

Transportation and Logistics Committee

Report to the NGFA Board of Directors

September 2024

Rail Shipper/Receiver Subcommittee

I. Key Issues:

- Engage with the Surface Transportation Board (STB or Board) on proceedings.
- Engage with rail carriers, STB and Congress on rail service problems.

II. Subcommittee Activities:

- A. Rail Service:** NGFA continues to regularly engage with Class I carriers, STB and Congress on the need for sustained, reliable rail service.
- B. STB:** On May 11, 2024, Robert Primus was designated by President Biden as Chairman of the Board. Chairman Primus's first term on the Board expires December 31, 2027. On May 14, 2024, Patrick Fuchs was confirmed by the U.S. Senate for a second term, which will expire on January 14, 2029. Karen Hedlund's first term expires December 31, 2025, and Michelle Schultz's first term expires January 11, 2026. The fifth Board seat is vacant and expected to remain unfilled until after this year's federal elections. There currently are two Democrat Board members and two Republican Board members.
- C. Rail Safety:** The Senate Commerce Committee passed a rail safety bill on May 10, 2023 in response to a train derailment near East Palestine, Ohio in February 2023 that drew national attention. The derailed equipment included 11 tank cars carrying hazardous materials that subsequently ignited. The bill would mandate two-person crews, require a regulatory review of train length maximum limits, create train speed limits, mandate two separate processes for rail car inspection, and require the installation of hot-box detectors among other things. Due to the multitude of items that could negatively impact rail service, NGFA opted to not endorse the bill. A full Senate vote on the bill has not occurred. On July 23, 2024, Troy Nehls (R-TX), Chairman of the Subcommittee on Railroads, Pipelines, and Hazardous Materials, and Congressman Seth Moulton (D-MA), introduced a rail safety bill that is very similar to the bill in the Senate except one of the mandated processes for rail car inspection is removed. The House bill is not expected to receive a vote in this Congress.

On July 15, 2024, the National Transportation Safety Board (NTSB) released its final report on the East Palestine derailment. NTSB found a visual rail car inspection failed to catch the failing wheel bearing and thus one of NTSB's main recommendations is for research to create regulations on bearing defect detection systems. NTSB also recommends a phaseout of DOT-111 cars to happen more quickly since DOT-111 cars

are more likely to become compromised during derailments. NTSB also has many recommendations to improve the emergency response effort. Of note, NTSB did not identify train length as a contributing factor to the derailment, nor are there recommendations for visual railcar inspections.

- D. Common Carrier Obligation Legislation:** NGFA is advocating for a bill cosponsored by Sens. Tammy Baldwin (D-WI) and Roger Marshall (R-KS) that would further define Class I rail carriers' common carrier obligation.
- E. Emergency Service Orders:** STB released a final rule supported by NGFA in January 2024 which removes the requirement that a shipper's petition for alternative rail service contains a commitment from another available railroad, shortens the petition process for emergency service orders, and continues the policy of not prohibiting relief to contract traffic.
- F. Rail Rate Arbitration and Final Offer Rate Review (FORR):** In December 2022, STB issued rules on rail rate arbitration and FORR to create new methods for shippers to challenge unreasonable rail rates. STB rejected petitions from CN, UP, CSX and NS to stay its rules until district court challenges are completed. To help STB defend the rules, NGFA has filed with the district courts to preserve its right to submit an intervenor's brief if the court asks for it, and to participate in oral arguments if NGFA requests and the court allows it. No substantial actions have been taken in the district courts yet.
- G. Reciprocal Switching Proceeding:** After 12 years of gathering input on ways to increase rail-on-rail competition via reciprocal switching, the Board adopted a final rule on April 30, 2024 that abandons the concept of creating competition and instead focuses on rail service to determine if switches will be allowed, i.e., if a carrier falls below a STB determined service threshold, then shippers/receivers within a terminal area can petition STB to grant a switching opportunity for 2-4 years.
- H. Acquisition:** In late 2023, the Canadian National Railway contracted to acquire the Iowa Northern (CN) Railway and is seeking STB approval. On February 27, 2024, NGFA submitted its first round of comments and asked the Board to consider the acquisition as a significant transaction, which carries with it the highest level of regulatory scrutiny that can be applied to a merger involving a short line. NGFA also asked STB to use the highest level of regulatory scrutiny when Canadian Pacific Railway and CN submitted their KCS merger applications in 2021. STB decided on February 29, 2024, to evaluate the CN acquisition of Iowa Northern as a minor transaction. In its decision, STB said it can place conditions on the merger even though it's classified as a minor transaction. On April 18, 2024, NGFA filed in the second round of comments and asked for the approval to be conditioned on open gateways, a five-year oversight period, preservation of status quo for customer and local service. The Board has not yet ruled on the merger.
- I. Private Railcar Proceeding:** NGFA and other petitioners submitted comments requesting STB to create incentives for rail carriers to efficiently use private railcars.

