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Bill C-49, *Transportation Modernization Act*
Comments to the House of Commons Standing
Committee on Transport, Infrastructure and
Communities

Fertilizer Canada

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Executive Summary

Fertilizer Canada is a proud partner of Canada's freight rail system and supports the government's efforts to improve rail safety, competition, and transparency. We commend the intent of the proposed legislation in Bill C-49 and are providing recommendations to enhance the legislation further to strengthen competition and protect captive shippers.

Promoting competition, access, and transparency along our trade and transportation corridors is critical to the economic prosperity of our industry. A fair and efficient freight rail system is necessary to help our members get goods to market and to ensure farmers have access to sustainable, fertile soil. Such a system facilitates the growth of an innovative Canadian sector, supporting a significant source of jobs, exports, and manufacturing.

The proposed legislation takes important steps to reinforce railway safety and improve the Canadian freight rail sector; however, we wish to express our concerns with certain specific provisions of the legislation that could have unintended consequences for our sector and the freight rail system if enacted:

- **Sec. 129(3)** – removing exclusions to access Long-Haul Interswitching, including for specific products (Toxic Inhalation Hazard materials) and for key geographic corridors;
- **Sec. 136.9(2)** – permitting the removal of interchanges from service.

The provisions, as currently proposed, will undermine key principles of the Canadian freight rail system, contradicting much of the evidence-based policy rationale of the Bill. Fertilizer Canada strongly appeals for their removal from the Bill in order to avoid negative repercussions to Canadian businesses, Canadian jobs, trade with key partners, and critically, our members' ability to supply farms in Canada, the United States, and around the world.

Supporting Canada's Innovation Agenda

The Advisory Council on Economic Growth identified agri-food as a sector with enormous growth and export potential. As a natural resource industry with value-added manufacturing, Canada's fertilizer industry is well-placed to continue supporting the global growth of Canada's agriculture and agri-food sectors, in a manner capable of meeting the emerging market demand for higher value, higher yield foods through innovative agriculture systems.

Fertilizer Canada represents the manufacturers, wholesale, and retail distributors of potash, nitrogen, phosphate, and sulphur fertilizer and related products. Collectively, our members employ more than 12,000 Canadians and contribute over \$12 billion annually to the Canadian economy through advanced manufacturing, mining, and distribution facilities nationwide.



Farmers across the country – whether in the Prairies, the Annapolis Valley, the British Columbia Interior, or the Niagara Peninsula – rely on our industry to help them meet a growing global demand for food and food products. Farmers from key trade partner countries, such as the United States, India and Brazil, do as well. Our industry relies on the transportation system, including freight rail, to meet this demand in turn.

Fertilizer Canada is encouraged to be working with the government which has demonstrated commitment to modernizing Canada’s transport system and capacity. We are supportive of the proposed changes to clarify third party liability and strengthen the corresponding authority of the Canadian Transportation Agency (Section 137). We commend the Minister’s actions taken to reinforce rail safety, promote competitiveness, and improve our trade and transportation corridors (as envisaged in *Transportation 2030*). While we also commend the improvements to data transparency, we believe that those improvements could be expanded to broaden their application beyond only Long-Haul Interswitching rates.

Our trade and transportation corridors are essential to the movement of Canadian goods and to Canadian trade. In order to build and support a globally competitive advantage, the fertilizer sector requires a fair, efficient, and competitive freight rail system to move products to market in support of the Canadian agriculture sector, the economy, and Canadian jobs.

To provide some statistics:

- **Global Supply** – 12% of the global fertilizer supply is produced in Canada
- **Exports** – 80% of Canada’s fertilizer products are exported
- **Trade Surplus** – Canadian fertilizer maintains a \$4.5 billion trade surplus with the United States
- **Broad Market** – Canadian fertilizer is shipped to more than 70 countries worldwide

In meeting this high national and international demand, transportation has become the second-highest business cost for our members. In fact, our members comprise the third-largest customer group by volume for Canada’s Class I railways, CP and CN.

In an increasingly globalized world, the government needs to recognize that a nuanced approach is necessary to meet the needs of the Canadian economy – and of the Canadian fertilizer sector. The freight rail system should evolve to ensure that the management of Canadian railways does not impair Canadian jobs, Canadian trade, or healthy competition.

Removing Exclusions to Long-Haul Interswitching – Sections 129(3)(b) and (e)

Canada has long adhered to the “common carrier” principle as a foundation of the economy. This principle – that shipping companies cannot discriminate or refuse



service on the basis of a type of good – is what helps keep the Canadian economy in motion. Our members understand the responsibilities they bear under this principle: operating safely, ethically, and securely when handling, storing, and transporting their products. Since rail is a safe and reliable means to transport goods to market, it imperative to underpin that system with the common carrier principle.

From the perspective of fertilizer companies, this principle is even more important when considering the fact that most of our members operate in communities and regions captive to rail. While Fertilizer Canada is a proud partner of the Canadian rail system, it should be noted that our captivity to rail already creates imbalance in our commercial relationship in favour of our national railway companies.

Measures to exclude the movement of Toxic Inhalation Hazard (TIH) material from Long-Haul Interswitching in Bill C-49 are therefore a significant irritant for the fertilizer sector. One such TIH material, anhydrous ammonia, is a building block of nitrogen fertilizer. With such a significant dependence on rail, some of our members would be deprived of the benefits of Long-Haul Interswitching, thereby increasing the costs to farmers in Canada and reducing their competitiveness around the world.

