



On behalf of the Saskatchewan Association of Rural Municipalities (SARM), I thank you for the opportunity to provide comments during this very important *Canada Transportation Act* review. SARM is the independent advocate for all 296 rural municipalities (RMs) in Saskatchewan; these RMs are all home to a vast amount of arable land.

Grain movement is a crucial component of not just the rural Saskatchewan economy but for the country as a whole. A record crop year for local producers in 2013 and the subsequent grain backlog has peaked SARM's interest in ensuring that producers' grain is moved effectively, efficiently and fairly. We want to see Canada's rail system better equipped to provide adequate service in the future; both short and long term.

The effects of the backlog created by the 2013 crop year are still being felt today and the *Canada Transportation Act* review provides a needed opportunity to ensure that similar situations are avoided in the future. The aforementioned backlog resulted in great losses for producers; as such, SARM wants to ensure that producers have a voice in this review.

The *Fair Rail for Grain Farmers Act* was a positive first step in the right direction to improving Canada's transportation system and, specifically, the movement of grain by rail. The continued implementation of an Order in Council for a mandatory weekly minimum movement of grain helps ensure that large volumes of grain are moved. However more needs to be done to improve the rail system beyond the amount of grain moved, as you will see in our submission.

We understand that the railways are vital to Canada's economy but we need a sustainable world class rail system that provides fair, effective and timely service, and ensures a competitive market for producers. The Federal Government's commitment to improving the rail system and grain transportation is greatly appreciated. It is our hope that our comments will be considered in any changes to the *Canada Transportation Act*.

Once again thank you for this opportunity and SARM looks forward to continuing to work with you as this review progresses and future changes are considered.

Sincerely,

A handwritten signature in blue ink that reads "Ray ORB". The signature is written in a cursive style with the first letters of the first and last names being capitalized.

Ray Orb
Acting President

Railway Reporting, Transparency & Canadian Transportation Agency (CTA) Powers

SARM would like the railways to be required to produce plans which show how they will deal with the demands resulting from the upcoming crop year, in addition to expanding the reporting requirements of the rail companies. These plans should include how the railway will utilize its existing and/or added workforce, locomotives and rail car capacity to meet the new crop year demands.

In the current Order in Council railways will need to submit formal winter contingency plans to the Government of Canada as well as service plans for producer car loaders, short line railways for the remaining crop year, car order fulfillment by corridor, the placement of rail cars at producer car loading sites and along the short line railways to the Grain Monitor.

SARM is glad to see that the railways will be required to report this information to the appropriate authorities. Information reporting on car order fulfillment by corridor should also include the branch lines to ensure they are receiving their car orders.

Ideally the trend of increasing data reporting will be maintained and expanded on to ensure the continued improvement of Canada's rail system. Receiving more data, however, is just one part of a larger solution. With improved data the CTA and/or the Federal Government, will, in the future, be able to make more informed decisions in this area which may afford new powers and/or authority to the CTA.

New powers and/or authority for the CTA would only be appropriate in situations that merit the increased regulation of railways. The 2013 crop year is an good example of where this oversight power would have been helpful. Precedence has been set in the U.S. where the Surface Transportation Board recently received the ability to do this. In the U.S., the railways are now required to put forward more data that includes the following: average speeds, dwell times, number of cars loaded and emptied weekly, number of grain cars ordered, loaded, billed, overdue and cancelled. This list should not be considered complete, as more data may be necessary. However, such precedence serves as a working example and may be used as a guide to expanding data reporting in Canada. Furthermore, SARM would like to see all information more readily available to relevant stakeholders so that informed decisions can be made by all parties.

Expanding data reporting from the railways to the CTA is occurring and moving in the right direction. SARM is pleased by the improvements being done in data reporting and we hope that this trend will continue into the future; doing so ensures transparency and allows for more informed and proactive decisions.

Penalties & Incentives

The Order in Council Specifying the Minimum Amount of Grain to Be Moved from August 1, 2014 to November 29, 2014 was needed and is greatly appreciated; as is the current Order in Council until March 28, 2015. Included in the Order in Council is a penalty of \$100,000 per violation for not meeting the weekly minimum; this amount was maintained for the new Order in Council from November 30, 2014 to March 28, 2015.

The penalty is important to help enforce the weekly minimum however the amount of \$100,000 per violation is considered to be too low by SARM. SARM would like to see a penalty that carries more clout with the railways. The weekly revenue generated by the railways is significant and SARM believes that the service provided by them would improve if faced with the prospect of a higher penalty.

In the event that a railway is fined for a violation the money goes to the Receiver General. Those affected by the poor level of service (producers) do not receive any compensation for their losses. Poor level of service causes producers to lose out (\$5 billion in lost or deferred sales, demurrage charges and contract penalties this year and last). To combat this, there needs to be a system in place that diminishes the losses felt throughout the supply chain. SARM notes that the *Modernization of Canada's Grain Industry Act* bill was introduced in the House of Commons on December 9, 2014. It appears that this will establish a producer compensation fund to protect producers. This is another positive step forward for protecting producers and ensuring fairness. SARM eagerly awaits the related consultation process.

An alternative to penalties is the use of incentives. If provisions in the *Canada Transportation Act* allow for incentives then all parties involved can further negotiate Service agreements. For example, if the railroads or others in the supply chain meet certain conditions there could a reward system in place. Working towards an incentive rather than trying to avoid a penalty is a much more effective system. Incentives, while a good system, should only be implemented once producer confidence has returned to the marketplace. For confidence to return there will have to be consistent levels of service delivered by the main railways.

