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NATIONAL GRAIN CAR COUNCIL

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423-0001**

1999

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CHARTER OF THE
NATIONAL GRAIN CAR COUNCIL

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INTRODUCTION

Herewith is the Revised Charter of the National Grain Car Council (NGCC), a Federal Advisory Committee of the Surface Transportation Board (the Board). The authority for the Board to create the NGCC is derived from the Board's general powers, as outlined in 49 U.S.C. 721, in conjunction with its powers under the car service sections of Section 49 U.S.C. 11121, *et seq.* The statute gives the Board flexibility to address and resolve issues of car service, and formation of a Board-sponsored NGCC is one such method. This authority is also derived from the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. Under FACA, an advisory committee is an organization providing advice and recommendations to a federal agency. It is an attempt by Congress to resolve disputes in lieu of litigation.

The NGCC grew out of the experience of the Interstate Commerce Commission's sponsorship and the convening of meetings that allowed interested parties to discuss grain car supply. This dialogue between rail carriers and grain shippers was viewed as a means to facilitate the resolution of ongoing problems with grain car availability and use. In that regard, a conference held in Omaha, NE, proved successful in gathering information and input from grain shippers and railroads.

It should be the continued mission of the NGCC to build upon the dialogue established at that earlier conference. The NGCC will provide for, in the words of former

Senator Jim Exon (D.NE), "continued oversight and attention to grain car issues." Additionally, the NGCC is to provide recommendations and advice to the Board and NGCC members on car service and distribution. See 49 U.S.C. 11121(c). The NGCC will remain composed of not less than 30 members, consisting of a Chair and representatives from railroads, grain elevators, private car owners, and agricultural groups. The NGCC will consist of five representatives each for the six groups listed in Section 3.1 of the Charter. The membership will rotate every 2 years. Major associations, like the National Grain and Feed Association and the Association of American Railroads, will be permanent members so their entire membership has access to the Council. Section 3.6 in Article III provides for an advisory role for the U.S. Departments of Agriculture and Transportation. Their roles will be limited to advising the members, including providing government information that would be vital to the NGCC in its deliberations.

Any action taken by NGCC to resolve a matter would be subject to Board review in the form of petitions to consider proposals. However, some NGCC opinions and reports may not need actual Board action, but can simply be passed along to the Board for informational and oversight purposes.

FACA regulates the formation and operation of advisory committees by Federal agencies. The language of the NGCC Charter is consistent with the requirements for establishing the NGCC under the FACA and the General Services Administration implementing regulations, 49 C.F.R. 101-6. The Board itself will appoint two individuals

under FACA - - a Designated Federal Official (DFO), who attends all meetings of the NGCC, and the Committee Management Official (CMO), who is basically charged with ensuring compliance with FACA and has general oversight authority.

The NGCC will facilitate private sector solutions and recommendations to the Board on matters affecting grain cars, including recurring grain car shortages. While the parties may arrive at private sector solutions to matters in dispute, as aforementioned any final resolution of a dispute subject to the NGCC's jurisdiction will have to be approved by the Board.

Costs to the Federal government would be minimal, involving only two Board personnel. Their functions would include setting up meetings and preparing an agenda twice a year and other minor clerical duties requiring approximately 10 to 16 hours for each meeting. In addition, Board personnel would oversee the meetings. Committee members will not be paid or reimbursed for travel.

**Articles of Organization of the National
Grain Car Council.**

PREAMBLE

WHEREAS, the Surface Transportation Board, through its predecessor, the Interstate Commerce Commission, has established the National Grain Car Council (NGCC) for the purpose of coordinating policy and administration with respect to the functions and activities relating to the transportation of grain by railroad, and

WHEREAS, the Surface Transportation Board has determined that there should be an industry organization established for the purpose of consulting with and advising the Board and industry, and

WHEREAS, the Chairman of the Surface Transportation Board, with the concurrence of the members of the Surface Transportation Board, has appointed members to serve thereon without compensation, and

WHEREAS, the Surface Transportation Board has deemed the creation of the National Grain Car Council to be necessary and in the public interest, and

