



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **CERTAIN PROVISIONS OF THE *FAIR RAIL FOR GRAIN FARMERS ACT***

## **Report of the Standing Committee on Transport, Infrastructure and Communities**

**Hon. Judy A. Sgro  
Chair**

**December 2016**

**42<sup>nd</sup> PARLIAMENT, 1<sup>st</sup> SESSION**

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# **THE STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND COMMUNITIES**

has the honour to present its

## **NINTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the Committee has studied certain provisions of the *Fair Rail for Grain Farmers Act* and has agreed to report the following:





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# **STUDY OF THE FAIR RAIL FOR GRAIN FARMERS ACT**

## **INTRODUCTION**

The *Fair Rail for Grain Farmers Act*<sup>1</sup> (FRGFA) amended the *Canada Grain Act* and the *Canada Transportation Act* (CTA) in response to the record-setting crop year that saw 77 million tonnes of western grain sit in barns, silos and elevators over the course of winter 2013-2014, one of the coldest in a century. Grain production was more than 20 million tonnes greater than the typical crop year, while the railways' network capacity was reduced by as much as 35% to 40% during eight consecutive weeks of bad weather.<sup>2</sup> The FRGFA was passed by both houses of Parliament on 27 May 2014 and received Royal Assent on 29 May 2014.<sup>3</sup>

With respect to the CTA, the FRGFA

1. created a compensation mechanism in the event that railway companies fail in their level of service obligations to shippers;
2. required the Canadian National (CN) and Canadian Pacific (CP) railway companies to move minimum amounts of grain for the rest of the 2013-2014 crop year, while providing the Governor in Council the authority to mandate new minimum grain movements in subsequent years;
3. allowed the Canadian Transportation Agency (Agency) to prescribe different interswitching<sup>4</sup> distances for different regions and classes of goods;
4. authorized the Agency to make regulations that defined operational terms that could be subject to arbitration during the negotiation of a Service Level Agreement (SLA) between a shipper and a railway company;
5. created Administrative Monetary Penalties with maximum penalties of up to \$100,000 per day in the event that a railway company violates its obligation to transport minimum volumes of grain; and

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1 [Fair Rail for Grain Farmers Act](#) (FRGFA), S.C. 2014, c. 8.

2 Allan Dawson, "[Grain system pulled out all the stops for 2015-16](#)," *Manitoba Co-operator*, 8 September 2016.

3 Parliament of Canada, [Status of Bill C-30](#), 41<sup>st</sup> Parliament, 2<sup>nd</sup> Session, LEGISinfo.

4 The term "Interswitch" is defined at section 111 of the [Canada Transportation Act](#) as the "transfer [of] traffic from the lines of one railway company to the lines of another railway company in accordance with regulations made under section 128; (interconnexion)".

6. set a date when the above amendments to the CTA would be repealed (1 August 2016) should a postponement fail to be issued prior to that date.

An Order in Council postponing the reversal of the amendments made to the CTA by the FRGFA for one year was published in the *Canada Gazette Part I* on 19 April 2016.<sup>5</sup> The House of Commons Standing Committee on Transport, Infrastructure and Communities (TRAN or Committee) tabled a report in the House of Commons on 31 May 2016 recommending this postponement.<sup>6</sup> The House adopted the report on 15 June 2016.<sup>7</sup> The Senate, in a parallel measure, passed a similar motion on 8 June 2016.<sup>8</sup>

During the fall of 2016, TRAN held five meetings and heard from 19 witnesses to formulate recommendations for the Government of Canada with respect to the future of the amendments to the CTA in the FRGFA. The study also provided the Committee with an opportunity to discuss with stakeholders other important issues affecting the efficiency of the Canadian grain transportation system, such as the inadequacy of market information available to all stakeholders; disincentives for railway companies to invest in capital improvements and to provide better service to grain shippers; the narrow mandate of the Agency to address problems in the system; and the particular challenges of the shortline rail industry. This report summarizes what the Committee heard from stakeholders and presents a number of recommendations intended to improve the federal framework governing the grain transportation system for producers, shippers and railway companies.

## THE 160 KM INTERSWITCHING LIMIT

Interswitching in Canada is an operation whereby a railway company transfers a shipper's traffic to another railway company for the remainder of the movement. The CTA obliges the initial railway company to transfer the traffic to the other railway company on request, at a rate prescribed by the Agency. In the past, interswitching has been readily available to shippers located within 30 km of an interchange with another railway and, for greater distances, on application to the Agency.

