PRFBA

Private Railcar Food and Beverage Association

Subcommittee on Railroads, Pipelines, and Hazardous Materials

of the

House Transportation and Infrastructure Committee

Hearing:

"Stakeholder Views on Surface Transportation Board Reauthorization"

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Written Testimony of the

Private Railcar Food and Beverage Association

Submitted by

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INTRODUCTION

Chairs Peter DeFazio and Donald Payne, Ranking Members Sam Graves, and Rick Crawford, and Members of this Subcommittee, thank you for holding today's hearing, "*Stakeholder Views on Surface Transportation Board Reauthorization*," and for the opportunity to submit these written comments on behalf of the Private Railcar Food and Beverage Association (PRFBA).

I am Herman Haksteen, President of PRFBA. My aim this morning, is to shine a light on railroad performance, service, and financial burdens that are being passed on to PRFBA members, discuss how the Surface Transportation Board (STB or Board) are addressing these concerns, and make recommendations on what Congress can do to help stakeholders moving forward.

PRFBA is comprised of 18 global food and beverage companies and manufacturers headquartered in North America. All our members own or lease rail car equipment. These members include PepsiCo, Inc., Molson Coors Beverage Company, KraftHeinz Food Company, General Mills, Inc., McCain Foods USA, Inc, Sysco Corporation, Bonduelle America, Boardman Foods, Inc., G3 Enterprises, Inc., JD, Irving/Cavendish Farms, The Martin-Brower Corporation, Lamb Weston Holdings, Inc., Univar Solutions, Darigold, Inc., Kellogg Company, Land O' Lakes, Inc., National Sugar Marketing, LLC, and Leprino Foods. They are major rail shippers – some are captive – that rely on the railroads to distribute their food and beverage products that are vital to the health and welfare of our nation. These companies are responsible for feeding America. Without adequate rail service, their food and beverage products may not be available in all regions, at all times, and will carry a higher price to the end consumer.

PRFBA began in January 2016 because these companies were experiencing rail transportation challenges. PRFBA provided, and still provides, the forum for them to meet regularly to discuss opportunities and solutions to rail service issues. The membership collaborates with other aligned trade associations and stakeholders regarding industry changes, and proposed legislation and regulations that directly impact the food and beverage transportation needs of PRFBA members and the industry. Also, PRFBA meets with the Class I North American Railroads and the consumer group at the Surface Transportation Board where group discussions are held on rail service issues unique to its membership. PRFBA provides its members with a forum to work together to make rail work better within their supply chains.

PRFBA members 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 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.

It is important to note that PRFBA started **before** the implementation of Precision Scheduled Railroading (PSR). Many of the service and cost issues back then were being experienced due to a lack of railroad-to-railroad competition. But with PSR implementation – notably the reduction of workforce, serving yards, and switch days has resulted in PRFBA member companies dealing with the worst service and the highest rail costs in recent history. As Fortune 500 companies, PRFBA members are relying on their association to express their growing concerns and seek help from Congress and the Administration to get our railroads back on track.

LACK OF COMPETITION

When there is a lack of competition, notably in this case a lack of railroad-to-railroad competition, and especially at single served facilities (or captive shippers), the railroads are free to provide any service level at any costs. To improve railroad financials, the railroads are even reducing capacity by limiting equipment availability. When there is reduced capacity, rates increase, service suffers, and railroad margins rise. When there is a lack of competition in a free market economy, it is incumbent upon the government, in this case the Surface Transportation Board (STB or Board) per the ***Staggers Rail Act of 1980***, to intervene.

Today, there are only seven Class I railroads where four of them move 90 percent of our nation's rail freight. Of these four Class I rail carriers, two are predominately located in the east and 2 in the west. However, most customer locations served by these carriers are single carrier served locations. This is a far different market from when the ***Staggers Rail Act of 1980*** was enacted, when there were 40 Class I railroads. PRFBA member companies have been adversely impacted by the consolidation of the rail industry and their increasingly captive status in many locations.

The probability of further consolidation of the rail industry, where there are merger applications before the Board including a combination of two Class I railroads, inherently will bring on even more monopolistic, or, at best duopolistic behaviors within the railroad industry.

PRFBA members are not alone when it comes to the current issues of our remaining Class I carriers. The market is speaking and unfortunately more freight is moving from rail to truck, which is negatively impacting not only our supply chains, but our environment and infrastructure are paying a heavy price also.

The results of a shipper survey published by Morgan Stanley in January of 2022 suggests that over the past year (depending on the quarter), 30-40% of shippers surveyed were moving some or a significant portion of their freight volume from rail to truck.

