



Private Railcar Food and Beverage Association

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Case Title: Regulatory Reform Task Force

In Response to: Executive Order 13777, signed February 24, 2017

Action: Prepared Remarks for RRTF Listening Session, July 25th, 2017 at 10:00am

Address of Listening Session: 395 E. Street, S. W. Washington, DC 20423, First Floor

Hearing Room

Good morning Ladies and Gentlemen of the STB Regulatory Reform Task Force,

My name is Barbara A. Cataneo and I am the Secretary of the Board for the Private Railcar Food and Beverage Association.

The Private Railcar Foods and Beverage Association was formed in January of 2016 as the result of a group of frustrated food and beverage rail shippers that felt that their voices, as individual companies, were not being heard by the North American rail road network nor by the STB. The PRFBA members formed this group with the following objectives in mind:

To provide private railcar food and beverage shippers a forum/organization that will allow them to collectively advocate for rail reform regulation, including reciprocal switching, rate competitiveness and performance KPI's. Additionally, the Association members share best practices for the management of their private railcar fleets, they share common issues and concerns regarding underlying rail terms and conditions of service, they explore supply chain efficiencies within the group and with the railroad providers directly and they collaborate with each other to develop efficient railroad network opportunities such as empty private railcar backhauls programs.

Unreliable rail service in the USA and the effects of the current out-dated "de-regulation" surrounding railroad service, directly and greatly impact our membership on a daily basis.

The member companies that comprise PRFBA are:

McCain USA	Boardman Foods, Inc.
PepsiCo (Pepsi, Tropicana, Frito-Lay, Quaker and Gatorade)	Land O' Lakes
National Frozen Foods	Bonduelle USA and Canada



Private Railcar Food and Beverage Association

KraftHeinz	G3 Enterprises (Gallo Wine)
Kellogg's	Martin-Brower (McDonald's)
Pinnacle Food Group	Cavendish Farms
Twin City Foods	

Board of Directors: Charles Penrow, III – Chairman of the Board, McCain Foods, USA
Brenna Watson – Board Director, National Frozen Foods, Inc.
Patrice Legare – Board of Director, Bonduelle USA and Canada
Herman Haksteen – Board Director, Ex-Officio, Cryo-Trans, Inc.

While PRFBA has been very successful in achieving many of our goals and objectives as set forth above, ultimately the Association members are handcuffed by antiquated regulations that encompass the railroad industry today.

As we know the Staggers Rail Act, which was made in to law in 1980, deregulated the American railroad industry to a significant extent, and it replaced the regulatory structure that had existed since the 1887 Interstate Commerce Act. At that time, 37 years ago, the regulatory reform was needed and changes were made in order for the railroads to compete with the growing truck and airline transportation services available to shippers and in an effort to allow the railroads to earn adequate revenue. It is no secret to anyone in this room, that the railroads have the “home team” advantage when it comes to rates and services that are provided to the food and beverage railcar shippers. The current railroad regulations lean heavily on the railroad side. Our members are “stuck” with whichever railroad serves their shipping or receiving facility and they have absolutely no options for rail competition. ¹

Just like in 1980 when Congressman Harley Staggers recognized that the regulations surrounding the rail industry needed to be updated from their 93 year old origins, it is now time to revisit the railroads regulations once again in order to provide a healthier and more productive economy in the United States. All of the PRFBA members are major manufacturers and producers of food and beverages in the United States. The current state of the railroad industry has adversely effected our members as rates have sky-rocketed, service is left unaccounted for and food processing plants have been shut down because inbound products have not arrived as anticipated.

The current Staggers Rail Act, through which the railroads operate today, has many policies that are antiquated and do not represent the current trends or market



Private Railcar Food and Beverage Association

expectations that our PRFBA members are faced with on a daily basis. Each of our member companies provides a food or beverage to consumers in the United States, Mexico and Canada. Without reformed rail regulations that are more balanced between the shippers and railroads, the consumer pays the price.

Today's rail industry is eerily reminiscent of a monopoly. With two Class 1 railroads on the east coast and primarily two Class 1 railroads on the west coast, there is little competition available to the shipper, particularly when a shipper is captive to only one railroad.

There are several avenues through which rail regulatory reform can take place which will provide a fair and level playing field for both the shippers and the railroads. Either through the STB's reforms directly, such as the Reciprocal Switching Proposal or through a modification of the Staggers Act, as presented by Senator Tammy Baldwin through the Rail Shipper's Fairness Act of 2017. ²

However the rail regulatory reform takes place, the PRFBA members support any reform and re-regulating certain aspects of the rail industry that provide the shippers with a more competitive rail marketplace and allows the shippers to explore more than one railroad option.