This provision of the Bill directly contradicts the policy rationale of the legislation, which is to provide competitive and transparent rail service to Canadians and Canadian businesses. Critically, it erodes the fundamental value of the common carrier principle.

Safety and security in the handling, storage, and transportation of fertilizer products are central to the operations of the Canadian fertilizer industry. Our members already pay significantly higher freight rates to transport dangerous material and use purpose-built railcars for safe-handling. They invest significantly in the insurance coverage and safety measures necessary to safeguard the transportation of our products. Our industry has been recognized for our efforts to develop safety codes and educational resources on the safe and secure handling of fertilizer throughout the supply chain and for first responders.

We must ensure that future tragedies, similar to Lac Mégantic, never happen again, but in so doing, it is critical that we approach the safe and secure transport of dangerous goods through responsible, evidence-based policy decisions. There are not – and have not been – any safety reasons to discriminate against the shipment of TIH material by Long-Haul Interswitching. In fact, shipping TIH material by rail is the safest means of transportation.

Finally, we would also like to note our concerns regarding the provisions excluding certain geographic corridors (Vancouver—Kamloops & Quebec—Windsor) from accessing Long-Haul Interswitching. These provisions would result in negative effects for our members' operations, similar to the exclusion of TIH materials. There is little reason to exclude these key regions in British Columbia, Ontario, and Quebec from accessing Long-Haul Interswitching. By limiting access there, the legislation will



result in our members struggling to ensure an adequate supply for Canadian farmers in our three largest provinces and for our major global export facilities.

Railway companies are privileged to operate our national rail infrastructure and should be expected to uphold their obligation to transport essential goods safely to domestic customers and Canadian export facilities. Fertilizer Canada strongly appeals for the removal of Sections 129(3)(e) and 129(3)(b) from Bill C-49, which unfairly penalizes our industry and drive up the cost of business in the agriculture sector.

Merits of Extended Interswitching

Interswitching is an essential tool to encourage and enhance competition in the movement of products within a captive rail market. It allows captive shippers access to alternative options, and an expanded interswitching mechanism only serves to strengthen competition over greater distances. For Fertilizer Canada members, interswitching facilitates the economical delivery of fertilizer products from operations in Western Canada to farm customers throughout Canada and abroad.

Fertilizer Canada and its members are disappointed in the government's decision to sunset extended interswitching up to 160km, repealing it in favour of Bill C-49's Long-Haul Interswitching provisions. Our members were among those shippers outside of agriculture who made use of this mechanism. This decision represents a missed opportunity for Prairie businesses. These provisions are important to our members' businesses and the rates established on the basis of this threshold provided greater certainty and accessibility. With Long-Haul Interswitching, shippers will now be required to apply to the Canadian Transportation Agency for a rate, creating a significant new administrative burden for them that could adversely impact usership.

Western Canada's freight rail landscape has not changed in any fundamental manner since 160km interswitching regulations were introduced in 2014; therefore, the guiding principles behind the original legislation – enhancing accessibility and competition in the freight rail system – remain intact.

Ensuring Interchanges Remain in Service – Section 136.9(2)

Interchanges, like interswitching, facilitate the movement of one company's cars over the railway system of another. They are a vital tool to reduce the market limitations of captive Canadian shippers. Under current legislation, a company seeking to terminate an interchange is still subject to the authority of the Canadian Transportation Agency, which could order its retention. However, Bill C-49 removes this authority, allowing railways to terminate an interchange after only 60-days' public notice. This provision risks the effective elimination of interchanges and interswitching.

Although Fertilizer Canada would hope that rail companies would not remove economically vital interchanges, there may arise future circumstances where the



commercial considerations of a railway company do not align with the commercial considerations of a captive shipper. This provision only serves to further the monopolistic powers of Canadian railway companies. Although railways may never invoke such power, its existence is still a liability that risks Canadian jobs, manufacturing, and trade.

Permitting the elimination of an interchange is a contemporary amendment that does not give forethought to the future – and it fails to give consideration to the success of past practices. In effect, it is not a decision based on evidence and it harms those who rely on Canada’s freight rail system most.

Fertilizer Canada strongly appeals for the removal of Section 1369(2) from the Bill.

Conclusion

The Canadian fertilizer sector is a proud partner of Canada’s freight rail system. Our members, owing in part to the large-scale nature of our mining and manufacturing operations, heavily rely on an interconnected network of specialized handlers and infrastructure to ship our products over long distances to domestic, continental, and international markets. The economic future of our sector is dependent on a strong and responsive transportation network supported by a modern legislative framework. Ensuring our products are delivered to farmers safely and securely is of paramount importance and we have a long, proud record of success.

We are very supportive of much this Bill proposes and commend its intentions. Captive shippers are a weakness in our national railway infrastructure and the government should act to support them.

Fertilizer Canada kindly requests that the Members of the House of Commons Standing Committee on Transportation, Infrastructure and Communities consider our recommendations seriously and consider the negative impact that the retention of the above-noted provisions in the current legislation would have on the commercial and economic opportunities of our sector’s businesses – and on the Canadian jobs and trade opportunities that depend on them.

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