



## National Grain and Feed Association



## Transportation Policy Priorities

### Reauthorization of the Surface Transportation Board (STB) Freight Rail Policy Reform

**Issue:** Since the creation of the STB by the Interstate Commerce Commission Termination Act (ICCTA), the agency has failed to take a consistent and reasonably balanced approach in adjudicating issues between railroads and their customers. The STB regularly emphasizes railroad revenue needs and protections for railroads over shippers' interests and the need for competition in the marketplace. As a result of minimal effective oversight by the STB, railroad behavior in the marketplace and business relations between railroads and their customers have been adversely affected.

In addition, railroads continue to shift and avoid lawful liability for their own negligence and to shift transportation risk to shippers. Railroads are increasingly requiring prohibitive terms in their arrangements with shippers that effectively excuse the railroad's negligence and force shippers to agree to indemnify the carrier for personal injury and property damage liability that arise out of the railroad's own negligent acts. Railroads have the power because of their market dominance to dictate such unconscionable terms on a "take-it-or-leave-it" basis. Shippers have few or no meaningful alternatives or means to negotiate.

**NGFA Position:** We believe that a more even-handed STB would address many of the concerns voiced by shippers, but we also recognize that it may take a more comprehensive approach to resolve the myriad rail challenges experienced today.

#### Policy Options to Improve the STB...

- **Refocus "National Rail Transportation Policy" to Provide a Better Balance Between Shipper and Railroad Interests:** The ICCTA preamble includes a listing of objectives as part of "Rail Transportation Policy" and "regulating the railroad industry." Several key objectives should be prioritized by moving them to the front as "primary objectives."
- **Addressing Unreasonable Practices by Railroads at the STB and Expedited Handling of Unreasonable Practice Challenges:** The STB has unnecessarily delayed "unreasonable practice" proceedings, extending them for years. The STB should be directed to conduct unreasonable



practice proceedings within six months, and to set rules for timely consideration of requests to enjoin new tariffs before they become effective. There is currently no effective recourse through the STB for shippers to address grievances over private railcar compensation, demurrage and rail service failures.

- **Economically reasonable access to reciprocal switching at railroad junction points:** This is critical to allow shippers to avail themselves of potential competitive alternatives. The shipping community is encountering excessively high switch charges by some carriers that both inhibits competition and adversely affects a national freight system to cooperatively link and provide maximum access to markets.
- **Meaningful Access to Rate Relief:** The ICCTA directed the STB to establish workable procedures for small rate cases, but meaningful, practical and reliable access to rate relief remains unavailable for these cases. Maximum relief available over the five-year recoverable period is capped at \$1 million for small cases. Because the cost to bring even a small rate case remains a significant barrier (\$250,000), the maximum rate relief should be set at no less than \$3 million.
- **Regulation and a Process to Challenge “Paper Barriers” that is Effective:** The current system allows “paper barriers” that restrict the ability of a purchaser or tenant railroad to interchange traffic with carriers other than the seller or landlord railroad. Paper barriers may have some justification and even may bring about some indirect benefits to rail customers, including encouraging railroads to sell branch lines or other properties while they are sufficiently sound to handle traffic without major rehabilitation expenses. However, there comes a time when the barriers become an impediment to economic efficiency.



## Upper Mississippi River System Navigation Project Lock-and-Dam Construction

**Issue:** The recently enacted Water Resources Development Act (WRDA) authorizes the U.S. Army Corps of Engineers to implement the Navigation and Ecosystem Sustainability Program (NESP) of the Upper Mississippi River System. The project, which will provide for much-



needed modernization of the system, has spent more than a decade in the study and planning phase, while the transportation advantage held by the United States in international markets continues to erode. Congress has previously provided funds to the project’s Production Engineering and Design phase. With authorization finally complete, and given the projected 20 years this critical project will take to complete, it is imperative that sufficient funding be secured to begin the construction phase.

**NGFA Position:** The National Grain and Feed Association (NGFA) supports funding for NESP at the fully authorized level to begin construction as part of the FY 2010 Energy and Water Appropriations bill.

### **Why This Funding Is So Important...**

- ◆ U.S. transportation infrastructure, once a key competitive advantage for U.S. agricultural exports, is under stress and deteriorating. In particular, much of the inland waterway locks and dams were built in the 1930s and are in desperate need of modernization and expansion. The lock system on the Upper Mississippi River cannot accommodate modern barging practices, which use 1,200-foot barge tows. Many of the locks are only 600-feet long, forcing barges to use a time-consuming and dangerous double-locking procedure.

- ◆ The U.S. Army Corps of Engineers spent 12 years and more than \$70 million on a study that more than justifies the needed improvements to the Upper Mississippi and Illinois Waterway.



- ◆ Sixty percent of U.S. agricultural exports transit the Mississippi River. These exports and other navigation activity on the river support more than 400,000 jobs, including 90,000 high-paying manufacturing jobs.

- ◆ Improving inland waterway capacity has major national implications for: 1) the fundamental ability of U.S. agriculture to compete in an increasingly competitive global marketplace; 2) addressing ever-greater congestion on U.S. highways and railroads; 3) enhancing the capacity of the overall U.S. transportation system; and 4) averting potential constraints on the future growth of the national economy.

- ◆ There also are significant environmental benefits of modernizing the lock system, as the backwaters created support more than 40 percent of the migratory water fowl and fish breeding grounds and are home to more than 500 miles of wildlife refuge. In addition, more than \$1 billion is generated each year in recreational use – fishing, hunting and tourism.

## **U.S. Highway Bill Reauthorization Hours-Of-Service Agricultural Exemption**

**Issue:** Congress rightly codified the limited Hours-Of-Service (HOS) agricultural exemption during consideration the 2005 highway bill. That measure expires on September 30, 2009, and early consideration has begun for the next reauthorization. The limited agricultural exemption is a long-standing part of the highway authorization statute and the 2005 bill clarified the intent of the original exemption. Despite its' limitations, and being subject to state laws and regulations, there are groups calling for its removal without justification based on safety concerns or consideration of its impacts on the agricultural economy.



**NGFA Position:** Maintain the current agricultural HOS exemption during the reauthorization of the highway bill.

### **Why the agricultural exemption should be protected...**

- This specific exemption for the agricultural industry, first established by Congress in 1995, ensures that critical goods and services can be transported to and from the farm during the busy planting and harvesting season.
- Transportation is an extension of the planting and harvesting by the farmer and therefore an essential part of the crop. Without the exemption, the HOS regulation would require crop input dealers, agricultural transporters, farmer cooperatives and farmers to take several days off at the peak of agricultural production to accumulate enough off-duty time to resume driving. A farmer's ability to produce a viable and profitable crop relies on very sensitive input delivery timing.
- There are critical windows of opportunity during the crop production season when weather conditions dictate the timing of seed, nutrients and crop protection chemical applications to allow for maximum crop yields. Maintaining the HOS exemption for agriculture helps ensure our nation's ability to meet the food and fiber demands of American consumers and remain competitive in a global marketplace.
- The HOS agricultural exemption does not preempt any State laws and regulations concerning the safe operation of commercial motor vehicles. The exemption must be adopted in each state with established planting and harvesting dates and is limited to a 100 air mile radius of the source of the agricultural commodities or distribution point of farm supplies. We believe that allowing for the continued use of experienced, qualified and well-trained drivers to transport agricultural commodities and farm supplies during this busy time of year enhances safety.
- The food and agriculture industry represents approximately one of every six jobs in the United States. This HOS exemption is a vital part of ensuring that American farmers are provided with the inputs for production when needed and our nation maintains a strong domestic food supply.