Allowing reciprocal switching throughout the USA rail network, would be a positive and progressive commitment on the part of the STB and would most certainly, be in-line with President Trump's EO 13777 (identifying regulations for repeal, replacement or modification). ³ Implementing and enforcing rail regulations that will allow the food and beverage rail shippers of the United States, to have multiple railroad options instead of being captive to one railroad, ultimately will trickle down to the end consumer. The more options available in the rail industry, the more cost effective and reliable services will be and in the end, the consumer will pay less at the store or restaurant for their food and beverages.

In 2013, The Canadian Government made a bold move when they started to enforce a law that had been on the books for many years, The Canadian Transportation Act and in particular, interswitching, which is provided for at s. 127 of the Act. ⁴

The Canadian government heard the concerns shared by the Canadian rail shippers and they implemented a "mandatory switching model", which allows either railroad (the



Private Railcar Food and Beverage Association

Canadian Pacific and the Canadian National) the opportunity to quote rates and render service to the shipper regardless of which railway owns the track. ⁴

Interswitching (reciprocal switching) in Canada guarantees that a shipper with direct access to only one railway at the origin or destination of a move can have the shipment transferred to another carrier at a rate prescribed by regulation if the origin or destination is within a certain radius of an interchange point. **Interswitching is available, unconditionally, to all shippers having direct access to one railway.** ⁵

In the U.S., the STB can require terminal facilities owned by one carrier to be used by another carrier (terminal trackage rights), or the railroad owning the terminal facilities to transport the traffic on behalf of the other carrier (reciprocal switching), if it finds this to be practicable and in the public interest. Since 1985, the meaning of "public interest" in this context has been greatly narrowed to mean determining whether the incumbent carrier has acted in an anticompetitive manner. The US food and beverage rail shippers need the same opportunity as their Canadian counterparts, "**unconditional reciprocal switching, to all shippers having direct access to one railroad.**" ⁵

In the U.S., the policy is to allow to the *maximum extent possible competition and demand for services to establish reasonable rates*, and to minimize the need for regulation over the rail system. In Canada, it is instead stated that *the objectives of policy are most likely to be achieved when competition and market forces are the prime agents* in providing transportation services. ⁵

Clearly, the focus on the US regulations needs to change to be more in-line with the Canadian approach where rates are not even part of the objective of the policy.

The CP and CN Railways furnished their 2016 annual earnings earlier this year and it is apparent that they have the best operating ratio of all Class 1 Railroads in North America. CP reporting an operating ratio of 58.6 percent and CN reporting an operating ratio of 55.9 percent. Interswitching (reciprocal switching) has clearly not eroded their profitability. ⁶

Our friends at the American Association of Railroads state that we do not need more regulation, and we would agree with that statement. However there must be reform of the current rules. Today's monopolistic environment created by the railroads requires that reciprocal switching be allowed. Reciprocal switching does not yield more regulation, in fact it creates more freedom for all parties.



Private Railcar Food and Beverage Association

In conclusion, the Private Railcar Food and Beverage Association strongly supports Railroad Regulatory Reform and modifying the Staggers Rail Act of 1980 with respect to multiple rail access for shippers (reciprocal switching), advocating for real railroad options for shippers, advocating less of a monopolistic hold on the food and beverage rail shippers and supporting a more balanced approach between shippers and railroads with regard to the current railroad regulations or out-dated “de-regulations”.

Thank you again for your time today in allowing the Private Railcar Food and Beverage Association this opportunity to share our feedback on the importance of Regulatory Reform in the rail industry. We appreciate your listening to our concerns, ideas and solutions and we would be agreeable to assist the RRTF, STB or any other governmental agency or person that wishes to support the agenda of railroad regulatory reform.

References:

1. “Staggers Rail Act”, *Wikipedia*, June 25, 2017.
2. “Rail Shipper’s Fairness Act 2017”, S. 1233 introduced to the Committee on Commerce, Science, and Transportation (Senate Floor), May 25, 2017 by Senator Tammy Baldwin (D-WI).
3. “90-Day Status Report (Regulatory Reform Task Force)”, *Interoffice Memorandum* from Rachel D. Campbell to Acting STB Chairman Ann Begeman, May 25, 2017.
4. “Railroads, NITL Clash Over Reciprocal Switching Proposal”, *Journal of Commerce*, March 24, 2014.
5. “Comparison of Canadian and United States Rail Economic Regulations”, *CPCS Final Report*, January 20, 2015.
6. “Class 1’s Release 4th Quarter and 2016 Annual Earnings”, *Smart- Union.org*, February, 2017.