Pursuant to the FRGFA, the Agency created a new 160 km interswitching zone and rate for all commodities originating in the provinces of Alberta, Saskatchewan and Manitoba. A number of witnesses who came before the Committee stated that the new 160 km interswitching limit provides competitive alternatives to many more grain shippers than the previous 30 km limit and to more shippers of other commodities than ever before.

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5 Order Establishing the Text of a Resolution Providing for the Postponement of the Coming into Force of Subsections 5.1(2), 6(2), 7(2), 8(2), 9(2), 10(2), 11(2) and 12(2) of the Fair Rail for Grain Farmers Act, SOR/2016-77.

6 House of Commons Standing Committee on Transport, Infrastructure and Communities (TRAN), [Certain provisions of Fair Rail for Grain Farmers Act](#), Fifth Report, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 30 May 2016.

7 House of Commons, [Debates](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 June 2016, pp. 4565-4573.

8 Senate, [Debates](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 8 June 2016, pp. 923-924.

A representative of the Agency suggested that “to the extent that interswitching provides more than one option for a shipper, one could make a strong argument that that is beneficial overall to the market, to the economy, and to the smooth flowing transportation system.”<sup>9</sup>

The Committee learned that the use of the new interswitching zone has been quite limited (i.e., less than 5,000 railcars per year), but the representative from the Grain Growers of Canada suggested that the “greatest use of interswitching has been a passive one.”<sup>10</sup> Representatives of several groups of rail shippers noted that the possibility of interswitching gives them more leverage in their negotiations with the railway companies that serve them directly.

The representative of a group of commodity shippers who, by and large, do not have access to interswitching presented the view that interswitching operations lead the railway companies to charge the other commodity shippers higher rates.<sup>11</sup> These rail shippers believe that the rates offered to them offset the lower railway revenues and higher operating costs from interswitching operations.

The railway company representatives who appeared before the Committee argued that the regulated interswitching rates are not high enough to justify the capital investments needed to support the service and that interswitching operations reduce system efficiency. They also informed the Committee that the new interswitching zone gives U.S. rail carriers access to Canadian traffic without reciprocity – unlike regimes in place for other federal modes of transportation – and improves the economics of the U.S. rail system at the expense of the Canadian system.

Witnesses provided the Committee with recommendations on the 160 km interswitching limit that ranged from eliminating the new zone to making it permanent and even extending it. Based on the testimony it heard, the Committee believes that the 160 km interswitching limit should be maintained unless and until Transport Canada can establish an alternative policy (based upon market data that is not currently available) that would help bolster the bargaining position of rail shippers where rail competition is extremely limited. Therefore, as proposed by almost all rail shippers who appeared before the Committee, the Committee recommends:

**That the Canadian Transportation Agency retain the flexibility provided under the *Canada Transportation Act* by the *Fair Rail For Grain Farmers Act* to set interswitching distances up to 160 km, in order to maintain a more competitive operating environment for rail shippers with direct access to only one railway company.**

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9 TRAN, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2016, 0905 (Randall Meades, Chief Strategy Officer, Canadian Transportation Agency). Unless otherwise noted, all *Evidence* cited hereafter is from the 1<sup>st</sup> Session of the 42<sup>nd</sup> Parliament.

10 Ibid., 1005 (Fiona Cook, Executive Director, Grain Growers of Canada).

11 TRAN, [Evidence](#), 29 September 2016, 0905 (Brendan Marshall, Vice President, Economic and Northern Affairs, Mining Association of Canada).

The Committee is of the view, though, that railway companies should not be penalized for their obligation to interswitch traffic. The Committee is in agreement with the representatives of the Canada Transportation Act Review Panel (CTA Review Panel) and recommends:

**That the Minister of Transport request the Canadian Transportation Agency to examine the railway interswitching rates it prescribes to ensure that they are compensatory for railway companies.**

The Committee is also concerned about the impact on the efficiency of the Canadian rail system of Canadian rail traffic being interswitched to U.S. railways. Given the assessment of the CTA Review Panel that the new interswitching limit puts Canadian railway companies in a position of unfair competition from U.S. rail carriers, the Committee recommends:

**That the Government of Canada negotiate an agreement with the Government of the United States of America that provides Canadian railway companies with access to U.S. rail traffic, just as the Canadian interswitching provisions in the *Canada Transportation Act* provide for U.S. railway companies.**

## **THE OBLIGATION TO MOVE GRAIN**

As a result of the FRGFA, CN and CP were each required to move a minimum of 500,000 tonnes of grain per week between April and August 2014 in order to clear the backlog of grain stored on the Prairies and get it to an export position. Two Governor in Council orders extended minimum grain movements, at varying minimum grain volumes, through 28 March 2015.<sup>12</sup> No new minimum grain movements have been imposed on CN and CP.

