

OVERSIGHT OF THE SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2015

(115–43)

HEARING

BEFORE THE
SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
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CONTENTS		Page
Summary of Subject Matter		vi
TESTIMONY		
Hon. Ann Begeman, Chairman, Surface Transportation Board		3
Hon. Deb Miller, Vice Chairman, Surface Transportation Board		3
PREPARED STATEMENTS SUBMITTED BY WITNESSES		
Hon. Ann Begeman and Hon. Deb Miller, joint statement		22
SUBMISSIONS FOR THE RECORD		
Letter of April 17, 2018, from Chris Jahn, President, The Fertilizer Institute, to Hon. Jeff Denham, Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials, et al.		31



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April 13, 2018

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "Oversight of the Surface Transportation Board Reauthorization Act of 2015"

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on April 17, 2018, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony on the implementation of the *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114-110).

BACKGROUND

The Surface Transportation Board (STB or Board) was created on January 1, 1996 by the *ICC Termination Act of 1995* (ICCTA) (P.L. 104-88). ICCTA established the STB as the successor agency to the Interstate Commerce Commission (ICC). ICCTA eliminated the expansive ICC and transferred some of its functions, predominantly those related to the regulation of railroads, to the Board. The STB was originally composed of a three-member, bipartisan Board with regulatory jurisdiction over railroad rate reasonableness, mergers, line acquisitions, new rail line construction, abandonments of existing rail lines, and the conversion of rail rights-of-way to hiking and biking trails. The Board was decisionally independent but administratively aligned with the U.S. Department of Transportation from 1996 to December 2015, when the *STB Reauthorization Act of 2015* ("Act") established the STB as a wholly independent federal agency on December 18, 2015.

The STB's jurisdiction includes overseeing and monitoring railroad commercial practices nationally; enforcing the railroads' common carrier obligations; evaluating challenges to the reasonableness of rail rates; reviewing proposed railroad mergers; ensuring rail carriers provide fair employee protective arrangements in certain transactions; monitoring rail carriers to ensure they are able to earn revenues that are adequate for the infrastructure and investment needed to meet the present and future demand for rail services, including the calculation of the rail carriers' cost of capital; investigating rail service matters of regional and national significance; and

authorizing construction, operation, discontinuance, and abandonment of rail lines and service. The agency also has jurisdiction over certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

The Surface Transportation Board Reauthorization Act of 2015

On December 18, 2015, the President signed into law the STB Reauthorization Act of 2015, which reauthorized the agency for the first time since its inception in 1996. The Act focused on making the STB a more efficient and transparent agency and provided common-sense measures to resolve rail shipper and rail carrier disputes.

Below is an overview of major sections of the Act, as well as the steps taken by the Board to implement each mandate of the Act.

Section 3 – Establishment of Surface Transportation Board as an Independent Agency

Prior to the passage of the Act, the Surface Transportation Board was decisionally independent yet administratively aligned with the Department of Transportation (DOT). Section 3 of the Act established the Board as a fully independent agency. Accordingly, in early 2016 the Board developed plans toward an orderly transition to full independence while ensuring that critical administrative services were not interrupted. The focus of the Board's efforts has been in the areas of information technology, budget and fiscal services, and human relations procedures. Specifically, Board staff transitioned the Board's financial management, budget, and acquisition functions from the DOT to the STB; liaised with Congressional staff to implement the Board's budgetary bypass authority as an independent agency; forged a relationship with DOT's Office of Inspector General to meet the audit requirements of the financial statements in accordance with Generally Accepted Government Auditing Standards, and worked with the STB's Information Technology (IT) Staff to update website and email functions previously linked to DOT. On August 29, 2016, the agency announced the change of its website address from the former "www.stb.dot.gov," to "www.stb.gov", reflecting the Board's status as a wholly independent federal agency.

Section 4 – Surface Transportation Board Membership

Section 4 of the Act increased the Board's membership from three to five. Under the Act, three members of the Board "shall be individuals with professional standing and demonstrated knowledge in the fields of transportation, transportation regulation, or economic regulation" and at least two members "shall be individuals with professional or business experience (including agriculture) in the private sector."

At the time of enactment, the Board consisted of Chairman Daniel Elliott, Vice Chairman Deb Miller, and Board Member Ann Begeman. In the fall of 2017, Chairman Daniel Elliott resigned and Ann Begeman became Acting Chairman. On March 2, 2018, President Donald Trump nominated Patrick Fuchs and Michelle Schultz to be Members of the Board. If confirmed by the U.S. Senate, the Board would have four of five Member positions filled. On March 19,

2017, President Trump designated Ann Begeman Chairman of the STB. Deb Miller continues to serve as Vice Chairman of the Board.

Section 5 – Nonpublic Collaborative Discussions

Section 5 of the Act allowed a majority of the members to hold a meeting that is not open to the public to discuss agency business with the following limitations:

- (i) no formal or informal vote or other official agency action may be taken at the meeting
- (ii) each individual present at the meeting must be a member or an employee of the Board; and
- (iii) the General Counsel of the Board must be present at the meeting.

Section 5 also provides that if the Board “properly determines matters may be withheld from the public under section 555b(c) of title 5, the Board shall provide a summary with as much general information as possible on those matters withheld from the public.”

Since the passage of the Act, the Board Members have held numerous “Section 5” meetings to discuss pending matters before the STB, ranging from merger applications to rate cases to trackage rights agreements. Each time the Board members hold a Section 5 meeting, a summary of the meeting is posted on the Board’s website in the docket for the matter at issue.

Section 6 – Reports

Section 6 requires the Board to submit an annual report on its activities to Congress which must include each instance in which the Board has initiated an investigation on its own initiative. Section 6 also requires the Board to post a quarterly report of rail rate review cases pending or completed by the Board during the previous quarter, and establish and maintain a database of complaints received by the Board.

Section 11 - Procedures for Rate Cases

Section 11 required the STB to maintain one or more streamlined processes for railroad rate cases in which the traditional stand-alone cost presentation is too costly, given the value of the case. Section 11 also set rate review timelines for full stand-alone cost rate challenges to ensure the STB efficiently decides on relief. Finally, Section 11 required the STB to initiate a proceeding to assess other procedures, including procedures common in other litigation settings, to help expedite rate cases.

On March 7, 2016, the STB issued a Final Rule adjusting the procedural schedule in stand-alone cost (SAC) cases. In addition to modifying the deadline for discovery, opening evidence, and reply evidence, the Board added two additional deadlines to the timeline. Most notably, the Board added the requirement that the Board issue its decision no later than 180 days after the close of the evidentiary record.

On June 14, 2016, the STB issued an Advance Notice of Proposed Rulemaking (ANPRM) in *Expediting Rate Cases*, EP 733, pursuant to Section 11 of the Act, seeking comment on any procedures used by courts to expedite litigation that could be applied to rate cases and any other the ideas for expediting Stand-Alone Costs cases. Following the submission of comments on the ANPRM, on March 30, 2017, the Board issued a Notice of Proposed Rulemaking (NPRM) addressing the comments received as well as a set of proposed rules. The NPRM set forth a list of proposed changes to the Board's regulations relating to the pre-complaint period, discovery, evidentiary submissions, and technical modifications. A Final Rule, modifying the Board's rules pertaining to rate case procedures, was effective on December 30, 2017.

The Final Rule creates a pre-complaint period requiring a SAC complainant to submit a pre-filing notice at least 70 days prior to filing its complaint; calls for Mandatory Mediation in Stand-Alone Costs cases to take place during the pre-filing period; requires Board appointment of a liaison to the parties within 10 business days of the complainant's submission of pre-filing notice; updates the Board's regulations relating to the submission of evidence; and places page limitations on final briefs.

Section 12 – Investigative Authority

Section 12 of the Act authorized the Board to conduct investigation on its own initiative that “(1) comply with the requirements of 11701(d) of title 49 United States Code, as added by subsection (b); (2) satisfy due process requirements; and (3) take into account ex parte constraints.” Section 11701 stated investigations commenced on the Board's own initiative should only involve issues of national or regional significance and allowed the Board to dismiss the findings if no further action is warranted or initiate a proceeding to determine if a provision of the governing law had been violated.¹

On May 6, 2016, the STB issued, *Rules Relating to Board-Initiated Investigations*, EP 731, an NPRM establishing a framework for investigations. The Board proposed a three-stage process consisting of (1) Preliminary Fact-Finding, (2) Board-Initiated Investigations, and (3) Formal Board Proceedings, describing each stage in detail and seeking comments on each stage. Multiple parties submitted comments on the Board's proposed rules for investigations. A Final Rule was published on December 7, 2016. The Board adopted the proposed three-stage process with certain modifications and significant clarifications pursuant to the commenting parties.

Section 13 – Arbitration of Certain Rail Rates and Practices Disputes

Section 13 of the Act requires the Board to promulgate regulations to establish a voluntary and binding arbitration process to resolve disputes involving rates, demurrage, access charges, misrouting or mishandling of rail cars, or a carrier's publishes rules and practices. In resolving a rate dispute, the Act requires the arbitrator(s) to consider the Board's methodologies for setting maximum rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues. A Final Rule was published in the Federal Register on September 30, 2016.

