

March 13, 2019

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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Re: STB *Ex parte* No. 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions

Dear Ms. Brown:

The organizations listed below strongly support a waiver of the Board's *ex parte* communication rules in this proceeding as requested by the American Forest & Paper Association ("AF&PA") and the Institute of Scrap Recycling Industries, Inc. ("ISRI"). In their Petition for Waiver, AF&PA and ISRI have asked the Board to authorize meetings between interested stakeholders and Board members, subject to certain disclosures and other procedures.

As members of the Rail Customer Coalition, our groups filed comments in EP 739 supporting proposals for modifying the Board's rules concerning *ex parte* communications in informal rulemaking proceedings. In those comments, we asked that the Board specifically permit the occurrence of *ex parte* meetings in EP 704. We continue to believe that permitting *ex parte* meetings would be extremely valuable as the Board considers the possible revocation of certain commodity and traffic type exemptions.

The Board has permitted *ex parte* meetings in other similarly-situated proceedings, including its competitive switching and performance data reporting proceedings.¹ The Board has previously waived its *ex parte* prohibition "so that the agency may develop a more complete record with regard to technical issues and move this proceeding forward in an expeditious manner." For similar reasons, the Board should also permit *ex parte* meetings in its proceeding regarding possible exemption revocations.²

¹ Reciprocal Switching, *Ex parte* No. 711, slip op. 27-28 (served July 27, 2016); United States Rail Service Issues—Performance Data Reporting, *Ex parte* No. 724 (Sub-No. 4), slip op at 2 (served Nov. 9, 2015).

² The Board also recently decided to allow *ex parte* meetings in future rulemaking proceedings subject to certain safeguards. See *Ex parte* No. 739, Ex parte Communications in Informal Rulemaking Proceedings (served Feb. 28, 2018). Although, the review of commodity exemptions was not included in that decision, the Board indicated that it could consider waiving its *ex parte* prohibition in pending proceedings on a case-by-case basis. *Ex parte* No. 739, slip op at 20.

More than two years have passed since the filing of comments in this proceeding and two of the three members are brand new to the Board. Permitting *ex parte* meetings would assist the new members in fully understanding the issues involved in this proceeding, and would facilitate the entire Board's ability to make an informed decision without additional delay. During *ex parte* meetings, Board members could hear directly from stakeholders about the effects of the exemptions at issue, ask follow-up questions, and obtain more detailed information. Such meetings would enable the Board to reach a prompt and thorough decision on the exemption revocations currently under review.

For these reasons, we respectfully request that the Board grant the Petition for Waiver and authorize stakeholders to meet with Board members about the important issues in this proceeding.

Respectfully submitted,

Spencer Pederson
700 2nd St NE
Washington, DC 20002
spencer_pederson@americanchemistry.com

Alliance of Automobile Manufacturers
Alliance for Rail Competition
American Chemistry Council
American Fuel and Petrochemical Manufacturers
American Malting Barley Association
American Petroleum Institute
The Chlorine Institute,
Corn Refiners Association
The Fertilizer Institute
Glass Packaging Institute
Independent Lubricant Manufacturers Association
International Warehouse Logistics Association
National Association of Chemical Distributors
Plastics Industry Association
Portland Cement Association
Private Railcar Food and Beverage Association