A number of rail shippers told the Committee that CN and CP's new obligation under the FRGFA to move minimum volumes of grain weekly had unintended consequences for certain rail shippers. These stakeholders believed that the minimum volume requirements led the railway companies to prioritize large grain shippers that could fill a train and those that are situated closest to port.<sup>13</sup> The representative of the Mining Association of Canada (MAC) expressed concern about the impact the grain volume requirements had on disputes between railway companies and their customers, as the order created a due diligence defence for the railway companies.<sup>14</sup> The representative of CN stated that grain quotas send the wrong signal to shippers of other commodities that also trade on global markets and negatively affected overall system efficiency.

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12 See [SOR/2014-189](#) and [SOR/2014-276](#) for more details.

13 TRAN, [Evidence](#), 29 September 2016, 0935 (Greg Northey, Director, Industry Relations, Pulse Canada).

14 TRAN, [Evidence](#), 29 September 2016, 0900 (Marshall).

The Committee believes that promoting an economically healthy agriculture industry and enhancing Canada's reputation as a reliable supplier is in the national interest. Therefore, the Committee recommends:

**That the Governor in Council's discretion provided in section 116.2 of the *Canada Transportation Act* to require the Canadian Pacific and Canadian National railway companies to move minimum volumes of grain be maintained.**

The Committee agrees, however, with the Canadian Federation of Agriculture, Pulse Canada and the Saskatchewan Shortline Railway Association that minimum traffic volume requirements should be more carefully designed so as not to have a negative impact on some rail shippers. The Committee recommends:

**That the Canadian Transportation Agency develop a model to calculate the minimum grain volume requirements provided under section 116.2 of the *Canada Transportation Act* so that no grain shippers are unduly disadvantaged by the policy.**

## **LEVEL OF SERVICE OBLIGATIONS**

All freight shippers have a long-standing right to rail service in Canada. They may complain to the Agency if they believe that a railway company has failed to respect the level of service provisions enshrined in the CTA, which are sometimes referred to as a railway's "common carrier obligation". The level of service provisions oblige a railway company to provide "adequate and suitable accommodation" for all traffic offered for carriage, among other things, and the Agency must assess whether the rail services offered are adequate and suitable when deciding disputes. Since 2013, rail shippers have also had the right to enter into SLAs with railway companies on request.<sup>15</sup>

Some provisions in the FRGFA were intended to strengthen the level of service provisions in the CTA. The FRGFA gave the Agency a new authority to order a railway company to compensate any person for expenses incurred as a result of a railway company's failure to meet its level of service obligations. The FRGA also allows the Agency to define and specify operational terms that could be subject to arbitration during the negotiation of an SLA between a shipper and a railway company. The Committee recommends:

**That the temporary amendments made to the *Canada Transportation Act* by the *Fair Rail for Grain Farmers Act* pertaining to railway level of service compensation and the definition of operational terms that could be subject to arbitration be made permanent.**

Some representatives of rail shippers who appeared before the Committee (e.g. Cereals Canada and the Canadian Canola Growers Association) recommended to

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<sup>15</sup> *Fair Rail Freight Service Act*, S.C. 2013, c 31.

the Committee that “adequate and suitable accommodation” be defined in legislation. These rail shippers suggested that the definition should direct the Agency to give priority to an individual shipper’s needs when assessing level of service complaints. Conversely, the representatives of the CTA Review Panel suggested that the term be clarified in a manner that guides the Agency to assess the rail services offered to one shipper in consideration of shippers’ needs across the entire system.

All representatives of rail shippers expressed dissatisfaction and frustration with respect to the lack of commercial accountability on the part of railway companies under SLAs. They told the Committee that many rail shippers are unable to negotiate financial penalties for a railway company for non-performance and recommended that it should be possible for all shippers to impose contractual penalties on railway companies for poor service. The representative of Cereals Canada further recommended to the Committee that SLAs should be in effect for longer than one year, given the effort required to negotiate them. The representative from Pulse Canada requested that the operational terms defined by the Agency under section 169.31(1.1) of the CTA, such as the *Regulations on Operational Terms for Rail Level of Services Arbitration*,<sup>16</sup> and subject to rescission under the FRGFA become permanent.