NGFA argued that STB regulation has not kept pace with the changeover in railcar ownership.

- J. California Air Resources Board (CARB):** CARB has proposed changes to locomotive regulations. By 2030, CARB seeks to require all freight locomotives operating in California to be less than 23 years old and by 2035, for all freight locomotives to be emission free. On April 5, 2024, NGFA led a coalition of ag associations requesting the U.S. Environmental Protection Agency (EPA) to reject the proposal. EPA has not issued a decision on the request.

III. Other Actions:

The Rail Shipper/Receiver Subcommittee and NGFA staff also were engaged in the following activities during the March 2024 – September 2024 period:

- A. Rail Service:** NGFA worked on behalf of members with rail carriers and STB to obtain better rail service. NGFA also helped members understand regulatory remedies available to them.
- B. U.S./Mexico Rail Crossings:** In September 2023 and December 2023, Customs and Border Protection closed rail crossings that severely restricted commerce between the United States and Mexico. NGFA rallied other agricultural groups and worked with the affected rail carriers to convince Congress and the Biden administration to pressure the Customs and Border Protection to reopen the crossings. In 2024, service conditions have been substandard for grain railcars that go through the Eagle Pass and El Paso crossings. On July 31, 2024, NGFA sent an agricultural coalition letter to the U.S. government asking them to work with their Mexican government colleagues to improve rail service in Mexico. NGFA has had many subsequent meetings with U.S. government officials on the topic of Mexico rail service.
- C. BNSF Programs:** In June 2024, the Subcommittee provided BNSF an opportunity to explain their strategy for revising grain shuttle and destination efficiency train (DET) programs. BNSF reduced shuttle offering from 155 to 140 sets, increased direct DETs from 8 to 15, and held regular DETs unchanged. BNSF believes it can increase turns to 2.7 trips per month in the last quarter of 2024 to offset the reduction in the number of grain shuttles.
- D. Canada Rail Labor:** In 2024, CPKC and CN have been negotiating with Teamsters Canada Rail Conference on a new labor contract. NGFA has sent three letters to the Canadian government asking for their assistance to ensure agricultural freight continues to move regardless of the duration or outcome of the negotiations.
- E. STB Hearing:** On September 16 and 17, STB is holding a hearing on Growth in the Freight Rail Industry and NGFA's President and CEO, Mike Seyfert, will testify and provide ideas.

Motor Carrier Subcommittee

I. Key Issues:

- Work to safely increase trucking capacity and efficiency by engaging with the U.S. Department of Transportation (U.S. DOT) and Congress.

II. Subcommittee Activities:

A. Infrastructure Investment and Jobs Act (IIJA): NGFA is monitoring the implementation of the apprentice program to allow commercial driver's license (CDL) holders aged 18-20 to drive across state lines. There are almost fifty companies approved to hire apprentices thus far. This is seen as a pathway for more people to enter the trucking industry.

B. House Transportation and Infrastructure Committee Votes: NGFA led a coalition of agricultural associations in supporting the following trucking bills that were passed by the House Transportation and Infrastructure Committee on May 23, 2023. A full House vote is not anticipated in this Congress.

H.R. 3372 - 91,000-lb. Weight Exemption Pilot Program

H.R. 3318 - 10% Axle Variance for Dry Bulk

H.R. 3013 – Licensing Individual Commercial Exam-takers Now Safely and Efficiently

H.R. 2367 – Truck Parking Safety Improvement Act

C. Independent Contractor Rule: A Department of Labor rule was released in January 2024 that forces employers to consider contractors as employees when they are economically dependent on a company. The fate of this rule is anticipated to be decided in federal court or potentially replaced if former president Trump is elected President.

