



# National Grain and Feed Association

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## NGFA Rail Policy Priorities

Having access to efficient, competitive rail transportation is crucial to the grain, feed and processing industry, as well as its farmer-customers. While the modal share of grains, oilseeds and grain products hauled by rail has declined from 50 percent when the Staggers Rail Act was enacted in 1980 to around 28 percent today, billions of bushels of grains and oilseeds still are shipped by rail each year. Further, significant U.S. crops are extremely reliant upon rail service to move to domestic and export markets, including 72 percent of U.S. wheat and 56 percent of U.S. barley.

Yet, agricultural producers and shippers now depend upon only six U.S. Class I carriers to haul the vast majority of grains and oilseeds shipped by rail. Four of those six railroads typically originate more than 80 percent of such traffic, compared to only 53 percent in 1980.

### STB Reauthorization

NGFA strongly supports rail legislation (S. 2777) introduced in 2014 by Sens. Jay Rockefeller and John Thune, which was considered and approved by the Senate Committee on Commerce, Science and Transportation. The bill, among other things, would:

- Authorize the Surface Transportation Board (STB) to initiate investigations of rail practices (except rail rates) on its own initiative, rather than only in response to the filing of shipper complaints.
- Require the STB to report quarterly to Congress (and, in most cases, to the public) on the:
  - Status of ongoing STB proceedings.
  - Status of complaints filed with the agency and how they are resolved.
  - Service complaints received by the STB and how they are resolved,
  - Status of unfinished STB proceedings.
- Enable STB members to communicate with one another about proceedings and issues to provide for a more informed and deliberative process. Currently, the STB members and their respective staffs are banned from such discussions unless a public meeting is called.

As part of such legislation, NGFA also believes consideration should be given to amending the National Rail Transportation Policy to achieve a greater balance between the need for revenue adequacy of rail carriers and the need for a more competitive rail environment. NGFA believes these steps would create a more balanced environment that would encourage railroad-shipper dialogue to resolve business issues directly, thereby enhancing efficient transport of ag products.

## NGFA Membership Profile

- Country elevators that provide storage, merchandising and farm supply services to farmer-customers.
- Feed mills that manufacture premixes and complete feeds for the livestock, poultry, aquaculture and pet food industries.
- Export elevators that merchandise and ship U.S. grains, oilseeds and processed commodities to foreign customers.
- End users of grain and grain products, such as:
  - grain processors and millers who process raw grain into myriad products – such as flour, corn meal and syrup, and soybean oil and meal – for human and animal consumption, and industrial uses;
  - livestock and poultry integrators; and
  - biofuels producers, who manufacture fuel ethanol and soy diesel, as well as co-product ingredients for animal feed.
- Cash grain and feed merchandisers who buy and sell grains, oilseeds and grain products.
- Commodity futures brokers and commission merchants who provide hedging services to grain buyers and sellers through the use of futures markets.
- Allied industries, such as banks; railroads; barge lines; grain exchanges; biotechnology providers; engineering and design/construction firms; insurance companies; computer/software firms; and other companies that supply goods and services to the industry.

## **STB Rail Proceedings**

NGFA currently is engaged in several key STB proceedings, including:

- **Rail Service Reporting Metrics** (*STB EP 724-4*): NGFA urged the STB to begin requiring Class I rail carriers to report various data to the agency and public on their service performance in the aftermath of significant service disruptions in 2013/14. The NGFA is pleased the agency did so, and is involved in the agency's current proceeding proposing to require weekly data reporting to be made permanent to enable the agency and rail users to better track service performance.
- **Competitive Switching Proceeding** (*STB EP 711*): NGFA has urged the STB to replace its current competitive switching rules that apply to Class I railroads to provide a fairer, more reasonable way for shippers to access lines of competing carriers to reach customer markets. Specifically, NGFA supports instituting a revenue-to-variable-cost threshold for switching charges (such as the Staggers Act's 180 percent threshold for challenging rail rates) which, if exceeded would shift the burden to railroads to demonstrate that such charges are reasonable. Some switch charges have ranged from \$500 to \$700 per car, several times more than the variable cost of providing the service. For shipments of ag products, NGFA has encouraged the STB to retain the authority to determine, on a case-by-case basis, whether a shipper's facility is within a "reasonable distance" of a working interchange (and thus is eligible for competitive switching) rather than limiting such a determination based on whether the facility is within a specific mile radius of an interchange.
- **Grain Rail Rate Proceeding for Captive Shippers** (*STB EP 665 Sub-No. 1*): NGFA has proposed a new, simplified methodology to the STB that it believes will be much more workable and accessible for captive shippers of agricultural products that lack a competitive transportation alternative (e.g., truck or barge) to challenge rail rates they believe are unreasonable, while still preserving railroads' ability to be revenue adequate and invest in their infrastructure to enhance capacity and service. NGFA's economic analysis found that Class I carriers on average exceeded the current statutory threshold (180 percent revenue over variable cost) at which shippers can challenge rates as being unreasonable on nearly 31 percent of corn shipments; 49 percent of wheat shipments; 43 percent of soybean shipments; 21 percent of soybean meal and soybean hull shipments; and 65 percent of ethanol shipments.
- **Rail Fuel Surcharge Safe Harbor** (*STB EP 661 Sub-No. 2*): NGFA has submitted comments to the STB urging that it modify or revoke the so-called "safe harbor" granted to rail carriers when they use a national fuel index (highway diesel fuel index) to set fuel surcharges to protect against situations in which carriers could charge significantly more than the changes in fuel costs they actually incur.
- **Rail Arbitration**: Reflective of its belief in encouraging direct private-sector dialogue to resolve shipper-railroad disputes, the NGFA in 1998 established a Rail Arbitration System with all major U.S. and Canadian Class I carriers, numerous shortline railroads and NGFA-member company rail users. These railroads and rail-user companies are required to arbitrate certain types of disputes, including: application of demurrage rules or terms; disputes involving receipts and bills of lading, such as loss-and-damage claims; transportation contracts between rail carriers and users; mishandling of private cars or locomotives; most disputes involving the reasonableness of published service rules and practices, including demurrage; application of general car-distribution rules that govern so-called "regular tariff" service; application of special car or equipment program rules; leases of railroad-owned land by rail users; misrouting of loaded rail cars or locomotives; and property damage claims arising under or related to rail sidetrack agreements. In addition, other types of rail-related disputes may be resolved through NGFA arbitration if mutually agreed.

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