For their part, CN and CP both testified that nearly three-quarters of their grain traffic is transported under SLAs that contain reciprocal penalties.<sup>17</sup>

Given the confusion expressed by stakeholders concerning the definition of “adequate and suitable accommodation”, the Committee recommends:

**That “adequate and suitable accommodation” be clarified in the *Canada Transportation Act* in a manner that balances shippers’ needs for timely service and railway network efficiency.**

**That the *Canada Transportation Act* be amended to give rail shippers appropriate recourse to a dispute resolution process that is effective and cost efficient during their negotiation of service level agreements with railway companies.**

**That Transport Canada establish true commercial accountability for freight railway companies by ensuring that they are subject to financial penalties for failure to meet the terms of service level agreements with their customers.**

## **MARKET DATA REQUIREMENTS**

Representatives of some rail shippers and other industry stakeholders, including the railway regulator (the Agency) and the CTA Review Panel, told the Committee that

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16 *Regulations on Operational Terms for Rail Level of Services Arbitration*, SOR/2014-192.

17 TRAN, [Evidence](#), 27 September 2016, 0930 (Janet Drysdale, Vice-President, Corporate Development, Canadian National Railway Company), 1005 (James Clements, Vice-President, Strategic Planning and Transportation Services, Canadian Pacific Railway).



there is insufficient publicly available information about the market for railway company services. Of particular interest is information about railway capacity and car availability.

The Barley Council of Canada noted that some grain shippers may receive only 75% of the cars they order,<sup>18</sup> while the MAC indicated that some of its members were receiving between 50% and 80% of cars they requested.<sup>19</sup> The representatives of the Chemistry Industry Association of Canada (CIAC) told the Committee that the lack of information on rail capacity and performance negatively affects investment decisions in the Canadian chemical industry.<sup>20</sup> Furthermore, witnesses highlighted that data forms an integral part of any dispute resolution process and that without proof of a service failure nothing would change.

During their appearance before the Committee, representatives of the CTA Review Panel noted that there is no comprehensive source of data and other market information accessible by rail shippers, the railway companies and the regulator. They were emphatic that more public data is necessary for stakeholders to track priorities and anticipate potential problems in the rail system, such as the backlog of grain that occurred in 2014.

The CTA Review Panel representatives recommended that a comprehensive integrated data platform, administered by the Agency, be created to deliver public-access, industry-specific and confidential information regarding the capacity, demand and performance of the rail system. The CIAC recommended that market data be provided to stakeholders through an independent, restricted access portal. The MAC proposed that new reporting requirements be imposed on railway companies and that performance and capacity information and data collected be used by the Agency to monitor the rail transportation system as well as to inform any forthcoming legislation intended to address service issues.

The Committee is of the view that it is in the national interest that the grain supply chain, from producer to transportation service provider, operate in as competitive an environment as possible, with reasonable safeguards in place to support the economic viability of each partner in the process. The Committee is confident that more and better data – including confidential commercial and proprietary data – would permit the Agency to more effectively identify and investigate issues in the rail system and exercise its authority to issue orders to railway companies. Such data would also allow the Agency to measure or otherwise assess the implications of implementing the recommendations contained in this report.

The Committee believes that more data would make the Agency more effective in these and other functions and therefore recommends:

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18 TRAN, [Evidence](#), 29 September 2016, 0850 (Philip de Kemp, Executive Director, Barley Council of Canada).

19 Ibid., 0900 (Marshall).

20 TRAN, [Evidence](#), 29 September 2016, 0940 (David Podruzny, Vice-President, Business and Economics, Chemistry Industry Association of Canada).

**That the Canadian Transportation Agency have access to necessary data related to transportation logistics from all participants in the grain supply chain, from producers to transportation service providers, including marine.**

**That the Canadian Transportation Agency and the Minister of Transport monitor commodity movements and respond to system performance issues.**

## **MAXIMUM GRAIN REVENUE ENTITLEMENT**

The Maximum Grain Revenue Entitlement (MRE) replaced legislated maximum rates (the “rate cap”) for the movement of western grain.<sup>21</sup> Put simply, the MRE imposes a maximum on the amount the railway companies may earn to move regulated western grains to export ports in a crop year.<sup>22</sup> The MRE formula is set out in the CTA, and the benchmark value was calculated in 2000 for two Class 1 freight railway companies (CN and CP). The Agency recalculates the MRE annually to take into account changes in the railways’ costs and other factors.

