



## Supply Chain Regulatory Review Submission

As the national voice for Canada's grain farmers, Grain Growers of Canada (GGC) represents over 65,000 producers through our 14 national, provincial, and regional grower groups. GGC advocates for federal policy that supports the competitiveness and profitability of grain growers across Canada. Below are recommendations from the GGC as they relate to supply chain issues within grain transportation.

### Maximum Revenue Entitlement (MRE)

Given the duopolistic rail system that shippers operate in, the MRE is critical to the health of the overall western grain production and export system. It ensures that carriers are compensated fairly for the grain that they transport within a service provider environment that is absent of effective competition. It also enables price flexibility for railways by allowing them to increase rates based on the goods and services they use. Because of this, the MRE provides shippers, and by extension western grain farmers to whom the costs of rail freight are passed by shippers, some price protection and predictability for the shipment of grain to export positions.

Continued investments in railways are essential to keeping Canada internationally competitive. The MRE provides price flexibility for carriers to make growing profits, while also investing back into the system. The built-in flexibility of the MRE accounts for changes in inflation on items such as labour, fuel, materials, and capital purchases. It encourages railway investment to improve efficiencies, especially since those improvements accrue to the bottom-line of carriers. Recent years also show that within the structure of the MRE, carriers have been able to increase profits and provide shareholder value. In particular, Canadian railways have collectively earned over \$50 billion in excess income in the last decade over what Canadian regulators would consider necessary for financial viability coupled with the best operating ratios in the North American railway industry<sup>1</sup>.

We recommend:

- Maintaining the maximum revenue entitlement in its current format to provide price stability for grain shippers and, thus, grain producers.
- The continued remittance of railway MRE overages to the Western Grains Research Foundation (WGRF) to facilitate long-term production research activities. Resource allocation to WGRF grain transportation initiatives, such as railway performance monitoring should be considered.

### Extended Interswitching

With the Canadian Transportation Agency's (CTA) publication of the Zone 5 rates in September 2023, regulated extended interswitching is now available to any shipper, within the 160 km radius of an interchange in the prairies, for a duration of 18 months.<sup>2</sup> While GGC commends this pilot project, more must be done to foster a balanced relationship between the railways and grain companies that grain

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<sup>1</sup> Coalition for the Factual Analysis of International Rail Rates. (2023, Sept 26). *Rail Rates in Canada White Paper*. <https://www.fairrail.ca/>

<sup>2</sup> Canadian Transportation Agency (September 18, 2023). Determination R-2023-178. [Canadian Transportation Agency \(otc-cta.gc.ca\)](https://www.cta.gc.ca/)

farmers rely on to ship their production. It is also noted that while operating in a different context, the United States is examining a framework defining inadequate service with objective standards, as part of the Surface Transportation Board's deliberations on the issue of reciprocal switching.<sup>3</sup>

First, extended rail interswitching must be made permanent. While the 18-month pilot project is helpful, the length of the project is not long enough to provide any real data. Furthermore, grain companies (i.e. shippers) may be reticent to utilize extended interswitching within a limited timeframe as it could impact their relationship with rail carriers over the long-term. Second, while the 160 km radius benefits over 90% of grain elevators in the prairies, there continues to be elevators, and grain farmers, that are unable to access this policy tool. For example, farmers in northern Alberta and northern Saskatchewan are geographically unable to access extended interswitching, meaning they continue to be beholden to a single carrier. Lastly, extended rail interswitching must be expanded across Canada. While this practice benefits most prairie grain farmers, there continues to be grain farmers both in the prairie region and across the country who are unable to access this competitive framework. For example, were extended interswitching expanded to 500 km, it would still not benefit farmers in British Columbia's Peace River Country area.

We recommend:

- Permanently implementing extended interswitching with an increased radius of 500 km and broadening the policy nationally.

#### **Canadian Transportation Agency Own Motion Powers**

Since the authorization of CTA's Own Motion Investigation in 2018, there has been one application of this process to date.<sup>4</sup> Providing the CTA the flexibility to independently launch its own investigations on issues that are possibly impacting multiple shippers would remove one step of the process which currently causes delays and potential political considerations.

Investigations must be timely and swift. When a serious rail transportation issue is occurring, time is of the essence, with each day of delay resulting in millions of dollars being lost. Investigations must move quickly to identify problems and issue enforceable orders to correct the situation. That means using pre-determined thresholds as to what constitutes a service failure. To support this, high-level railway performance metrics should be established and proactively monitored by the CTA and Transport Canada. Own motion investigations should be launched when the CTA realizes, through its own observations and the monitoring of accurate rail service data, that rail service has been insufficient over an extended period of time or has sharply dropped over a shorter period of time. Similarly, investigations should be considered when shippers bring to the CTA's attention a situation that is systemic and negatively affects more than one shipper.

We recommend:

- Removing the requirement for Ministerial authorization to mitigate political considerations and speed up investigation timelines.

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<sup>3</sup> United States Surface Transportation Board (September 7, 2023). Notice of Proposed Rulemaking. Reciprocal Switching (Docket No. EP 711 (Sub No.2)). [Surface Transportation Board \(stb.gov\)](https://stb.gov)

<sup>4</sup> The 'Vancouver Freight Rail Investigation' (conducted January-April 2019). <https://otc-cta.gc.ca/eng/2019-vancouver-freight-rail-investigation>

- Review and update the terms and conditions under which the CTA may invoke an own motion investigation.
- Provide the CTA with access to the currently provided Waybill data to support their ability to monitor the rail transportation system and quickly assess whether an investigation is needed.

#### **Automatic Demurrage Penalties**

The nature of the imbalanced relationship between railways and shippers is such that legislation and regulations must protect shippers from abuse of dominance, especially in monopolistic environments. There currently lacks a mechanism to reach fair capacity and performance terms for grain shippers. Unlike many other forms of transportation, in the case of inadequate service standards by rail providers, railways are not required to pay demurrage, meaning there is no incentive to provide timely transportation of grain from elevator to port. Automatic demurrage rates for failure to provide service should be implemented with failure constituting a non-delivery or pickup of the agreed upon number and volume of rail cars either at origin or destination.

We recommend:

- Legislating demurrage rates within rail tariffs for failure to provide timely service with annual reviews and changes set by the CTA.