Data published by the American Trucking Association (ATA) indicates that from 2017 to 2021 total truckload tonnage grew by 3.5 %, domestic air freight tonnage grew by 24.2% while rail tonnage declined by 5.1%

Interestingly, the Association of American Railroad's (AAR) own data, as presented on its website, shows a grimmer picture. Since the start of PSR in 2017, total carload traffic in the United States has shrunk by 11% when compared to 2021. Even when including intermodal traffic, 2021 rail volume was down 5% from 2017 as shown in the chart below:

Rail Volumes in Millions				
AAR numbers				
		Carload	Intermodal	Total
2017		13.5	14	27.5
2018		13.6	14.4	28.1
2019		12.9	13.7	26.7
2020		11.3	13.4	23.7
2021		12	14.1	26.1
Change 2017-2021		-1.5	0.1	-1.4
% Total Change		**-11.11%**	**0.71%**	**-5.09%**

Assuming that most of this traffic migrated to truck as the data would indicate, at a 3-1 conversion for carload traffic, this migration to truck has added 4.5 million truck load shipments onto our highways. This additional volume is wearing out our infrastructure faster and creating unnecessary additional greenhouse gases.

This does not match with the policy objectives of the Biden Administration and some Members of Congress as possibly one way to address climate change challenges and enhance safety on our nation's highways.

It is important to note, that the increase in truck volume only pertains to those limited number of shippers who can transport their products by truck. Many shippers, however, have significant barriers to shipping by truck (or even water/barge and air) due to numerous factors including commodity type, location, and infrastructure investments already made to support a rail supply chain. For shippers that can change to another mode(s), it is not easy to change transport options – each mode of transportation requires its own infrastructure and there are needs unique to each commodity. Shippers invest in their infrastructure to support freight rail transportation, based in large part, on what the rail carriers require to service those facilities or what service the railroads offer to provide via their sales and marketing efforts. When shippers make the difficult decision to change modes, it is often a last resort to meet an immediate customer need. These changes add huge costs resulting in higher prices for the end consumer.

The simple fact that freight rail volume is down, and truck volumes are up, helps illustrate that something is wrong with our freight rail network, and the additional shipping expenses can be contributing factors to our current inflation concerns.

When there is a lack of competition in the marketplace, combined with the railroads' exemption from most antitrust protections, it is incumbent upon the government – in this case the STB per the ***Staggers Rail Act of 1980*** – to instill competition. PRFBA asks Congress to consider these three areas, affected by a lack of competition, when developing the next STB authorization:

Maintenance, Service and Rates

Maintenance. It is expected that private car owners will incur maintenance costs. But due to the limited railroad-to-railroad competition, railroads are free to make decisions that increase their profits and pass costs back to railcar owners and shippers. PSR operational decisions which include longer trains and more gravity fed hump yards, increase the wear and tear on the rail cars.

Cryo Trans (a business I ran up until 2020) is the largest owner and lessor of food grade refrigerated and insulated food cars. Cryo Trans saw a 52% increase in car maintenance costs when comparing 2021 to 2017. During that same time, Cryo Trans also experienced a 330% increase in cars that were completely destroyed.

<u>Service</u>. A lack of railroad-to-railroad competition and profit driven decisions also impacts service. Some PRFBA member companies are experiencing record poor service levels ranging from missed switches, reduced switching service days, bunching caused by longer trains, bottlenecks primarily driven from a reduction of serving yards and crews to the reduction of cars and locomotives, which all have led to longer transit times and irregular service.

Longer transit time reduces the utilization of rail cars. For operators of private cars, this results in a significant financial hit. Depending on the car type, this expense ranges from $50 to $300, per day, per car. For a shipper with 250-cars, this can add $75,000 per day to that shipper's operating budget.

Reduced service days has resulted in shippers having to acquire their own switching equipment (track-mobiles) to reduce the impact on operations. The capital required to acquire track-mobiles is significant as is the training costs associated with the operations of this equipment.