¹ 49 U.S.C. 11701(d)(2) and (7)(A-B)

Section 14 – Effect of Proposals for Rates from Multiple Origins and Destinations

Section 14 of the Act called for the Government Accountability Office to study rail transportation contract proposals containing multiple origin-to-destination movements. The report was completed December 7, 2016. The final report provided a comparison of shipping freight under a tariff versus a contract and the potential benefits of each, as well as the views of stakeholders—including rail shippers, railroads, and STB staff—on the implications of shipping freight under a tariff versus a contract.

Section 15 – Reports

Section 15 of the Act required the Board to submit a report to Congress on rate case methodology that indicates whether current large rate case methodologies are sufficient, not unduly complex, and cost effective, and whether alternative methodologies exist, or could be developed, to streamline, expedite, and address the complexity of large rate cases. The report also includes a look at alternative methodologies, which exist or could be developed, that are consistent with sound economic principles. Section 15 also required the STB to submit quarterly reports on the progress the STB makes “towards addressing the issues raised in each unfinished regulatory proceeding, regardless of whether the proceeding is subject to a statutory or regulatory deadline.”

On September 22, 2016, the Board announced that the report on rate case methodology was complete and available for viewing on the Board’s website. The study, titled “An Examination of the STB’s Approach to Freight Rail Rate Regulation and Options for Simplification,” found that, while the STB’s procedures are generally adequate, there are some opportunities for simplification of the process for handling Stand-Alone Costs cases.

WITNESS LIST

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board

The Honorable Deb Miller
Vice Chairman
Surface Transportation Board

OVERSIGHT OF THE SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2015

TUESDAY, APRIL 17, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Jeff Denham (Chairman of the subcommittee) presiding.

Mr. DENHAM. The subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

Good morning. Today we meet to oversee the implementation of the Surface Transportation Board Reauthorization Act of 2015. This is an important law that will reform the Surface Transportation Board to work more efficiently to better regulate the railroads.

This year is the 38th anniversary of the passage of the Staggers Act, which saved the railroad industry from bankruptcy and played a major role in railroad deregulation. This deregulatory effort culminated in the creation of the STB [Surface Transportation Board] in the Interstate Commerce Commission Termination Act of 1995.

The STB is a small but significant agency that conducts the economic regulation of our railroads, and its 2015 reauthorization was the very first since its creation. The STB Reauthorization Act streamlined and simplified Government regulatory activities.

While the STB has successfully overseen a stronger railroad industry, the act has helped the rail industry better serve its customers. It has streamlined dispute resolution procedures and set hard deadlines for completion of rate cases to reduce litigation costs.

The act provided greater transparency into complaints received by the STB and required enhanced reporting by the agency. It rejected big Government reregulatory action that has been proposed in the past. The act made necessary reforms to the agency to improve its processes and procedures.

Finally, the act had broad support from not only railroads and the STB, but also from shippers throughout the country, including the National Grain and Feed Association, the American Chemistry

Council, The Fertilizer Institute, and the American Farm Bureau Federation.

I am pleased at the content of the STB Reauthorization Act and the bipartisan nature in which it was enacted. Today we turn to the STB to evaluate their progress in enacting the STB Reauthorization Act.

I look forward to hearing your testimony. I now recognize Mr. Capuano for any comments he may have.

Mr. CAPUANO. I agree with everything the chairman just said. Thank you.

Mr. DENHAM. I now recognize the full committee chairman, Mr. Shuster, for any comments he may have.

Mr. SHUSTER. I thank the chairman. And, again, just to echo what Chairman Denham said, today we are exploring as to whether the reauthorization has been helpful, and being able to do the things like enhancing procedures in arbitration, timeline completion, rate cases, and reducing all of the burdens that the timing puts on the industry. So I will be happy to hear today what it looks like and if we need to address different issues as we move forward or if things are going in the right direction.

So, again, thanks for being here today. We appreciate it. Thanks for holding the hearing, Mr. Chairman.

Mr. DENHAM. I now recognize the ranking member of the full committee, Mr. DeFazio.

Mr. DEFazio. Thanks, Mr. Chairman. Obviously, the rail network for freight and passenger is critical to this Nation, and that is why we gave STB enhanced authority in 2015, so that we could deal with service issues and efficiency issues on the network.

I want to hear more about the letter that the Board wrote in March to all of the Class I railroads. And we all know that CSX, because of a radical management change, which hopefully—well, which is now history, was degraded dramatically by a particular individual who took over before he died.

So CSX has been a major focus, but I was surprised to see that you are finding basically nationwide a deterioration in service and would like to know what the STB believes is the root cause and what actions the STB would recommend or is going to recommend to deal with that.

And then, secondly, we have the whole issue of Amtrak delays. We have seen—because Congress mandated that we have preference for Amtrak, yet the railroads went to court and got a rather confusing decision because of the way the statute was worded. You know, basically, the regulations were thrown out.

And since that time, we have seen a huge deterioration in on-time performance for Amtrak, and that ultimately is going to impact the revenues, if it already hasn't, for Amtrak when you look at, you know, the Coast Starlight down to 57 percent on-time. You know, that is just a huge deterioration; Empire Builder, from 90 to 59 percent.

A lot of people are very much less likely to take rail if they are going to be infinitely delayed and they don't have any idea when they are going to get there. So I would like to hear recommendations from the Board. Seems to me the simplest thing we could do, although I don't know that this Congress can do anything, would

be to rewrite that statute in a form that would withhold scrutiny from the courts.

But absent that, we need to see some sort of effort by the railroads, the freight railroads, to better facilitate the movement of passenger rail.

So I look forward to hearing about all those critical subjects today. Thanks for being here.

Mr. DENHAM. Thank you, Mr. DeFazio.

I now welcome our panel today, the Honorable Ann Begeman, Chair of the STB, and the Honorable Debra Miller, Vice Chair of the STB.

I ask unanimous consent that our witnesses' full statements be included in the record. Without objection, so ordered.

Since your written testimony has been made part of the record, the subcommittee requests that you limit your summary to 5 minutes. Welcome back to the Committee on Transportation and Infrastructure's Subcommittee on Railroads, Pipelines, and Hazardous Materials.

Ms. Begeman?

TESTIMONY OF HON. ANN BEGEMAN, CHAIRMAN, SURFACE TRANSPORTATION BOARD; AND HON. DEB MILLER, VICE CHAIRMAN, SURFACE TRANSPORTATION BOARD

Ms. BEGEMAN. Good morning, Chairman Denham, Ranking Member Capuano, and members of the subcommittee. Thank you for holding today's oversight hearing on the Surface Transportation Board Reauthorization Act of 2015 and for inviting Vice Chairman Miller and me to provide an update on the Board's efforts to implement the act.

I want to begin by first thanking Chairman Denham and Chairman Shuster for inviting Katherine Bourdon of our staff to serve as the detail to your subcommittee during the past few months. We know it has been a wonderful learning experience for her, and we hope that her service has been helpful to you as well.

The STB Reauthorization Act was the Board's first reauthorization since it was created over two decades ago. It established the Board as a fully independent agency, enhanced our authority, and created new responsibilities. The Board members and staff have been fully committed to implementing the mandates of the act, and we have been accomplishing its directives.

Today we will highlight the actions the Board has taken to implement the act and discuss some of the remaining challenges. Because of the STB Reauthorization Act, the Board has achieved greater efficiency, accountability, and transparency. For example, the Board prepares quarterly reports about its rate review cases, its formal and informal service complaints, and unfinished regulatory proceedings as directed by the act.

We submit copies of these reports to our oversight committees, along with transmittal letters that track our implementation progress and also provide important Board updates. These reports and letters are also publicly available on the Board's website.

Section 13 of the Reauthorization Act required the Board to revise its arbitration program. After notice and comment rulemaking, we issued rules in September of 2016 to conform to the new statu-

tory requirements. Among other things, we expanded the program to encompass rate disputes and establish caps on damages as directed by the act. We also maintain a roster of arbitrators, which is updated annually.

Although no parties have chosen to participate in the Board's program, we believe it would be a very viable alternative for resolving disputes. The Board also offers mediation services, which have been used successfully.

Section 12 of the act gave the Board new authority to investigate issues of national or regional significance. After moving through notice and comment rulemaking, we issued rules in December of 2016. The rules contemplate a three-stage process, including preliminary fact-finding, Board-initiated investigation, and formal Board proceeding.

In developing these rules, we wanted to ensure that appropriate protections for due process, separation of fact-finding and decision-making, and timely resolution of investigations were incorporated. This new authority provides the Board an important additional tool to aid in carrying out its mission.

Finally, with respect to the act's provisions regarding rail rate review procedures, Vice Chairman Miller and I have a shared interest in improving our current processes. Since coming to the Board, we have both expressed concerns about the costly, time-consuming, stand-alone cost methodology known as SAC, which is used in larger cases.

The Reauthorization Act addresses some of these concerns. It shortened the timeline to process SAC cases. It directed us to initiate a proceeding to assess procedures used in court litigation that might be used to expedite our rate cases.

It required the Board to maintain one or more streamlined processes for cases in which the SAC test is too costly, and it required us to submit a report on rate case methodologies. The Board has complied with these directives as detailed in our written testimony.

Although the Board currently maintains a streamlined process for rate review for smaller cases, we believe additional work is needed to provide a more accessible and affordable rate review process.

