps the most obvious being that Board Members can now meet in private to discuss agency matters. As the authority over rail rates and service disputes, being able to initiate its own investigations on issues of national or regional significance is another sensible reform. The fertilizer industry is also

pleased with the improvements made to the voluntary arbitration process, including the increase in the maximum damage awards. TFI supports the comments submitted by the Rail Customer Coalition, and looks forward to the issuance of a final rulemaking later this year. Moreover, the monthly implementation updates on proceedings, rulemakings and other matters are appreciated and helpful.

The STB Reauthorization Act also promotes ways to modernize methodologies for resolving rate disputes. This is an important task. In fact, an expert report by the National Research Council's Transportation Research Board concluded that the STB's rate review procedures are now "unusable by most shippers." The report went on to say that the system lacks a sound economic basis and "has the effect of safeguarding railroad revenues by making it too costly for most shippers to litigate a case."³

To help address the need to modernize this essential oversight function of the Board, the STB Reauthorization Act requires a study on alternative methodologies, a proceeding on expediting cases, new timelines, and an alternative methodology.

Since enactment of the law, the Board has taken steps to provide a faster and less burdensome process to resolve rate disputes between shippers and railroads. The fertilizer industry supports the Board's proposal for allowing parties to use arbitration for such disputes. We further support the Board's ongoing efforts to improve its existing rate case methodologies. However, it is increasingly clear that the Board's primary rate case methodology, the Stand Alone Cost (SAC) test, is too complex, costly, and burdensome.

The Board has also been making progress on initiatives that are not just directly tied to implementation of S. 808. The fertilizer industry is encouraged by the recently proposed rulemaking on competitive switching. It is already being done successfully in Canada. This may have contributed to comments made by Canadian Pacific Railway, which, during its recent proposed merger discussions with Norfolk Southern, stipulated its support for competitive switching and said it would allow competitive switching for its customers if it acquired Norfolk Southern.

Shippers often have access to only one major railroad, which can create a challenging power dynamic with the rail industry. Competitive switching is a practical way to give rail customers access to a measure of competition where none currently exists. The fertilizer industry appreciates the Board's efforts on competitive switching and looks forward to continued engagement on this important matter.

As I mentioned earlier, rail is a vital part of the transportation network. A competitive, safe and efficient rail industry allows TFI's members to successfully serve and supply America's farmers.

Thank you, Chairman Thune and Ranking Member Nelson, for the opportunity to share TFI's views on freight rail reform and implementation of the STB Reauthorization Act of 2015. TFI and its members look forward to our continued engagement with you and members of the Committee.

³ <http://onlinepubs.trb.org/onlinepubs/sr/sr318.pdf>