WHEREAS, it is the sense of the National Grain Car Council that it can fulfill a useful function in an advisory capacity to the Surface Transportation Board and industries regarding the transportation of grain by rail with respect to requests from the Board and the private sector for advice, information, and recommendations representing the views of the railroad industry, grain shippers, and car owners;

THEREFORE, in order to provide for their organization and operation, the members of the National Grain Car Council adopt the following Articles of Organization:

SURFACE TRANSPORTATION BOARD

CHARTER OF THE

NATIONAL GRAIN CAR COUNCIL

ARTICLE I

ESTABLISHMENT

Section 1.1 The Chairman of the Surface Transportation Board ("the Board"), having determined with the concurrence of the members of the Board that it is in the public interest in connection with the performance of the duties of the Board with regard to the adequacy of grain car supplies under 49 U.S.C. 11121, et seq., and 49 U.S.C. 721, establishes the National Grain Car Council (NGCC), pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

ARTICLE II

FUNCTION

Section 2.1 Balancing the needs of transportation interests, car owners, grain shippers, farmers, consumers of grain at various levels, and the public in general, the NGCC shall conduct a continuing dialogue to provide advice and guidance to the Board, and to provide a forum for the resolution of disputes and controversies, regarding distribution and transportation of grain. Any final resolution of matters subject to its jurisdiction shall be approved by the Board.

Section 2.2 The NGCC shall, as it deems necessary or as requested by the Board or the public, suggest to the Board appropriate policies or regulations to be adopted with regard to grain car supply.

Section 2.3 The NGCC will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

ARTICLE III

MEMBERSHIP

- Section 3.1** The NGCC shall consist of not less than 30 members, including the Chair. There will be a balanced representation of executives knowledgeable in the transportation of grain, including not less than 10 from the Class I railroads, 5 representatives from Class II and III carriers, 10 representatives from grain shippers and receivers, and 5 representatives from private car owners and car manufacturers.
- Section 3.2** The Vice-Chairman of the Board shall serve as an ex-officio member of the NGCC.
- Section 3.3** The Chairman of the Board will solicit nominations for the NGCC from other members of the Board, members of Congressional oversight committees with jurisdiction over the Board, and appropriate carrier, shipper, farmer, grain elevator, car lessor, port and consumer organizations.
- Section 3.4** Members of the NGCC shall be selected by the Chairman of the Board, with the concurrence of a majority of the members of the Board.
- Section 3.5** Members will be invited to serve for a term of two (2) years. Members may serve more than one term.
- Section 3.6** The Chairman of the Board shall invite representatives from the U.S. Departments of Agriculture and Transportation to serve on the NGCC in an advisory capacity. These representatives shall have no authority to vote.

ARTICLE IV

OFFICERS

- Section 4.1** The Officers of the NGCC shall consist of a Chairman, a Co-Chairman, a Vice-Chairman, and such other

officers as deemed necessary by the NGCC. Chairmanship and Vice-Chairmanship of the NGCC will rotate among the different groups represented on the NGCC. At no time will both the Chairman and the Vice-Chairman be a member of the same interest group.

Section 4.2 The Vice-Chairman of the Board shall be designated Co-Chairman.

Section 4.3 The Chairman and Vice-Chairman of the Council will be elected by a majority vote of those members present at the first meeting of the NGCC, and serve a term of two (2) years.

Section 4.4 If a vacancy in either of these offices occurs, notice shall be provided that the vacancy shall be filled by election at the next regular or special meeting of the NGCC.

Section 4.5 The Chairman of the NGCC shall be responsible for the management of the NGCC. In consultation with the Designated Federal Officer and the Co-Chairman, the Chairman shall establish study committees, and appoint members thereof.

Section 4.6 The Vice-Chairman of the NGCC shall have such powers and duties as may be delegated by the Chairman, and in the absence or disability of the Chairman, shall exercise all the duties and powers granted to the Chairman.

ARTICLE V

FUNDING

Section 5.1 As budgetary constraints do not allow the use of government funds to compensate members or reimburse them for travel and expenses, members shall serve without compensation and without reimbursement of travel expenses unless reimbursement of such expenses is authorized in advance by the Director of Administration of the Board. The Director shall have the discretion to consider the financial hardship travel would impose on a particular participant in deciding whether to reimburse that participant for travel expenses.