The Board issued an advance notice of proposed rulemaking to explore a new rate process for smaller shippers. Based on the comments we have received, more work is needed.

To that end, the Board has recently established an internal Rate Reform Task Force, which is working to develop recommendations to streamline the Board's rate methodology for large cases and to improve rate options for smaller cases. The task force is comprised of eight Board staff, bringing together considerable economic and legal expertise and experience in this very difficult, challenging undertaking.

The task force is going to be reaching out to stakeholders, including your offices, to obtain input and ideas on these issues. This is a very difficult assignment, but one that we simply must keep working on to address.

I will now turn to my colleague, Vice Chairman Miller, to continue our testimony.

Thank you.

Mr. DENHAM. Vice Chairman Miller, you are recognized for 5 minutes.

Ms. MILLER. Thank you, Chairman Denham and Ranking Member Capuano, members of the subcommittee. Chairman Begeman has clearly explained what steps the Board has taken to implement many of the Reauthorization Acts. I will pick up the narrative and address the two things the Board—the act has done to improve collaboration and to help us become an independent agency.

So, first, on collaboration, which a very important and much-appreciated goal of the act was to allow for greater collaboration between the Board members. The first way that was done was through section 4 of the act, which increased the Board's membership from three to five.

By having more than three members, the members will be able to talk with another member about pending proceedings in a non-public forum without running afoul of the Sunshine Act, which prohibits a majority of the Board from discussing pending matters in a closed setting. Because there are currently three vacancies on the Board, we have not yet been able to have any of these one-on-one conversations.

However, the President has recently submitted two nominees to the Senate for consideration, and the Senate Committee on Commerce, Science, and Transportation held a hearing last week on their nominations, and one of the nominees is with us today, Patrick Fuchs.

We look forward to the confirmation of the nominees and the chance to work more collaboratively with each of our member colleagues as envisioned under the Reauthorization Act.

The Reauthorization Act also gave the Board another tool to allow for more collaborative discussions. Section 5 permits a majority of the Board members to hold nonpublic discussions regarding agency matters, which we refer to as section 5 meetings.

While the act still prohibits the Board members from agreeing on an outcome in these meetings, we are permitted to discuss ideas with one another. To ensure transparency, the Board's general counsel must be in attendance and is required to prepare a meeting summary of the matters discussed. The summary is then made public after the meeting.

Since the act's passage, we have already had a number of section 5 meetings, and we would consider them very useful.

The final significant change made by the Reauthorization Act was the conversion of the Board to a wholly independent Federal agency. Prior to the act, the Board was decisionally independent but administratively housed under the U.S. Department of Transportation, which meant that DOT performed a number of the Board's administrative and information technology functions.

Since passage of the act, the Board has assumed these functions. This clearly has been the most challenging part of the act for us to implement. While we are pleased to report that we have made significant progress on adopting processes and systems necessary for the successful functioning of an independent Federal agency, there are clearly still areas where we have work to do, particularly in information security.

In the Board's most recent Federal Information Security Management Act, or FISMA, audit, DOT's inspector general identified a number of areas where improvements need to be made.

In addition, just last week, the full House passed H.R. 4921, the STB Information Security Improvement Act, which was reported by your full committee and requires the Board to implement an improvement plan for its information security system.

We appreciate your support of the Board's work to make needed improvements in this area. Improving our information security is a top priority of the Board. The Board has established a remediation plan in response to the IG's report, which we have shared with the IG's office. We have hired an information security system manager, who has already implemented corrective measures.

In conclusion, I think it is fair to say that Chairman Begeman and I agree that the Board has successfully implemented the act's requirements and that has, in turn, led to improvements in the Board's operation, just as was envisioned by Congress.

Before finishing my remarks, Chairman Begeman and I both felt that we should briefly address recent reports about service issues in the railroad industry. Several shipper organizations have indeed alerted us to concerns regarding service on certain carriers, and there has been a noticeable drop in service metrics for some carriers.

Last month we sent letters to all Class I railroads asking for their service outlook for the remainder of 2018. We have also asked certain railroads to participate in individual weekly calls with staff from our customer assistance office to help us monitor these carriers' service levels and progress.

At the moment, these service issues do not appear to have as severe an impact as those that occurred in the winter of 2013 and 2014, and the affected railroads generally appear to be taking aggressive measures to address their service and get it back to normal. But we will continue to monitor this situation very closely, and we will be happy to keep the full committee apprised of our actions, particularly if additional steps are needed.

Again, I want to thank the subcommittee for holding today's hearing, and I look forward to answering your questions.

Mr. DENHAM. Well, thank you, both. I know it is a difficult job with some of the controversies that you deal with on a regular basis. As a Member of Congress, normally shippers will contact us as a last resort when they are getting frustrated with any type of implementation.

But I would also say that, you know, as we have talked to leaders from other countries about transportation and logistics, the number one thing that they point to is our freight network that we have for goods movement across the entire country.

We have an amazing system with all of our freight rails, but that does also create a challenge with captive shippers. So when a lot of cars are being used for oil, sometimes you see shortages of cars being used for grain. That ends up with a call to a Member, and ultimately a call to the STB for you to work out some of these challenges as well. We deal with hazardous materials in this subcommittee, so a variety of different hazardous materials that must go by rail can be stuck captive as well.

And one of the questions and concerns that has come up is currently you are the Board, with only two members. One of the big changes that we made was actually increasing the three members to five. I wonder if you both could give us your thoughts on whether that will create efficiencies and create greater opportunities to solve some of these challenges that we have with captive shippers across the country.

Ms. BEGEMAN?

Ms. BEGEMAN. Thank you for the question. I do think when we have additional members, more than three, that will really be a great help to us. Because of the Sunshine Act, we are not allowed to actually talk to each other one on one about issues, although as my colleague mentioned, because of the section 5 meetings—we call them section 5 because that is the section 5 of the Reauthorization Act that allows us to have meetings as long as the general counsel is in attendance, and that we have a summary that is posted on our website after a meeting. Or if it is about a particular decision we are working on, it is posted along with that decision.

But it certainly would be—I think it will be a game changer for me to actually be able to walk into Deb's office and talk to her about a particular issue. I mean, imagine what your workload would be like if none of you could talk to each other. So I am really looking forward to it. I think it could only be a benefit.

Mr. CAPUANO. It might be an improvement.

[Laughter.]

Ms. BEGEMAN. I am looking forward to it.

Mr. DENHAM. Thank you.

Ms. MILLER?

Ms. MILLER. I would echo what Ann said. I think of all of the changes in the Reauthorization Act, I think this is the most important one. I have been on the Board for about 4 years now, and I was really surprised when I got here by, I mean, honestly, how isolated I felt.

For me, I have always felt that I learn a lot by working with colleagues, hearing their questions, having a better understanding about how they read a situation and how it might be different from the way I read it, or perhaps I just misunderstood something. And I have often felt that we could and would arrive at better decisions if we had more robust dialogue among the members of the Board.

And, quite frankly, I think it would enhance the collegiality of the Board, which is certainly—I don't mean in any way to imply that there aren't, you know, good working relationships, but, you know, when you just aren't in contact with each other as frequently, I think it does have an impact.

So, no, I am very enthusiastic about this change in the law. I think it will absolutely—I don't know that you could say it will lead to efficiency. I think with five members, you know, there might be some things that might feel a little less efficient, just the reality of that, but I think it will absolutely lead to better outcomes and that is what is important.

Mr. DENHAM. Thank you. And how has designating the STB as an independent agency benefitted the STB?

Ms. BEGEMAN. Prior to the Reauthorization Act, while we have always been decisionally independent, we were administratively

aligned with the DOT. I will say this has been our biggest challenge, such as establishing a number of our own processes with respect to IT and IT security.

We need our own separate servers. We need our own lines that we use with our financial services. We have our own HR Department. But we are now more set up to be responsible for our own destiny, if you will.

So it has been very challenging, although it has also been rewarding in its own way. As many of you know, we had a very difficult FISMA audit that we received last year from the DOT IG. They conducted the FISMA audit at our request. But that also has been an opportunity for us to improve problems that we didn't even necessarily know that we had.

It is a long-term process. It is one that this committee has recognized as long term. You have passed legislation out of your committee. It passed the full House last week. And I can assure you that with or without legislation, we are fully committed to addressing our cybersecurity vulnerabilities, and we are making progress.

So thank you for your interest in that area. But, again, I will say independence is a challenge.

Mr. DENHAM. Thank you.

Mr. Capuano.

Mr. CAPUANO. Thanks, Mr. Chairman. And I thank the ladies for being here.

I want to kind of get beyond some of the specifics. First of all, I am glad you like the changes because I agree with you. I am looking forward to it as well. I don't think the President will listen to me, though, when it comes to filling that fifth slot. Maybe I will give him a call, and maybe he will react, but I wouldn't hold my breath.

For me, the biggest issue you deal with it, it all ties into it. As I see the freight rail industry, it is a de facto monopoly, which is in and of itself acceptable. It is a de facto monopoly. And like all monopolies, therefore, they are subject to certain regulations. That is the balance you have. When there is no competition, you get more regulation. It works well for the most part.