According to witnesses who appeared before the Committee, there are a number of problems with the MRE formula that have a negative impact on rail service to the grain industry. The Committee learned that the legislated formulation of the MRE discourages railway companies from making capital investments in the grain transportation system. The MRE formula in effect creates a “free rider” problem for CN and CP because it does not differentiate between them and gives equal credit to both railway companies for any capital investment either railway company may make.<sup>23</sup> The MRE also counts revenue from interswitching without counting the distance travelled in the movement, while the inclusion of movements of grains in containers fails to properly capture the increased costs associated with this type of movement. A representative of the CTA Review suggested that the disincentive posed by the MRE for the containerized movement of grains is an obstacle to increasing rail capacity to accommodate the anticipated growth in the production of these commodities. It was noted that empty containers represent an opportunity to quickly increase grain capacity on the railways and could mitigate the impending retirement of the federal hopper car fleet.<sup>24</sup> Finally, the MRE does not provide incentives to railway companies to move more grain or offer premium services during peak periods even though shippers may get a premium price for their grain.

Some witnesses asked the Committee to retain the MRE or to review it, while others asked for it to be modified or eliminated. The Committee does not believe that there is enough market data available to Transport Canada or the Agency to make an

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21 Western grain comprises 58 commodities. See “Volume 1 – Pathways: Connecting Canada’s Transportation System to the Rest of the World,” *Canada Transportation Act Review*, Ottawa, 2015, p.150.

22 Ibid., pp. 159–161.

23 TRAN, [Evidence](#), 27 September 2016, 0955 (Drysdale).

24 TRAN, [Evidence](#), 22 September 2016, 0925 (Murad Al-Katib, Former Advisor, Canada Transportation Act Review Panel, as an individual).

evidence-based decision to eliminate the MRE and to transition to a market-based rate for shipping grains. The Committee is in agreement with the producers and rail shippers who recommended that the MRE be maintained, at least until there is sufficient market data to make an evidence-based decision to move to market-based rates. Therefore, as proposed by the Grain Growers of Canada and the Canadian Canola Growers Association, the Committee recommends:

**That the Maximum Grain Revenue Entitlement regime provided by the *Canada Transportation Act* be retained until federal decision-makers have sufficient market data to determine whether the grain supply chain can function efficiently with market-based prices for rail services.**

In the meantime, the Committee supports making certain changes to the MRE formula that the CTA Review Panel suggested would increase efficiency in the rail transportation system, for grains in particular.<sup>25</sup> The Committee recommends:

**That the Maximum Grain Revenue Entitlement formula contained in the *Canada Transportation Act* be adjusted to account independently for investments made by individual railway companies and to exclude revenues earned from interswitching operations and containerized grain movements.**

## THE CANADIAN TRANSPORTATION AGENCY

The Agency is the independent economic regulator for the federal transportation system in Canada. It is a quasi-judicial tribunal authorized to receive and make binding decisions concerning a range of complaints from rail stakeholders, such as problems with transportation rates, service charges, interswitching rates and levels of service. However, the CTA allows the Agency to investigate railway service and rate issues upon complaint only and to make decisions only with respect to the parties involved in those cases.

Representatives of rail shippers and the CTA Review Panel recommended to the Committee that the Agency should have the authority to investigate issues on its own motion.<sup>26</sup> Many shippers noted that the cost and time required to bring a matter before the Agency made it impossible or impractical to do so in many circumstances, particularly given the limited information and resources at the shippers' disposal.<sup>27</sup> These witnesses also noted that it would be useful for the Agency to have the power to make system-wide orders to resolve widespread issues.

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25 Ibid., pp. 159–160.

26 TRAN, [Evidence](#), 20 September 2016, 1000 (Jean-Marc Ruest, Vice-Chair of the Board of Directors, Cereals Canada), 1040 (Cook); TRAN, [Evidence](#), 22 September 2016, 0915 (Al-Katib); TRAN, [Evidence](#), 27 September 2016, 0855 (Perry Pellerin, Chairman, Saskatchewan Shortline Railway Association); TRAN, [Evidence](#), 29 September 2016, 0910 (Northey), 1005 (Podruzny).