D. Lawsuits: The Motor Carrier Subcommittee is monitoring lawsuits in which plaintiffs bypass suing independent truck drivers and instead sue the companies who hired them to haul their freight.

E. Insurance: The Motor Carrier Subcommittee is monitoring a bill in the House called the Fair Compensation for Truck Crash Victims Act that would increase the minimum liability insurance requirements for interstate motor carriers from \$750,000 to \$5 million.

III. Other Actions:

The Motor Carrier Subcommittee and NGFA staff also were engaged in the following activities during the March 2024 – September 2024 period:

- A.** The National Transportation Safety Board has called for the Federal Motor Carrier Safety Administration (FMCSA) to study the prevalence of fatigue for drivers operating under

the agricultural exemption to the hours-of-service rules. NGFA is engaging with FMCSA on the importance of the hours-of-service exemption for ag haulers.

Waterborne Commerce Subcommittee

I. Key Issues:

- Maintaining navigational access to the Lower Snake River Dams. The Columbia-Snake River System is the third-largest grain export corridor in the world, transporting nearly 30 percent of U.S. grain and oilseed exports through a sophisticated navigation system to deliver high value farm products safely and efficiently to West Coast ports and consumers worldwide.
- Advocate for the Water Resources and Development Act of 2024 (WRDA) to continue to provide federal funding of inland waterways projects identified in the Infrastructure Investment and Jobs Act (IIJA) to keep U.S. agriculture competitive in the global market.

II. Subcommittee Activities:

- A. Snake River Dams:** On December 15, 2023, the White House Council on Environmental Quality announced a plan to restore salmon populations in the Columbia River basin, which includes studies into the possibility of removing the Snake River basin's four dams. The plan represents a settlement in the latest legal action trying to remove the dams to purportedly increase salmon returns in the river.

In June, the Biden Administration announced the creation of an interagency task force to coordinate federal efforts to restore native fish populations and advance renewable energy in the Columbia River Basin. EPA, USDA and the Army Corps of Engineers will be represented on the Columbia River Task Force, which will be led by the Interior and Energy departments and the National Oceanic and Atmospheric Administration.

The announcement came on the heels of a new report from Interior detailing how hydroelectric dams have “deprived Tribal members of the ability to exercise traditional ways of life.” NGFA has requested meetings with task force members prior to its first meeting to get more information on industry and stakeholder involvement and to urge USDA to forcefully engage with the task force on the importance of this important transportation system to NGFA members and agriculture. We have been told the earliest the task force will meet is in the fall, although that date could be shifted by the elections.

- B. Appropriations:** On August 1, the Senate Appropriations Committee marked up and passed unanimously by a vote of 28-0 the Fiscal Year (FY) 2025 Energy and Water Development (E&WD) and Related Agencies Appropriations Act. The bill includes \$10.34 billion for the U.S. Army Corps of Engineers' Civil Works mission, which represents record funding and is even higher than the nearly \$10 billion the House Appropriations Committee approved on July 9. Congress is in recess until Monday September 9. There are three legislative weeks in September before Congress recesses again until after the November elections. Government funding (and other legislation

important to the industry) expires September 30. We anticipate Congress will pass a Continuing Resolution, extending FY24 funding to December, allowing lawmakers to negotiate final appropriations bills after the elections.

- C. WRDA 2024:** NGFA's Water Resources Development Act (WRDA) 2024 request is to adhere to congressional intent by providing 100% federal funding for the construction and major rehabilitation projects considered funded to completion in the IJA. The Senate passed its version of WRDA by unanimous consent on Thursday, August 1. The Senate bill has the IJA project language, as well as a provision to permanently set the cost share for inland waterways projects to 75% (federal)/25% Inland Waterways Trust Fund. The House bill, which passed July 22, does not contain these provisions. NGFA is encouraging the conference committee to adopt the Senate provisions in the final product.

Issues for Discussion/Input:

- Regardless of who wins the presidential election, there will be a new administration in 2025. Additionally, many reliable friends of waterways will retire at the end of this year.
 - What opportunities exist to advance policies that benefit the industry in 2025?
 - What potential risks exist in 2025?