What has changed in the last couple of years is that some of—and, again, not all people on Wall Street are bad people. Not all of—but some of the vultures of Wall Street have decided to come into the rail industry.

And when they do, they start doing to the rail industry what they have done to other industries, which is to strip it down, you know, kind of ruin it for all the other people that try and do the right thing, and just make a quick buck without any consequences whatsoever, without any concern what happens to the people who have to rely on this monopoly, or, as far as I am concerned, for America as a whole.

I think America absolutely needs a good, solid, functioning, and growing rail industry in freight. And when you get investors who only look at the immediate bottom line, it is a problem.

Up until recently, in the return for regulation and a certain degree of monopoly, the rail industry has been pretty much guaranteed a reasonable rate of return and a reasonable profit to split

amongst thoughtful investors and their employees and their leaders.

When greed takes over, which it has done in other industries—it hasn't happened in the rail industry yet, but it has crept into it starting just a few years ago with the attempt to get into Norfolk Southern. That was stopped, and then they—some of the things that CSX did, when you have a limited opportunity, and you intentionally reduce the number of locomotives, the number of rail, the number of employees, you intentionally stop making investments in your equipment and your people, in order to simply raise the price, therefore driving higher profits, if you have a pariah, eventually, if you let that system go, everybody else has to react to it.

In my mind, that is kind of what has happened already, which is why—I am not even asking, but why you had to write a letter that says, “Due to increased concerns over deteriorating service.” The service isn't deteriorating on the good lines. It is deteriorating on the few lines that have seemed to have been taken over by Wall Street, why the National Grain and Feed Association, the Alliance of Automobile Manufacturers are concerned about it, and everybody else I hear from.

And it was good to me to see the rest of the freight industry stand up against the aggressive attempt to overtake Norfolk Southern. They saw it as a bad thing. I think they were right, and I was glad to stand with them. I am glad they stood with us.

The question is: Does the STB have the tools to deal with these kinds of investors, to ensure that America has, and continues to have, a reasonably priced, effective freight rail system? And, again, I understand you can't have competition every rail.

We are going to have—we have de facto monopolies. It is acceptable. But that makes regulation essential—essential to keep the system going. And I am just curious, Madam Chair, whether you think you have the tools to ensure that that continues.

Ms. BEGEMAN. Thank you very much. I certainly appreciate what you have stated. While the Board doesn't have jurisdiction per se over Wall Street, you know, we have limited jurisdiction, but part of our jurisdiction that Congress has given us is that rail carriers have a common carrier obligation to provide service.

Mr. CAPUANO. Right.

Ms. BEGEMAN. So while—you know, let's take CSX as the example. During the past year, you know, we spent quite a bit of time shining a spotlight on their operations, having weekly phone calls with staff and senior executives. We required them to provide additional metrics on their service. We have been a real pain in the neck to them.

Mr. CAPUANO. Madam Chair, my time is limited. I don't mean to jump in, but do you have the authority to deny them or to change their rates if they take bad actions? If there is no—if they can't increase their profits, they are not going to do these bad actions. Do you think you have the authority to take action on that one item?

Because that is really—when everything is said and done, after all the good cajoling and discussions, if they can't make that extra profit, that that is what they are driven by, because you won't allow the rates to fluctuate that way, or you take action, that is

your one cudgel. Is it effective enough? Is it strong enough for you to be able to react?

Ms. BEGEMAN. I believe the Board has really large untethered authority should it need to go that route. A carrier has a common carrier obligation to provide service on reasonable request.

You can't get rid of all of your labor, all of your locomotives, all of your cars, just so you can show profits for a year. You have an obligation to serve your customers, and that is what we will make sure they do.

Mr. CAPUANO. Thank you.

Ms. BEGEMAN. And if you don't, we will find another carrier who would be happy to do it.

Mr. CAPUANO. That is what I wanted to hear. And, again, I want to be real clear. I think that all of the rail carriers want to do the right thing and have been doing the right thing for hundreds of years. I don't want it to change, and I don't want it to change because there is a couple of sharks coming in only looking at their own profit and without concern whatsoever to the American manufacturer.

Thank you.

Mr. DENHAM. Mr. Shuster.

Mr. SHUSTER. Thank you.

In your testimony, you talked about the various areas—arbitration, investigative authority, and the rate cases, that you have increased the efficiency that you are able to—and the time—reduced the time, but you didn't quantify it.

Either today, or at some point, can you give me an idea of how much have you reduced the time it takes to go through these different jurisdictions that you have? Because in Washington that is one of the biggest problems is it takes forever to go through these different processes. Can you quantify that?

Ms. BEGEMAN. Well, with respect to the stand-alone cost methodology, which is the process that is used for larger cases, you directed us to reduce our timeline by 5 months to complete those cases.

Now, since the Reauthorization Act, we have not had a new case brought to us. I will tell you, the directive you have given us is nearly impossible for the Board to meet, and that is why we have this internal reform task force to try to find a better approach, whether it is to have an entirely different process or to even just streamline the process that we have, so there could be more standardized approaches, because we don't have a choice but to—you know, we need to meet what you told us to do. But I don't want you to think it is going to be easy.

Mr. SHUSTER. Right.

Ms. BEGEMAN. We also established the changes to our arbitration program, as you directed. We have had an arbitration program on our books for over 20 years. It has never been used. Before the Reauthorization Act, about a few years before that, we actually tried to reform the program, so that people would use it. Unfortunately, it still isn't used. We do have success with our mediation program.

Mr. SHUSTER. So the answer is you are working on it, but it is difficult. Will the five members, will that assist you in doing that,

so you are able to have conversations sort of offline with other members to try to move things forward faster?

Ms. BEGEMAN. Yes.

Mr. SHUSTER. And how does—the way you are set up there are three of you. If you have five, and even when you had three, does somebody sort of take a lead on an issue on a case, or how do you divvy up the work?

Ms. BEGEMAN. That is a great question. There has never been more than three members since I have been on the Board, and my colleague has been on the Board. We are now two. I hope that we don't get down to one, because that would just be me.

But I am really—I can use all the help I can get. Being in charge after 6 years, it is a whole new experience. There is a lot of work to be done, and I am looking forward to having the help.

One of the nice things about these section 5 meetings, for example, where we can get together with our general counsel and others—again, we do it in a transparent way—it is not just the Chairman deciding when to do such a meeting.

But if my colleague thinks that she would benefit, or we would benefit, in addressing an issue by having a conversation, she will say, "Let's have a section 5 meeting," and we will do it. Again, there are only two of us. Even when there are five of us, it is not like a committee your size. We should be able to do efficient and effective work.

Mr. SHUSTER. But do you divvy up the work? You will take the lead on something versus—or is that not the way it works?

Ms. BEGEMAN. We haven't, but I am thinking that that would be an approach I would like to take, particularly on some of our pending regulatory proceedings. I am looking to sort of have some new brain power on that, and maybe we will see things in a new light.

Mr. SHUSTER. Maybe 5 years ago, I heard a lot more about rate cases and captive shippers. I haven't heard too much of that going on out there. I mean, I am sure there is a couple—

Ms. BEGEMAN. Oh, it is still there.

Mr. SHUSTER. It is still there? Because I—well, these captive shippers, I mean, some—you know, you can only grow wheat in some parts of the country, but I know over the years many of these folks that are captive shippers actually build a plant on a single line, and they create themselves to be captive shippers and then they complain about it.

Again, we haven't heard a lot of people complaining to us. So, again, I just wondered, is it because you are doing a better job, the railroads are doing a better job, the captive shippers are happier?

Ms. BEGEMAN. I would like to say it is because we are doing a better job, but I do want to be completely candid with all of you. You know, captive shippers have struggles. As you mentioned, yes, there are times when people locate on a captive line, and they choose to do that. Perhaps that is where their best labor pool will come from.

But I am a farmer's daughter. I grew up in South Dakota. I know what it is like to have captive service. I am not satisfied with the rate methods that the Board currently has, particularly for grain shippers, really smaller shippers. They can't afford multi-

million-dollar cases and lawyers for 5 years to bring a case that they may or may not win.

That is one of the reasons that we have put out an ANPRM [advance notice of proposed rulemaking] to try to establish a case for really small, small shippers. Unfortunately, our good intentions were not warmly received by either the industry or the shippers that we are trying to address, but we are not giving up.

And, again, we have established a task force that is trying—going to really try to help us find a better solution.

Mr. SHUSTER. All right. Thank you very much.

I yield back.

Mr. DENHAM. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

I was intrigued by something you said just previous to that in response to Mr. Capuano, which was that if someone were to shed themselves or strip the assets from a railroad, the power, the crews, and all that, and they weren't going to deliver adequate service, then you would find someone else who would.

How would that work? I mean, at what point can you intervene when someone like, you know, we had essentially an attempt to destroy CSX by Mr. Harrison, and he was brought in by some Wall Street investor. We had a previous attempt by the Children's Fund to take over and destroy CSX, a benignly named hedge fund out of Europe who was also a master at stripping assets and extracting value, they call it, as they destroy the capability of the railroad.

So what did you mean when you said that? How could you say you are going to find someone else who will? I mean, you don't have that authority.

Ms. BEGEMAN. Well, we do have emergency service authority, which has rarely been used. It really hasn't been used since the UP-SP merger back in the 1990s, the "mess in the West" after that particular merger.