27 TRAN, [Evidence](#), 29 September 2016, 0925 (Podruzny, van den Berg and Marshall).

Alternatively, both the MAC and the Saskatchewan Shortline Railway Association (SSRA) indicated that additional powers could also be held by a separate body. The SSRA proposed the establishment of a rail ombudsman with the authority to address rail issues in a timely manner. Both witnesses were favourable towards a more effective alternative dispute resolution mechanism that could quickly and cost-effectively resolve problems between railways and shippers.

The railway representatives indicated that the tools available within the CTA are more than sufficient to fulfil the Agency's current mandate.<sup>28</sup> The Agency pointed to the availability of compensation, level of service arbitration and final offer arbitration as measures that provide competitive remedies for railways and shippers to resolve their disputes.<sup>29</sup>

Since the Government of Canada is in some ways accountable for the performance of the federal rail system, the Committee additionally recommends:

**That the Canadian Transportation Agency be mandated to initiate investigations into the performance of the rail transportation system on its own motion and be empowered to issue temporary orders to respond to system-wide service issues.**

The Committee's previous recommendation to provide the Agency with new access to all market data in the grain supply chain would support the Agency's augmented mandate.

## **RAIL SYSTEM CAPACITY**

As highlighted in the final report of the CTA Review Panel, producer cars (i.e., those loaded and shipped by producers) are an important part of Canada's grain handling system and may be the only option for some producers to get their commodities to market.<sup>30</sup> The CTA Review Panel also observed that producer car groups are increasingly purchasing rail lines and operating as shortline railways. Given that even incremental measures could have an important impact on the capacity and reliability of Canada's freight rail system, the Committee recommends:

**That Transport Canada place a moratorium on the discontinuance or abandonment of railway sidings to support the expansion of producer car shipments.**

**That the definition of "shipper" in the *Canada Transportation Act* be expanded to include producer cars used in rail transportation.**

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28 Ibid., 0910 (Michael Bourque, President and CEO, Railway Association of Canada).

29 TRAN, [Evidence](#), 20 September 2016, 0850 (Fred Gaspar, Chief Compliance Officer, Canadian Transportation Agency).

30 "Volume 1 – Pathways: Connecting Canada's Transportation System to the Rest of the World," *Canada Transportation Act Review*, Ottawa, 2015, pp. 155 and 162.

**That the Government of Canada consider options to better enable shortline railways to maintain their existing assets as well as invest in new infrastructure and rolling stock.**



# LIST OF RECOMMENDATIONS

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## RECOMMENDATION 1

That the Canadian Transportation Agency retain the flexibility provided under the *Canada Transportation Act* by the *Fair Rail For Grain Farmers Act* to set interswitching distances up to 160 km, in order to maintain a more competitive operating environment for rail shippers with direct access to only one railway company..... 3

## RECOMMENDATION 2

That the Minister of Transport request the Canadian Transportation Agency to examine the railway interswitching rates it prescribes to ensure that they are compensatory for railway companies..... 4

## RECOMMENDATION 3

That the Government of Canada negotiate an agreement with the Government of the United States of America that provides Canadian railway companies with access to U.S. rail traffic, just as the Canadian interswitching provisions in the *Canada Transportation Act* provide for U.S. railway companies..... 4

## RECOMMENDATION 4

That the Governor in Council's discretion provided in section 116.2 of the *Canada Transportation Act* to require the Canadian Pacific and Canadian National railway companies to move minimum volumes of grain be maintained..... 5

## RECOMMENDATION 5

That the Canadian Transportation Agency develop a model to calculate the minimum grain volume requirements provided under section 116.2 of the *Canada Transportation Act* so that no grain shippers are unduly disadvantaged by the policy..... 5

## RECOMMENDATION 6

That the temporary amendments made to the *Canada Transportation Act* by the *Fair Rail for Grain Farmers Act* pertaining to railway level of service compensation and the definition of operational terms that could be subject to arbitration be made permanent. .... 5

## **RECOMMENDATION 7**

**That “adequate and suitable accommodation” be clarified in the *Canada Transportation Act* in a manner that balances shippers’ needs for timely service and railway network efficiency. .... 6**

## **RECOMMENDATION 8**

**That the *Canada Transportation Act* be amended to give rail shippers appropriate recourse to a dispute resolution process that is effective and cost efficient during their negotiation of service level agreements with railway companies. .... 6**