ARTICLE VI

MEETINGS

- Section 6.1** Meetings shall be held no less than one (1) time a year, a time determined by the Chairman of the NGCC with the advance approval of the Co-Chairman. Additional meetings may be called by the Chairman with the approval of the Co-Chairman. Special meetings may be called by the Chairman with approval of the Co-Chairman.
- Section 6.2** The Designated Federal Official shall be present at all meetings.
- Section 6.3** Meetings shall be called on at least 15 days' notice. In exceptional circumstances, meetings may be held on less than 15 days' notice. Appropriate notice shall be published in the Federal Register in accordance with applicable laws.
- Section 6.4** Meetings shall be held in Washington, D.C., unless another location is deemed necessary by the Chairman in consultation with the Designated Federal Official and the Co-Chairman.
- Section 6.5** Meetings shall be open to the public except as otherwise provided under Section 6.6 hereof. Notice of all meetings shall be given to the public.
- Section 6.6** All or part of a meeting may be closed to the public if deemed necessary by the NGCC, upon request to the Chairman of the Board and review by the General Counsel of the Board, consistent with all applicable laws.
- Section 6.7** Meetings shall be conducted as required by applicable laws.
- Section 6.8** The Designated Federal Official shall approve the agenda to all NGCC meetings in advance of the meeting.
- Section 6.9** At all meetings of the NGCC, one-third of the membership shall be necessary and sufficient to constitute a quorum for the transaction of business.

ARTICLE VII

SUBCOMMITTEES AND STUDY GROUPS

- Section 7.1** The NGCC may establish such subcommittees and study committees of its members as may be necessary, subject to the provisions of the Federal Advisory Committee Act.
- Section 7.2** At the first meeting of the NGCC, the NGCC shall determine the necessity of appointing administrative committees.
- Section 7.3** Study committees may be established by the Chairman of the NGCC at the request of the Board or the NGCC to prepare reports for the consideration of the NGCC which pertain to important issues affecting the transportation of grain as identified by its members.
- Section 7.3.1** Study committees shall terminate when they have completed their responsibilities.
- Section 7.3.2** The members of the study committees shall be selected from the NGCC membership on the basis of their training, experience, and general qualifications to deal with the matters assigned.
- Section 7.3.3** The date, time, place, and agenda of all meetings of a study committee shall be set by its Chairman.
- Section 7.3.4** A quorum of a study committee shall consist of a majority of its members. Action by such committees shall be by majority vote of those present. Each member of a committee shall cast his or her vote in accordance with his or her individual experience and judgment.
- Section 7.3.5** The meetings of all study committees shall be open to the public.
- Section 7.3.6** Records shall be kept by the Designated Federal Official as required by applicable laws.
- Section 7.3.7** All reports of study committees presented to the NGCC for its

consideration shall be made in writing and made available to all NGCC members in advance of the NGCC meeting at which the report will be considered.

ARTICLE VIII

RECORDS AND REPORTS

Section 8.1 Records shall be kept by the Designated Federal Official as required by applicable laws.

Section 8.2 The NGCC will report to the Chairman of the Board annually, not later than March 1 of each year. The report shall contain at a minimum a list of the members and their business addresses, a description of the NGCC's functions, the dates and places of the meetings held during the year, a summary of the NGCC's activities and recommendations made during its fiscal year, and the sources and disposition of funds. If any subcommittees or study groups have been created, a report for each subcommittee or study group shall be included in the annual report. A copy of the report shall be provided to the Board's Committee Management Officer.

ARTICLE IX

ANNUAL COST ESTIMATE

Section 9.1 Estimated annual cost to the Government for operating the NGCC is \$1,420, including the use of two Board personnel for a limited number of hours annually.

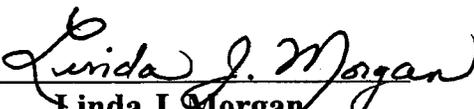
ARTICLE X

TERMINATION DATE

Section 10.1 Unless renewed by appropriate action prior to its expiration, the NGCC will terminate two (2) years from the date this Charter is approved.

APPROVED:

January 11, 1999
DATE


Linda J. Morgan
Chairman

January 11, 1999
DATE


William Clyburn, Jr
Vice-Chairman