Volume Requirements & Strategic Car Allocation

The Order in Council, from August 3, 2014 – November 29, 2014, established a weekly minimum movement of grain by volume. These weekly minimums have been extended as noted above. That volume was 536,250 tonnes of grain a week or approximately 11,000 cars. SARM was pleased with the establishment of a weekly minimum for grain movement. The weekly minimums ensure that there is constant movement of grain and helps to reduce the backlog that we are experiencing.

However, this movement was measured only by volume and did not include specifics in regards to corridors, short lines or car allocation. As a result of the Order in Council, larger companies have been getting the same level of service that they have been historically getting but the short lines have not. The short lines have been saying that their car orders are going unfulfilled or that the service they are receiving is poor. This is due to the railways focusing on the larger corridors to meet the weekly minimum. By doing this they are within the requirements of the Order in Council but this is not an efficient overall improvement. As noted in the data reporting section of this submission, the current Order in Council calls for reporting on the use of corridors and short lines. SARM hopes this means that the railways will be held accountable for the fulfillment of car orders off of the main lines.

We believe that there needs to be an efficient and strategic plan for the allocation of cars to ensure the fulfillment of car orders. Without a strategy only certain corridors are being used to meet the minimum volume requirement. This results in an unintended consequence on rural infrastructure in Saskatchewan. For example, the short lines that run along thin membrane surface (TMS) roads in Saskatchewan are not receiving their ordered cars in a timely manner or are not receiving them at all. The cars are going to the rail lines that run along major highways instead. In response to this, shippers and producers have to resort to trucking the grain. This method is more expensive and it is very damaging for the rural road infrastructure. It makes more sense for the cars to be delivered to those short lines rather than the rail lines that run along main highways.

The TMS roads are not designed for industrial or commercial activity; these roads were designed for light traffic. The damage from the heavy trucks is wrecking the roads and local municipalities are left with the responsibility of repairing them; these expenses could be avoided if the short lines are able to get their car orders filled. Therefore, SARM recommends that the minimum be raised to 13,000 cars moved weekly during the summer months.

Increasing the amount of cars moved and improving the level of service for short lines, and specifically for producer cars is also important from a confidence stand point. Unfilled orders of cars are leading to a lack of confidence in producer cars. Buyers are starting to shy away from producer cars as they are not as reliable. If this trend continues then it may be some time before that confidence returns.

It is also imperative that producer cars are not left out of the CTA review. SARM wants to ensure that producer cars are treated on an equal footing as others and that their accessibility is not limited. In the reporting section of this submission SARM notes that the Order in Council includes reporting on producer cars. With this information available to

the CTA, SARM is hopeful that the information will allow for better levels of service to producer cars.

Implementing a better strategy to avoid these situations is important both from a grain perspective and an infrastructure perspective, as explained above. It remains imperative that all corridors are served. The CTA should be given the authority to implement a car allotment strategy utilizing the additional data mentioned previously. This leads into the next issue related to producer cars.

Winter Months

The Order in Council ensures that grain will be moved throughout the winter months and that winter contingency plans are reported to the Government of Canada. These are steps in the right direction and SARM would like these taken further.

The extreme cold in Canada causes operational issues with the rails and locomotives which is part of the reason why grain movement drops during the winter months; SARM understands this clearly. However, other technologies have evolved to operate reliably in extreme cold. SARM wants to be sure that the rail companies are researching, developing, and implementing new technologies that will allow them to maintain levels of service throughout the winter months. In addition to improving technology it is important that the railroads maintain their crews and engines for the winter months rather than laying off employees for the season or leasing out locomotives.

Changes to these practices would go a long way in improving the movement of grain during the winter months. With the reporting of winter contingency plans SARM is hopeful that that will hold the railways more accountable and that they will have the capacity for the winter months.

Maximum Revenue Entitlement

SARM recommends that the Federal Government commit to keeping the maximum revenue entitlement in place. This mechanism ensures that the railways cannot overcharge for the movement of grain. SARM supports this mechanism and recommends that any changes to the maximum revenue entitlement should go through the consultation and research process first. This will ensure that any changes made will be based on science and that all stakeholders will have an opportunity to provide input into the process.

Dispute Resolution Mechanisms

Disputes that arise must be able to be resolved in a cost effective, fair and timely manner. In the event of a dispute shippers and grain companies are fearful when it comes to challenging the railways. There is a fear of retaliation by the railway companies and when complaints are made to the CTA results are not always tangible. We believe that there needs to be more options available to shippers and producers to resolve related disputes.

Mediation is a cost effective option for dispute resolution between affected parties. Unfortunately, the railways must agree to a meeting which is troublesome since small shippers are captive and the railways understand that they have few other means to move product. In the event that they do mediate and come to an agreement then all parties are satisfied. This is the desirable outcome but this is not always the end result.

A more expensive method for resolving disagreements is arbitration. In this case the shipper applies to the CTA to have a level of service agreement developed through arbitration; this process is confidential. In order to utilize this method of dispute resolution, shippers must contract legal counsel which results in higher costs. A cost-benefit analysis is needed by the shippers before pursuing arbitration; not every producer or shipper can afford to go through this process. Contracts that arise from arbitration are enforceable up to a maximum penalty of \$100,000. This is a good component of arbitration as it holds both parties accountable to the terms of the agreement. The end results of arbitration are desirable but the issue lies within the costs and length of such a process. Arbitration is not always a viable option for all shippers and producers.

Conclusion

SARM appreciates the opportunity to provide comments during the CTA review. This consultation process is the appropriate avenue to begin making improvements to the rail sector in Canada. Our comments serve to highlight areas that need improvement. It is encouraging to see that improvements are already being made and that the Government of Canada is taking these issues seriously.

As this portion of the CTA review comes to a close, SARM looks forward to future opportunities to provide more feedback and awaits further actions by the Government of Canada to improve the transportation of grain via rail.