## **RECOMMENDATION 9**

**That Transport Canada establish true commercial accountability for freight railway companies by ensuring that they are subject to financial penalties for failure to meet the terms of service level agreements with their customers. .... 6**

## **RECOMMENDATION 10**

**That the Canadian Transportation Agency have access to necessary data related to transportation logistics from all participants in the grain supply chain, from producers to transportation service providers, including marine..... 8**

## **RECOMMENDATION 11**

**That the Canadian Transportation Agency and the Minister of Transport monitor commodity movements and respond to system performance issues..... 8**

## **RECOMMENDATION 12**

**That the Maximum Grain Revenue Entitlement regime provided by the *Canada Transportation Act* be retained until federal decision-makers have sufficient market data to determine whether the grain supply chain can function efficiently with market-based prices for rail services. .... 9**

## **RECOMMENDATION 13**

**That the Maximum Grain Revenue Entitlement formula contained in the *Canada Transportation Act* be adjusted to account independently for investments made by individual railway companies and to exclude revenues earned from interswitching operations and containerized grain movements..... 9**



#### **RECOMMENDATION 14**

**That the Canadian Transportation Agency be mandated to initiate investigations into the performance of the rail transportation system on its own motion and be empowered to issue temporary orders to respond to system-wide service issues. .... 10**

#### **RECOMMENDATION 15**

**That Transport Canada place a moratorium on the discontinuance or abandonment of railway sidings to support the expansion of producer car shipments. .... 10**

#### **RECOMMENDATION 16**

**That the definition of “shipper” in the *Canada Transportation Act* be expanded to include producer cars used in rail transportation. .... 10**

#### **RECOMMENDATION 17**

**That the Government of Canada consider options to better enable shortline railways to maintain their existing assets as well as invest in new infrastructure and rolling stock. .... 11**



# APPENDIX A

## LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<b>Canadian Federation of Agriculture</b> Humphrey Banack, Vice-President	2016/09/20	21
<b>Canadian Transportation Agency</b> Fred Gaspar, Chief Compliance Officer Randall Meades, Chief Strategy Officer		
<b>Cereals Canada</b> Jean-Marc Ruest, Vice-Chair of the Board of Directors		
<b>Grain Growers of Canada</b> Fiona Cook, Executive Director		
<b>As an individual</b> Murad Al-Katib, Former Advisor, Canada Transportation Act Review Panel David Emerson, Former Chair, Canada Transportation Act Review Panel	2016/09/22	22
<b>Canadian National Railway Company</b> Janet Drysdale, Vice-President, Corporate Development Sean Finn, Executive Vice-President, Corporate Services and Chief Legal Officer	2016/09/27	23
<b>Canadian Pacific Railway</b> James Clements, Vice-President, Strategic Planning and Transportation Services Robert Taylor, Assistant Vice-President, North America Advocacy		
<b>Railway Association of Canada</b> Michael Bourque, President and Chief Executive Officer Gérald Gauthier, Vice-President		
<b>Saskatchewan Shortline Railway Association</b> Perry Pellerin, Chairman		
<b>Barley Council of Canada</b> Philip de Kemp, Executive Director	2016/09/29	24
<b>Chemistry Industry Association of Canada</b> David Podruzny, Vice-President, Business and Economics Lauren van den Berg, Manager, Business and Stakeholder Engagement		

Organizations and Individuals	Date	Meeting
<p><b>Mining Association of Canada</b></p> <p>Brendan Marshall, Vice President, Economic and Northern Affairs</p> <p><b>Pulse Canada</b></p> <p>Greg Northey, Director, Industry Relations</p>		

## **APPENDIX B LIST OF BRIEFS**

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### **Organizations and Individuals**

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**Barry Prentice**

**Canadian Canola Growers Association**

**Cereals Canada**

**Fertilizer Canada**

**Forest Products Association of Canada**

**Pulse Canada**

**Saskatchewan Shortline Railway Association**



## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 15, 21, 22, 23, 24, 34, 38 and 39](#)) is tabled.

Respectfully submitted,

Hon. Judy A. Sgro  
Chair





## **Supplementary Opinion of the New Democratic Party**

While we support the majority report, we would like to provide a supplementary opinion in order to highlight the points raised by grain producers that are not clearly reflected in the recommendations.