Mr. DEFAZIO. Yes, I lived through that.

Ms. BEGEMAN. Yes. Me, too. And I would like to never live through another mess.

And so we do have authorities that we could direct another carrier to operate and provide service over another line. You know, I don't look forward to using that authority, but we do have it if we need to use it.

Mr. DEFAZIO. That would be fairly—

Ms. BEGEMAN. I will also say that we certainly recognize that our regulations may need to be altered. When there is a degradation of service, a carrier and a shipper can come in and petition the Board to provide service over another line. That regulation has not been used, and so we have started some informal discussions with stakeholders and the Board staff to try to determine whether there are some changes that we could make to these regulations to make them more usable. We want to try to explore whether or not there is something we could do to improve the regulations, so that they could be used, if they needed to be.

Mr. DEFAZIO. But at this point, since you lack a quorum, you couldn't take any definitive action.

Ms. BEGEMAN. We don't have quorum requirements.

Mr. DEFAZIO. Oh, you don't.

Ms. BEGEMAN. However, you know, we also have not been challenged in court, whether or not there are two of us doing our work, whether that is an issue. There was a time when there was only one member for about a year, about 10 years ago. So we are—you know, we would like to not have to determine that answer.

But, again, we are not not doing our jobs because there are only two of us. We are trying to do as much as we possibly can.

Mr. DEFAZIO. OK. Yes. I mean, I wonder, and I am not exactly sure how I would approach it, but, you know, we finally did get rid of Frank Lorenzo. You know, Congress had standards, fitness standards, for operating airlines, and maybe we need something similar for railroads to try and keep out those people who would just come in and strip the assets and don't care about the vital service that is being provided after and disappear after they profit. So it is something to think about.

Thank you, Mr. Chairman. I appreciate it.

Mr. DENHAM. Thank you, Mr. DeFazio.

Mr. Westerman, you are recognized for 5 minutes.

Mr. WESTERMAN. Thank you, Mr. Chairman.

I have a large number of fertilizer and chemical manufacturers located throughout my district, and the majority of the fertilizer shipments moved by rail due to rail's ability to move it securely and safely and economically.

These shippers are vastly affected by the current rate review standards. These rate and service cases can take up to 3 years and the costs can run in the millions, hurting these companies' bottom lines, which trickle down and hurt workers and constituents in my district.

So I greatly appreciate the work that has been done since the implementation of the reauthorization of 2015 and working to expedite many of these cases. Could you give examples of improvements you have seen, as well as positive feedback you may have received in the first month of 2018, since the rule has been implemented? And that is for both of you.

Ms. BEGEMAN. I am sorry. You are asking what the positive impacts of the act have been? Is that what you are asking?

Mr. WESTERMAN. Yes. And maybe feedback you are getting from folks that have been affected by the rule.

Ms. BEGEMAN. Well, as I had mentioned in my testimony, we provide quarterly reports to Congress that we also post on our website that address our rate cases. They give an overview of our quarterly pending proceedings, regulatory proceedings, and they also provide information on our formal and informal service complaints during that time.

I think it has been really helpful for not just the Board but also for interested stakeholders to know what kinds of calls we are receiving, because, again, informal means there hasn't been a written filing. It is more like what our Rail Customer and Public Assistance office—what kind of phone calls they have been getting.

One of the things that my colleague and I have done as a result of the directive on the regulatory proceedings is we have been working to establish an internal process to set deadlines for our other cases, not just regulatory cases but actually our day-to-day caseload. We have been doing this for the past year.

One of the benefits I have found, because I have not always been the Chairman or Acting Chairman, is it lets all of us know, and the staff know, what our priorities are for the next 3 months, what cases we plan to get done once the record is closed, and how to kind of prioritize our workload, and so that all of the different burdens we put on staff, they can help to better juggle.

So we are really trying to, you know, just be as productive and efficient as possible for the stakeholders.

Mr. WESTERMAN. Would you like to add to that?

Ms. MILLER. Yes. Thank you very much, Mr. Westerman. Well, first, I would say, since you brought up the fertilizer industry, they have, since I have been on the Board, gotten much more proactive. And I have found them to be very helpful partners to work with.

They visit us fairly regularly and provide very good and helpful information, and I think just their proactive approach has been I think good for their industry. It has certainly been good for me as a member of the Board to have a better understanding of the challenges they face and how we might impact them.

In terms of positive improvements, I think that the issue of transparency is extremely important and have in my Government service always championed it. I think that, one, we are doing the work of the public, so the public has a right to know what we are doing and when we are doing it. And, secondly, I think for those who are impacted by the decisions we make, the more information they have about what we are doing, when we are doing it, how we are doing it, helps them both understand and, you know, quite frankly, then interact with us in a way that is useful.

So I think one of the most beneficial consequences of the Reauthorization Act has been the collaboration, the transparency requirements. When it comes to transparency, one can always do more, and I do think there are other things the Board could do to continue to refine its processes that would be helpful.

But I think the fact that there is more information available to those stakeholders who engage with us has made a difference, and I think in the service challenges that is one of the places we can be helpful. The metrics that we require railroads to submit, the information we then provide to stakeholders, helps them to adjust their activity.

Mr. WESTERMAN. OK. And I have got more questions, but I will submit them for answers, unless we get another round.

I yield back, Mr. Chairman.

Mr. DENHAM. Thank you, Mr. Westerman.

Mr. CARSON? Mr. Carson, you are recognized for 5 minutes.

Mr. CARSON. Thank you, Chairman.

I am very concerned about the growing problems of freight trains blocking grade crossings in urban and suburban communities across our country, particularly Indianapolis. The trains have gotten longer, especially downtown, and I think it is important that this subcommittee, and our regulatory partners quite frankly, take steps to better understand what is happening and how the problem can be essentially fixed.

Are investigations being conducted as we speak, and what have you learned so far, and beyond what you can tell me today, we would appreciate more information and detail in writing. I know

we have limited time, and a separate briefing would be very helpful.

Ms. BEGEMAN. Well, one thing I would like to ask of you or your staff, if you would follow up with us after this. We have a Rail Customer and Public Assistance office. You know, there are times when blocked crossings are occurring and the carrier needs a phone call and a nudge, like, “what can you do to try to address this”—ASAP kind of a matter. So please don’t hesitate.

I will leave the phone number for our office, so that we can try to be as responsive and timely—occasionally, that could be almost an emergency situation. You know, hospitals can’t be blocked. Please, you know, we want to be helpful to you.

With respect to our new investigative powers, we did implement regulations to establish regulations on our investigations. We have not currently—we have not conducted a formal investigation at this point. That is not to say that it is not a very helpful tool.

It is actually a very big stick of authority that you have given us. What our first preference is is to exhaust our informal approaches. You know, we want the railroads to work with us and with their shippers and other carriers—in an appropriate way—to try to address issues. And a formal investigation, as you can imagine, will have a bit of a chilling effect on the person or the entity perhaps being investigated.

So I am not saying that, you know, we—there may be the right time and place for that, but to the extent we can exhaust our work in an informal way, that is the way we would like to do it, particularly because it also is a transparent process. It is not done confidentially.

Mr. CARSON. You know, we are seeing delays up to 3 hours now, which has become extremely problematic, especially for folks trying to get to work and emergency vehicles. So if we could have a separate briefing, that would be tremendously helpful.

Ms. BEGEMAN. Absolutely.

Mr. CARSON. Thank you. Secondly, your written testimony mentions some adjustments from your previous affiliation with the DOT and now your status as an independent agency. Can you describe some of the outstanding cybersecurity and information technology challenges that should be addressed? And what are your top priorities in this area?

Ms. BEGEMAN. When we became independent, we actually suddenly became responsible for everything we do, and that included all of our IT network, our financial network, et cetera. Some of the answers I would like to give to you in private.

Mr. CARSON. Sure.

Ms. BEGEMAN. If you don’t—and I am sure you can appreciate why. But I will say that it is a top priority of my colleague and me, and the Board staff frankly. They are working very hard to address some of our vulnerabilities. I will also say that much of it is about paperwork.

Mr. CARSON. All right. Thank you.

I yield back, Mr. Chairman.

Mr. DENHAM. Thank you, Mr. Carson.

Mr. Katko, you are recognized for 5 minutes.

Mr. KATKO. Thank you, Mr. Chairman, and thank you, both, for testifying today. We appreciate you being here.

A quick question to start off with. The Rate Reform Task Force, where are we with that process? And at what point can we expect it to reach some conclusions as to that task force?

Ms. BEGEMAN. It is a new undertaking. It was established in January. It is comprised of eight members of our staff that are attorneys or economists. They all have, you know, personal experience processing rate cases. All except one I think has finally come to the conclusion that the SAC process is just more than we can really bear, and we need a new way.

What they have been doing is they have been doing a lot of different research. They have been exploring various ideas that they have had, you know, over the past several years. Shortly, they plan to be going out to various stakeholder communities. Again, as I said, we would be happy to meet with any of you or your staff.

But also, they are going to different association meetings. The National Grain and Feed Association is having a meeting in a few months. And so they are going to travel around a bit and to try to really get a best sort of—just the best ideas that they can put forward.

I am not interested in the rail industry telling us that the status quo is perfect or that we should be content with it, because we are not going to be content with it. We need to change.

