



Private Railcar Food and Beverage Association

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Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Petition for Rulemaking – Amendments to Regulations Governing Ex Parte Communications, Docket No. EP 782

To Whom It May Concern,

The Private Railcar Food and Beverage Association (PRFBA) respectfully submits these comments in response to the Petition filed in the above-referenced proceeding by the Association of American Railroads (AAR) seeking a widening of the STB's ex parte rules.¹ PRFBA strongly opposes this request and asks the Surface Transportation Board (STB) not to open a proceeding in this matter. The AAR's proposals are not needed and run counter to the reasons behind limitations on ex parte communications.

PRFBA is comprised of global food and beverage companies and manufacturers headquartered in North America with combined revenues in excess of \$150 billion per year. All are major rail shippers that rely on the railroads to distribute their food and beverage products that are vital to the health and welfare of our nation and essential to feeding its citizens. Without affordable and adequate rail service, their food and beverages will not be on American store shelves at reasonable prices.

Moreover, PRFBA members all own or lease railcars. As such, they absorb costs associated with equipment ownership, operation, and maintenance. Investing millions of dollars in rail cars also greatly restricts these members from other transportation modes. If a decision is

¹ The Board's regulations already specify that "[e]x parte communications" means an oral or written communication that concerns the merits or substantive outcome of a pending proceeding." 49 C.F.R. 1102.2(a)(5). Status and procedural inquiries (AAR Pet. at 6) are thus already allowed.

made to change modes, it means “parking” assets which is seldom a wise financial decision. PRFBA members have skin in the game and deserve to be treated as such.

PRFBA members meet regularly to discuss opportunities and solutions to their similar challenges with railcar service and costs. The membership collaborates with other trade associations with regard to industry changes and proposed legislation as well as regulations that directly impact PRFBA’s food and beverage transportation needs. PRFBA meets with the Class I North American railroads for group discussions on rail service issues unique to its membership. PRFBA provides its members with a forum to work together to break through railroad service challenges, providing a better industry foundation for private railcar food and beverage shippers across North America.

Ex parte communication regulations at the STB are in place to ensure fairness and maintain the integrity of its adjudicatory system. These rules generally prohibit STB Members from having any discussions about a case with only one party (or their attorney) present without the knowledge and consent of the opposing party. These existing communication rules are essential for the following reasons:

- Promoting impartiality: STB Members are expected to be impartial and base their decisions solely on the evidence and arguments presented openly to all parties. Ex parte communications can give one party an unfair advantage by allowing them to present their case or discuss relevant issues with the STB outside the normal open process, without the opposing party having the opportunity to respond or challenge the information.
- Ensuring due process: The Constitution guarantees "due process" in all legal proceedings, which means that all parties must have a fair opportunity to be heard on all matters related to the case. Ex parte communications undermine this fundamental principle by introducing new information to the decision-maker (judge or jury) without giving the other party a chance to explain or respond.
- Maintaining public trust: The public's trust in the STB’s adjudicatory system is crucial for its proper functioning. When STB Members engage in ex parte communications, it creates an appearance of impropriety and can lead the public to believe that the system is unfair or biased.

In summary, the ex parte communication regulations are designed to prevent STB Members from being influenced by information presented by only one party and to ensure that all parties have an equal opportunity to present their case to the Board. This helps to maintain fairness, due process, and public confidence in the STB. Therefore, the AAR proposal generally runs counter to these policies and will create less trust in the STB which is a result stakeholders do not want.

At any time, this Petition should be rejected based on these policies behind ex parte communications rules. This result is even more apt now because the Trump Administration is discouraging new regulations. Consequently, the STB should not open a new proceeding to review this request.

Respectfully submitted,
/s/ Herman Haksteen
Private Railcar Food & Beverage Association
President
Herman Haksteen