While the report's first recommendation underscores the importance of interswitching to fostering competition, it leaves the door open to a reduction in the distance allowed. Moreover, the 160-km interswitching limit expires on 1 August 2017. The New Democrats therefore recommend that the government make the current 160-km interswitching limit permanent. Grain shippers need a more competitive business environment in order to more efficiently get their products to foreign markets. The NDP also suggests exploring the possibility of extending the current interswitching provision to other provinces and other sectors of the economy.

Another issue is the ability to enhance the performance of the rail system by improving the quality of the data that can be gathered by the Canadian Transportation Agency (CTA). The majority report could have told the government that the CTA can collect confidential commercial data without hurting stakeholders. An analysis of these data would have prevented problems with grain shipping performance and benefitted the entire supply chain.

We also fear that the Department of Transport will interfere with the CTA in its rail system monitoring work. Politicizing the duties performed by the CTA could result in the Minister making arbitrary decisions that would not necessarily benefit grain shippers.

As for the Committee's proposal to clarify the definition of "adequate and suitable accommodation," the New Democrats believe that the current definition indeed favours Canadian National (CN) and Canadian Pacific (CP), who enjoy a dominant position in the market. Accordingly, the recommendation could have identified demand rather than supply as the factor that should determine service levels in the grain shipping market.

### **1. 160-km interswitching limit**

**Recommendation 1:** That the federal government make the 160-km interswitching limit permanent and explore the possibility of extending it to other provinces and other sectors of the economy.

Currently, 50% of grain freight is destined for international markets. The vast majority of these export products are shipped by rail. The economies of the Western provinces are heavily dependent on the strength of their agriculture sectors and on high-quality rail service. Yet the great majority of grain shippers are captives of the services provided by the same carrier. As a result, grain shippers are forced to pay excessive rates to CN or CP because of the lack of competition. That is why the federal government must reassure grain shippers by making the 160-km interswitching regulatory provision permanent. The representatives of Pulse Canada told the Committee the following:

“Our members who have used the provision report freight rate savings of between \$500 and \$1,500 per car, which are significant cost savings over current rate offerings and significant savings for the small and medium-sized shippers we represent.”

## **2. Collection of reliable rail system data**

**Recommendation 2:** That the Canadian Transportation Agency have access to all data related to transportation logistics from all participants in the grain supply chain, from producers to transportation service providers, including proprietary and confidential commercial data.

Data collection is essential for the CTA to be able to predict problems that could affect the rail system. Unfortunately, it was decided that the majority report's recommendation would not state that the CTA should be given the power to collect confidential and commercial data from the rail companies.

As Pulse Canada stated:

“The Agency, as an independent quasi-judicial body is best positioned to act as the trustee of a comprehensive database of highly confidential and commercially sensitive operational and financial data.”

## **3. Independence of Canadian Transportation Agency**

**Recommendation 3:** That the Canadian Transportation Agency independently monitor commodity movements and respond to system performance issues.

As a quasi-judicial tribunal, the CTA must remain independent, particularly in carrying out its mandates to monitor commodity movements and resolve rail system performance issues. However, the majority report recommendation states that Transport Canada must become involved in the CTA's work. This proposal could impair the independence of the CTA's mandates and opens the door to political interference in the rail system monitoring process.

The CTA's independence is vital to ensuring it can launch proactive investigations into problems with the rail system. In this regard, Cereals Canada noted the following:

“This power would relieve shippers of carrying the sole burden for challenging railways in circumstances in which service is inadequate, by empowering the agency to investigate systemic issues and to take action where necessary.”

## **4. Rail service levels determined by demand, not supply**

**Recommendation 4:** That the federal government amend the *Canada Transportation Act* to provide that rail grain shipping services be determined by demand, not supply.

Because CN and CP dominate the grain shipping market, grain producers have very little leverage when negotiating service contracts. The current legislation provides that

rail companies must provide “adequate and suitable accommodation.” A number of stakeholders believe that this definition is vague.

Moreover, some witnesses pointed out that this lack of clarity leads rail companies and grain shippers to have differing interpretations of what constitutes “adequate and suitable accommodation.”

That is why we believe the federal government should amend the *Canada Transportation Act* to provide that rail service levels must adequately meet the production capacity of grain producers. As the Vice-Chair of Cereals Canada explained:

“The nation's economy cannot be expected to fully capitalize on global marketing opportunities when the ability to provide the goods to international customers is governed by one's domestic rail service provider.”