Mr. KATKO. That I understand. Is there some sort of a timeframe you have put on this endeavor, or is this going to be kind of an open-ended thing?

Ms. BEGEMAN. You know, saying it is open-ended probably is not the approach I want you to think that we are taking. But it is a long, difficult process, and I—

Mr. KATKO. Everything is in the rail industry.

Ms. BEGEMAN. Everything is, and I don't want to say I want it next month.

Mr. KATKO. Yes.

Ms. BEGEMAN. But we want to see it brought to a conclusion as quickly as it can be.

Mr. KATKO. OK. And I take it stakeholders have the opportunity to provide input, even—

Ms. BEGEMAN. They will. Yes, they will be.

Mr. KATKO. OK. All right. Wonderful. I want to switch gears a bit. I am also on the Committee on Homeland Security, and I just don't know if I understand the breadth of your jurisdiction.

One of the things I am very concerned about is the shipment of volatile crude on the trains through urban areas. In Syracuse, New York, my jurisdiction, for example, we have multiple shipments sometimes a day of 100-car trains of volatile crude going through urban areas. And they are subject, really, to a lot of concern that, you know, a disaster in an urban area with volatile crude train shipments is a very serious thing.

And I just wonder, are you involved at all in the safety aspects of the shipment of that crude, or is that outside your jurisdiction?

Ms. BEGEMAN. That is primarily FRA.

Mr. KATKO. Pardon me?

Ms. BEGEMAN. It is primarily the Federal Railroad Administration.

Mr. KATKO. OK. All right. Under section 6, the Board has established and maintained a database of complaints. Could you tell me, are you gathering complaints?

Ms. BEGEMAN. Yes.

Mr. KATKO. OK. And how many formal complaints have been filed with the STB since the Reauthorization Act?

Ms. BEGEMAN. Formal, I think there were approximately 20. There are currently five pending.

Mr. KATKO. OK. And how do you deal with those when you get those formal complaints? And we will talk about informal in a minute.

Ms. BEGEMAN. Sure. Well, formal complaints, you know, are in writing. It is basically—it is a case. A party will make their formal filing. The entity that they are filing against will then reply to that. Depending on what the situation is, they may get to a point where they want to have discovery, which can be a long process in its own way. But ultimately, you know, the record will be closed, and then we will work to issue a final decision as quickly as possible.

Mr. KATKO. OK. Great. And now let's talk about the informal complaints. I take it there is probably more of those than—

Ms. BEGEMAN. There are, yes.

Mr. KATKO. OK. And how is that process different than the formal complaint process?

Ms. BEGEMAN. For the informal complaint process, our Rail Customer and Public Assistance office fields phone calls from shippers, sometimes from other railroads, sometimes from short line railroads.

And it is a small group, but it is comprised of some attorneys, some former shippers, some former railroad folks, and they will then, assuming that the—sometimes the shipper does not want to be outed. You know, they just maybe want to have an ear and try to get some informal recommendations as to sort of what—you know, is there anything that the Board could do or what—you know, what is the law. So sometimes they just want to get information.

But there are times when a shipper will say, "I need you to help me, please. Yes, let the railroad know that if they don't provide service to me, you know, if I can't get a shipment by midnight tomorrow, I am shutting down." And our staff will then get on the phone and they have been extremely successful. I am so proud of them. I mean, they are probably the—they can get things done.

Mr. KATKO. Well, that is exactly what we want to hear, and I appreciate that very much.

With that, Mr. Chairman, I see I am out of time, so I will yield back. Thank you.

Mr. DENHAM. Thank you, Mr. Katko.

Mrs. NAPOLITANO.

Mrs. NAPOLITANO. Thank you very much, and good morning, ladies. I am just wondering, who is your new Board member? Would you have him stand up?

Ms. BEGEMAN. Well, he is not currently a Board member, but he is our nominee.

Mrs. NAPOLITANO. Nominee?

Ms. BEGEMAN. Patrick Fuchs is our nominee.

Mrs. NAPOLITANO. Very good. And do you expect a fourth one?

Ms. BEGEMAN. We also have a fourth nominee, who is not here today, but they had their confirmation hearing last week. And then we are waiting for one more to be nominated.

Mrs. NAPOLITANO. Good. Well, it is about time.

Ms. BEGEMAN. Yes.

Mrs. NAPOLITANO. I am sorry. But there are several questions I have in regard to the status of the law passed in 2015 by the Federal courts giving Amtrak preference on-time service over freight railroads. How does STB see this issue moving forward?

Ms. BEGEMAN. As you know, the reauthorization—I am sorry—PRIIA [Passenger Rail Investment and Improvement Act of 2008] directed FRA and Amtrak to establish metrics. Those metrics would then be used by the Board in order to process on-time performance complaints.

Mrs. NAPOLITANO. OK. That was 3 years ago.

Ms. BEGEMAN. Yes.

Mrs. NAPOLITANO. How is it moving?

Ms. BEGEMAN. It is still in court. In the meantime, the Board tried to step in and establish our own standards. The U.S. Court of Appeals for the Eighth Circuit vacated our attempt last year. So at this point, we have authority but we don't actually have standards. So, again, it is back in court, and until the court rules there is—

Mrs. NAPOLITANO. Back in court as in appeal?

Ms. BEGEMAN. Yes, it is being—DOT—they are back trying to say that the FRA metrics and Amtrak metrics, that they should not be invalid.

Mrs. NAPOLITANO. OK. That same act provided STB with authority to investigate nationally or regionally significant issues on its own initiative rather than on complaint. Do you believe you have staff capacity to initiate such investigations? How do you determine when it is time to launch an investigation?

Ms. BEGEMAN. I do believe we have staff capacity. Of course, we would always benefit from having more employees than we have. I think we are a very fortunate agency in that the Congress and also the administration have provided us a bit of an increase in our funding since the previous years. Hiring people is a lengthy process in the Federal Government. It is surprising how frustrating of a lengthy process it can be.

But again, I mean, we—whatever we need to do, we will do, but we are trying to hire up. So if you know of any good people, please send them our way.

Mrs. NAPOLITANO. Well, we need to know that because we are facing an issue where a lot of our agencies are experiencing diminishing capacity to hire people, qualified people.

Other questions are the—you talked about—Mr. Carson indicated that grade crossings sometimes is a public problem, and you directed him to the Rail Customer and Public Assistance office. But

I also want to know, to what extent are you involved with the length of the trains and the Positive Train Control?

Ms. BEGEMAN. I am—

Ms. MILLER. Positive Train Control, length.

Mrs. NAPOLITANO. And the length of trains, because sometimes the crossings are held up with trains moving back and forth in half an hour, and you have traffic, you have rage, and you have problems because there are not quad gates or the like. I am a new member on this subcommittee, so I am digging.

Ms. BEGEMAN. When we had our listening session with CSX last October, one of the witnesses who appeared did indicate—told us about his concerns—it was actually a representative of rail labor—about the length of trains and how much they are—how they sort of are growing quite a bit, not just with CSX but other carriers as well.

You know, there is a tradeoff with the length. You know, longer trains means fewer trains. But as you mentioned, one of the results also could be impacting a crossing that wouldn't have been otherwise.

Mrs. NAPOLITANO. And also, they don't—the receiving end is not capable of receiving that length of a train either.

Ms. BEGEMAN. And that is really more of an FRA issue than it is an STB issue. But, yes, certainly, you know, this—we want a fluid network. But we also don't want—you know, it is not just about rail service impact. We don't want them to impact, you know, drivers sitting at crossings. I certainly have—

Mrs. NAPOLITANO. And Positive Train Control?

Ms. BEGEMAN. You know, Positive Train Control is not our jurisdiction. It is the Federal Railroad's jurisdiction.

Mrs. NAPOLITANO. Are you involved in it in any way?

Ms. BEGEMAN. Absolutely. Because ultimately it is about service.

Mrs. NAPOLITANO. Thank you very much, Ms. Begeman.

Mr. DENHAM. Mr. DeSaulnier, you are recognized for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chairman. I am sorry I was distracted. I am still looking up the—I am trying to figure out what a shock is, but I will leave that to the ranking member to translate it for me. Shock.

I wanted to ask you—and I appreciate the comments by the ranking member and Mr. DeFazio in terms of a changing private environment where you have investors who expect really sometimes an unfair rate of return. So I appreciate your historic responsibilities in protecting this valuable national capital infrastructure.

But I want to question a little bit—and it goes to some of the other comments about changing environments and anticipating that and working jurisdictionally, cross-jurisdictionally, with FRA and with State agencies.

I used to be on the California Air Resources Board. The rail companies would complain about our idling rules and some of our issues getting into the Port of Long Beach and L.A. and the Port of Oakland.

So just maybe in terms of reauthorization, how you feel you could better work with your sister agencies, both at the Federal and State level, so that you can keep rates as low as possible and still consistently meet your mandate about efficiency in regard to public

health and other issues, and the FRA issues with hazardous materials going through urban areas.

So this goes to a little bit about the other comments, understanding the jurisdictional constraints, but the communication with sister agencies in this regard, anticipating your mandate, effects on your mandate.

Ms. BEGEMAN. That is a very good question. Thank you so much. One of the things that the Board has been doing over the past several years is Board staff meets with staff of the FRA on a routine basis. Now that the FRA Administrator is confirmed, I have been a bit negligent in reaching out and trying to set up a dialogue with him, although I will be doing that.

I think it would actually be helpful for all of the members to—so that we know each other and we know their staff, so that we have a good understanding, because what we do is all interrelated. It is not to say we have jurisdiction over—you know, we don't share jurisdiction, but it certainly is interrelated.

We have a Rail Shipper Transportation Advisory Council that meets four times a year, and they are going to meet in early May, and we have invited FRA staff to come and give us an update on PTC [Positive Train Control] implementation. So that way we will, you know, have a new update relative to shippers that are affected by PTC, and there are carriers that also are on that council, and so we will also get a sense of the progress at that point.

Mr. DESAULNIER. And on another external pressure on your mandate, west coast we are concerned about trade wars and the impact on our economy, and certainly in northern California the ability to transport agricultural goods, as the Chairman is aware of, in and out of the Port of Oakland.

Do you look at those things to try to anticipate, again, that what the effect on those kind of external things, trade implications of a trade war, in this case in the Pacific Rim, which is certainly the focus of the administration right now, how that might affect your mandate in terms of rates and efficiency of the system?

Ms. BEGEMAN. Well, certainly, if products become less desirable from other countries, there probably will be less movement to those ports.

Mr. DESAULNIER. Understood. But do you do any kind of analysis in anticipation of that? Or is it just sort of—

Ms. BEGEMAN. No.

Mr. DESAULNIER [continuing]. We wait and react—we are somewhat reactive, and then the shippers will come to you and say, “We need a rate reduction,” or “We are moving some of our assets because of this.”

Ms. BEGEMAN. Well, rate—our rate reform, our rate review I should say, is—it is on complaint. So we don't just proactively or go out on our own and say your rates are too high; you can't do X. So that is not the approach that we take. It is actually a shipper needs to come to the Board to establish that—

Mr. DESAULNIER. But that is my point. If you anticipate, certainly, intellectually on your own, you might anticipate when you read news articles that one of your shippers may come to you and say, “Our model has changed dramatically. Do we do”—and this is

hopefully part of our review in Congress is letting you—being mindful.

We don't want mission creep, and we want to keep the jurisdictions focused, but still anticipating these changes, you know, in a world that changes quite dramatically quickly. You don't have a vehicle to do that is what I am getting from your response.

Ms. BEGEMAN. I think that is right. And also, the majority of movements are—I shouldn't say a majority, but many are under contract.

Mr. DESAULNIER. Right.

Ms. BEGEMAN. So that is individually dealt with between the shipper and the carrier.

Mr. DESAULNIER. Would it be helpful to have more assets or jurisdictional responsibility to anticipate those changes, or, no, you—it is fairly predictive, the contracts are constrained and your jurisdiction is—

Ms. BEGEMAN. You know, I think that the more we know, the more helpful it is for—not just for the Board to be effective and efficient, but so that—and, again, we try to be very transparent. So the more that we can share with interested stakeholders, we certainly want to do.

Mr. DESAULNIER. OK. Thank you.

I yield back, Mr. Chairman.

Mr. DENHAM. Thank you, Mr. DeSaulnier.

Ms. Begeman, Ms. Miller, thank you very much for joining us on this hearing about STB. We are looking forward to the full implementation as well.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing, and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

If no more Members have any other questions, this subcommittee stands adjourned.

[Whereupon, at 11:08 a.m., the subcommittee was adjourned.]

Joint Written Testimony of
Ann Begeman, Chairman and Deb Miller, Vice Chairman
Surface Transportation Board

before the

House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials

April 17, 2018

OVERSIGHT OF THE
SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2015

Good morning, Chairman Denham, Ranking Member Capuano, and distinguished Members of the Subcommittee. Thank you for holding today's oversight hearing on the Surface Transportation Board Reauthorization Act of 2015 and for inviting us to provide an update on the Surface Transportation Board's (STB or Board) efforts to implement the Act. Before diving in on today's important topic, we want to first thank Chairman Denham, Chairman Shuster, and your staff, for inviting Katherine Bourdon to detail to your Subcommittee, which we know has been a wonderful learning experience for her. We also hope her service has been helpful to the Subcommittee.

As you know, the STB Reauthorization Act of 2015 was the Board's first reauthorization since its creation over two decades ago. It established the Board as a fully independent agency, enhanced the Board's authority and created new Board responsibilities. The Board Members and Board staff have been fully committed to implementing the mandates of the Act in a timely manner, and we have been accomplishing the Act's directives. We can also report that its implementation has already produced improvements in how we operate. Today, we will

highlight the specific actions the Board has taken to implement the Act and discuss some of our remaining challenges, along with other matters that may be of interest.

Quarterly Reports

Because of the STB Reauthorization Act, the Board has achieved greater efficiency, accountability, and transparency, which directly benefits the public and the stakeholders that we serve. In addition to providing quarterly reports on our rate case review metrics, formal and informal service complaints, and unfinished regulatory proceedings, as required by the Act, the Board has provided written updates to our congressional oversight committees, which tracked the progress made in meeting the Act's directives, along with various other updates. All of these reports and letters are publicly available on the STB Reauthorization Act page of our website to enable all interested stakeholders to be informed about our work.

Arbitration

In September 2016, following a notice of proposed rulemaking, the Board issued final rules amending our procedures for arbitrating disputes before the Board to conform to the statutory requirements of Section 13 of the Reauthorization Act. Among other things, we expanded our existing rules to encompass rate proceedings and set a cap on damages of \$25 million in rate matters and \$2 million in other matters.

Investigative Authority

Section 12 of the Reauthorization Act gave our agency new power to investigate nationally or regionally significant railroad issues on our own initiative. After moving through notice-and-

comment rulemaking, we issued final rules in December 2016. The final rules contemplate a three-stage process consisting of: (1) preliminary fact-finding; (2) Board-initiated investigations; and (3) formal Board proceeding. In developing these rules, we wanted to ensure that appropriate protections for due process, separation of fact-finding and decision-making functions, and perhaps most importantly, timely resolution of investigations were incorporated. With this new authority, the Board has an additional tool to aid it in carrying out its mission.

Rate Reasonableness Cases

Since coming to the Board, we have both expressed our separate reservations and concerns about the Board's rate review processes, particularly with the costly and time consuming stand-alone cost methodology, also known as "SAC." The Reauthorization Act addresses some of those shared concerns. With respect to rate cases, the Act: (1) shortened the timeline for SAC cases; (2) directed the Board to initiate a proceeding to assess procedures used in court litigation that may help in expediting rate cases before the Board; (3) required the Board to maintain one or more streamlined processes for cases in which the SAC test is too costly; and (4) required that the Board submit a report on our rate case methodologies.

On March 9, 2016, the Board issued final rules amending our regulations to comply with the shortened rate case procedural schedule set forth in Section 11(b) of the Act. As further directed by Section 11 of the Act, the Board looked for ways to expedite rate cases by examining procedures available in court litigation. Board staff held informal meetings with stakeholders and practitioners who have experience litigating rate cases before the Board. In June 2016, the Board issued an advance notice of proposed rulemaking (ANPR) in Expediting Rate Cases, EP 733, introducing several measures, such as standardizing discovery requests and evidentiary

submissions, limiting the scope of certain filings, and having increased technical meetings between the parties and STB staff. The Board proposed rules in March 2017, and in November 2017, issued final rules implementing changes to the rate review process to help expedite cases.

In addition, Section 15 of the Act instructed the Board to submit a report examining the sufficiency of our rate case methodologies and any potential alternatives to those methodologies. The Board commissioned a report in late 2014 by an outside consultant, InterVISTAS Consulting LLC, for an independent assessment of the SAC methodology and possible alternatives. The Board delivered that report, which is available on the Board's website, in September 2016 and held a roundtable of distinguished economists to discuss potential alternatives to our rate review methodologies.

Although the Board currently maintains streamlined processes for smaller cases as directed under the Act, the Board believes that additional work is needed to provide a more accessible and affordable process. To that end, the Board issued an ANPR in Expanding Access to Rate Relief, EP 665 (Sub-No. 2), to explore a new rate review process for small shippers. In addition, the Board has created an internal Rate Reform Task Force, which was established in January, to develop recommendations to reform and streamline the Board's rate methodology for large cases, and to improve rate review options for smaller cases. The Task Force is comprised of eight Board staff, bringing together considerable economic and legal experience and expertise to this very challenging undertaking. In carrying out its mission, the Task Force will be reaching out to stakeholders to obtain input and ideas on these complex issues. Informal discussions can

help the Board obtain a more thorough understanding of the interests of stakeholders and perhaps provide additional ideas regarding new rate review methodologies.

Board Composition and Collaborative Discussions

Another important aspect of the Act relates to the Board's membership and the Members' ability to have collaborative discussions. Section 4 increased the Board's membership from three to five, and Section 5 permits a majority of Board Members to hold non-public collaborative discussions regarding agency matters, subject to disclosure requirements. Both of these provisions allow for greater collaboration between the Board Members.

With respect to the Board's composition, the President has submitted two nominees to the Senate for consideration. We look forward to the confirmation of the nominees and the chance to work more collaboratively with each of our Member colleagues, as permitted under the Reauthorization Act. Once there are more than three Board Members, Members will be able to have permissible one-on-one discussions about Board work, as envisioned under the Act. We also hope to reach some resolution on a few significant pending rulemakings.

Regarding the collaborative discussions permitted by the Act, it is our shared view that these Member meetings, which we refer to as "Section 5 meetings," have really given the Board a much-needed, common-sense tool by allowing Members to directly discuss important proceedings and issues that are before the Board. Prior to the Act, we could not discuss the merits of pending issues with each other due to constraints imposed by the Sunshine Act. Such restrictions hindered the Board's efficiency.

Since passage of the Act, we have held Section 5 meetings on many occasions, and they have proven to be very effective. While we cannot resolve matters in these meetings, we can discuss ideas. When these meetings are held, the Board's General Counsel is required to be in attendance, and our meetings must be disclosed. We do not meet in secrecy, but instead, the STB Reauthorization Act promotes transparency by requiring that a meeting summary be prepared and made public two days after a meeting, unless the meeting relates to an ongoing proceeding. In that case, the summary is made public on the date of the final Board decision. For example, we held Section 5 meetings to discuss the Reauthorization Act's requirements concerning both arbitration and investigations and how best to implement those directives. In addition, we have made use of the new authority in several other proceedings, which has been helpful to Members' and staff's time management.

Full Independence

The Reauthorization Act made the STB a fully independent federal agency, ending our prior administrative affiliation with the U.S. Department of Transportation (DOT). Where our Information Technology and Financial Services were previously considered administratively housed within DOT, we are now responsible for our own IT infrastructure and independent financial controls and records. Implementation has not been without its challenges. We want to commend DOT for the guidance and the continued support it has provided to the Board during the agency's transition to independence. Although the transition to becoming an independent agency has often times been a difficult and resource-intensive endeavor, we believe that, in the long-run, this change will improve the Board's administrative functions.

While we are pleased to report that we have made significant progress on adopting processes and systems necessary for the successful functioning of an independent federal agency, there are still areas where we have work to do. For example, the Board has been working hard during the past months to address the cybersecurity issues and recommendations noted in the Fiscal Year 2017 FISMA audit, which was completed last October by the DOT Inspector General (IG). This was the agency's first FISMA audit as an independent agency, which the IG conducted at our request under contract. The Board has established a remediation plan, which has been shared with the IG's office, and has hired an Information Security System Manager. The IT staff is working hard to address the IG's recommendations and make needed remediation, prioritizing the most critical areas.

Just last week, the full House passed H.R. 4921, the STB Information Security Improvement Act, which was reported by your full Committee. We appreciate your strong interest in and support of the Board's work to make needed improvements in this area. The Board's effort to address cyber security vulnerabilities is well underway, and, as the legislation recognizes, it is an involved, long-term process, but one in which the Board must continue to make steady progress. We want to assure this Subcommittee that improving our information security is a top Board priority.

In addition to implementation efforts, of course, the Board has been handling its day-to-day case load and addressing other matters. For example, the Board actively monitors the rail network, paying close attention to service issues, a number of which have arisen during the past year, such

as those that arose last year with CSX Transportation, Inc. (CSX) after it began implementing a new operating plan. The Board has kept its oversight committees fully informed of our actions concerning CSX and its metrics have shown a marked improvement. Recently, we have seen some rail service challenges among several other Class I railroads. Last month, we sent letters to all Class I railroads asking for their service outlook for the remainder of 2018. As with CSX last year, we have asked certain railroads to participate in individual weekly calls with staff from our Rail Customer and Public Assistance (RCPA) office to help the Board monitor those carriers' service levels and progress. The Board Members and Board staff are committed to helping the railroads resolve their service issues as quickly as possible for their customers. And, as always, RCPA staff is available to assist shippers and stakeholders resolve any service problems on a case-by-case basis.

Finally, we want to mention one additional recent Board initiative intended to further improve our way of doing business and to better serve our stakeholders and the public. In February, the Board updated its long-standing rules on ex parte communications to enhance the Board's ability to make informed decisions through increased stakeholder communications. The modified regulations will permit greater communication in informal rulemaking proceedings. This new rule is a fundamental change in the Board's prior approach that severely restricted one-on-one stakeholder communications with the Board during rulemaking proceedings. We strongly believe that this rule change will help the Board obtain a more thorough understanding of stakeholders' positions about Board proposals, enabling us to establish better final rules.

In closing, we thank the Subcommittee for your efforts to reauthorize the agency and for your continued strong interest and oversight of the Board and its work. As a result, the Board is more transparent and accountable to shippers, rail carriers, and the public. Thank you. We would be happy to answer any questions.

* * * * *



April 17, 2018

The Honorable Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines,
and Hazardous Materials
B-376 Rayburn House Building
Washington, DC 20515

The Honorable Michael E. Capuano
Ranking Member
Subcommittee on Railroads, Pipelines,
and Hazardous Materials
2163 Rayburn House Building
Washington, DC 20515

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Building
Washington, DC 20515

The Honorable Peter Defazio
Ranking Member
Committee on Transportation and Infrastructure
2163 Rayburn House Building
Washington, DC 20515

Re: Implementation of the Surface Transportation Board Reauthorization Act of 2015

Dear Subcommittee Chairman Denham and Ranking Member Capuano and Chairman Shuster and Ranking Member Defazio:

Thank you for holding today's hearing, titled "Oversight of the Surface Transportation Board Reauthorization Act of 2015."

The Fertilizer Institute (TFI) represents the nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer. The U.S. fertilizer industry generates more than \$154 billion in economic benefit each year and provides approximately 89,000 direct jobs and 406,000 indirect jobs for a total of 495,000 U.S. jobs.

The majority of fertilizer (56 percent) moves by rail throughout the year. While we may disagree at times, TFI and its members have a positive relationship with the railroad industry. TFI works closely with the rail industry and regulators to promote safety for employees, the public, and first responders. We want the rail industry to be successful because its success is essential to our success. However, as shippers, we also want the power dynamic in the rail marketplace to be more balanced.

The Surface Transportation Board (STB) Reauthorization Act of 2015 is the first reauthorization of the STB since its creation, and the first concerted effort in twenty years to modernize the STB. We commend Chairman Begeman and Vice Chairman Miller for their work on these matters. Their efforts must continue, and, as the Board gets fully staffed, it should accelerate.

As the rail transportation marketplace has changed, the importance of the STB's ability to efficiently respond to rate and service issues has grown. Yet, rate and service cases have become so expensive, cumbersome and time consuming that most shippers do not have the time or money to pursue regulatory remedies to rail market power.

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This is why it is important for the STB to modernize the methods, standards and procedures for resolving rate disputes. STB Board Members have expressed agreement with these sentiments and with those in a report by the National Research Council's Transportation Research Board. The report concluded that the STB's rate review procedures are now "unusable by most shippers."


The STB's current rate review standards were put in place for coal shippers more than three decades ago when the railroad industry was quite different. Over two dozen railroads competed across the country for most carload traffic, while unit train coal traffic bore the brunt of rail market power, and railroads were emerging from financial crisis. While rail industry fortunes have changed a great deal, the rate review process has not. Rate and service cases at the STB typically take three years at a cost of more than \$5 million. The time and expense to file a rate case does not work for most shippers whose traffic, unlike coal, does not move in unit trains between the same locations over many years. TFI appreciates STB's consideration of ways to improve how rate disputes are resolved.

Further, as a way to reduce service disruptions and promote competition in lieu of regulation, TFI urges the STB to complete its reciprocal switching rulemaking. For decades, reciprocal switching has worked successfully in Canada and even some U.S. locations. Under the current reciprocal switching proposal, unlike in Canada, shippers still must demonstrate their need for, and the feasibility of, switching. If STB grants a request -- after reviewing all safety and fairness questions -- a shipper would then pay the incumbent rail carrier to switch the shipment to another nearby railroad to complete the movement, instead of remaining captive to the incumbent for the entire route. Reciprocal switching, also known as competitive switching, is a practical way to give rail customers access to more competitive options. The fertilizer industry appreciates the Board's efforts on competitive switching and looks forward to continued engagement on this important matter.

Reciprocal switching is just one way to address rail service challenges, which have become increasingly pervasive over the past year in North America. As we shift into the Spring months, TFI is hopeful that many of these problems will be resolved soon. Nevertheless, the increase in service problems over the past 12 months has brought to the forefront long latent concerns over the lack of viable options when poor rail service jeopardizes the operations of TFI members. As such, TFI is pleased the Surface Transportation Board (STB) announced last week that its staff will hold informal stakeholder meetings on the STB's directed service regulations, which have been an ineffective and inadequate remedy for service problems despite that being their primary intent. This is an important opportunity to review the existing regulatory framework for service remedies, and how potential changes could benefit the U.S. economy. We advocate a system where railroads are encouraged to proactively work to prevent service disruptions before they happen. But when problems do occur, we need effective directed service regulations that will benefit everyone.

Thank you again for holding today's hearing. For more information, please reach out to Justin Louchheim of my staff by email or phone at [REDACTED] or [REDACTED].

Sincerely,



Chris Jahn
President
The Fertilizer Institute

Cc: House Committee on Transportation and Infrastructure