Current service levels have strongly impacted On-Time Performance (OTP). One PRFBA member manually tracks the Class I OTP of the five Class I railroads providing it service throughout the United States. OTP is based on the railroads ability to deliver a car "door-to-door" within a day of the service schedule the railroads had previously agreed to. These results speak for themselves in the following chart:

	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average
Rail	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021
BNSF	83.4%	68.3%	57.2%	85.0%	89.5%	83.7%	96.0%	100.0%	65.0%	75.0%	88.0%	55.0%	78.8%
UP	69.3%	61.3%	83.3%	85.4%	81.2%	83.1%	67.1%	78.0%	67.0%	62.0%	60.0%	56.0%	71.1%
NS	37.9%	41.4%	67.4%	74.2%	52.6%	76.6%	68.3%	95.0%	75.0%	67.0%	56.0%	50.0%	63.5%
CSX	50.4%	65.1%	47.6%	84.3%	58.0%	84.2%	81.2%	23.0%	63.0%	49.0%	33.0%	25.0%	55.3%
CN	100.0%	56.0%	92.0%	91.0%	75.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	92.8%

Service in the way of OTP is mostly experienced or "felt" by shippers at the first mile or last mile (FMLM) segments of a freight rail movement. The railroads, however, are not required to report this data to the Board. (The STB does, however, require in Docket No. EP 724 (Sub-No. 4) *United States Rail Service Issues—Performance Data Reporting*, FMLM for unit trains and intermodal service only.) In 2020, PRFBA joined with several other aligned shipper groups in requesting that the Class I railroads provide, in the aggregate, to the Board FMLM data.

Considering the STB has jurisdiction to provide oversight of these segments of the journey, it is nearly impossible for it to do so because without this data, the Board simply does not know "what it does not know":

- No complete picture of the overall functioning of the rail network that shippers need for planning and operational purposes.

- No assessment of whether any service problems are specific to them or more generally, whether they are being singled out for any service problems, and whether general service is improving, deteriorating, or remaining stable.
- No determination if railroads are properly executing their common carrier obligation.

PRFBA is pleased that the Board is beginning to consider requiring the reporting of FMLM data in EP Docket No. 767, *FIRST MILE/LAST MILE SERVICE.* It would be helpful if Congress would encourage the Board to reach a final decision on this as quickly as possible requiring the collection of FMLM data by the Class I railroads, in the aggregate.

In a second effort, the Board is considering revising its decades-old reciprocal or competitive switching rules, requirements, and processes, in EP Docket No. 711 (Sub.-1), *Reciprocal Switching*. It has been decades since the STB has granted a reciprocal switching request because it is nearly impossible for a shipper to meet the current requirements. Due to railroads' effective stalling tactics, this proceeding has stalled for about a decade, or stalled for 40 years if you consider that the ***Staggers Rail Act of 1980*** provided for competitive switching.

The Board proposal would allow PRFBA members and other shippers with access to only a single rail carrier to request before the Board that the carrier provide a switch for freight to be moved by a nearby rail carrier. This proposal would provide two paths for shippers to use when making the request before the Board: 1) switching must be practicable and in the public interest or 2) be necessary to provide competitive rail service.

It would be helpful for Congress to urge the Board to reach a decision on its reciprocal switching proposal as expeditiously as possible. Shippers who meet the proposed criteria should have this option in seeking competitive service and rates.

Rates and associated rail costs. It is inherent that when there is a lack of competition, rates and passed down costs increase especially for captive shippers.

Railroads, particularly when not encumbered by competition, can add demurrage fees and accessorial charges freely, further increasing the total cost of using rail. Several years ago, PRFBA's members participated in STB's proceedings regarding demurrage and accessorial charges. Shippers, including PRFBA members, were dealing with the railroads using demurrage charges, not as a method to incentivize customers to become more efficient or meet their performance expectations, but rather, raising fines and fees against shippers, imposing impossible-to-follow rules, and sending auto-invoicing fines without the railroads investigating if shippers were at fault. The amount of revenues being generated by the railroads was excessive to the point where some argued demurrage and accessorial charges were being used as revenue generators for the railroads rather than incentivizing shippers' behavior. Again, the lack of railroad-to-railroad competition, combined with PSR operating decisions that are made with little to no communication with the shippers, fosters this type of railroad behavior.

PRFBA appreciates the decisions the Board reached when issuing its 1) Final Statement of Board Policy in Docket No. EP 757, *Policy Statement on Demurrage and Accessorial Rules and Charges; 2)* Final Rule in Docket No. EP 759, *Demurrage Billing Requirements; and 3) Final Rule in the* Supplemental Notice of Proposed Rulemaking (SNPR) in Docket No. EP 759, *Demurrage Billing Requirements.* These new billing requirements went into effect on October 1, 2021. Shippers have been receiving and reviewing these new bills. While the railroads are providing the required new billing information, there are several problems which need Congressional, targeted fixes and accompanying policy modifications:

- Clarify that demurrage bills are to be sent to the shippers when railroads demonstrate that the shippers' behavior was the driver of the demurrage and not railroad service problems.

- Provide 30 days for shippers to pay demurrage bills. The 15 days allowed today by some railroads does not provide enough time for shippers to contest, research, and negotiate with railroads over questionable fees especially when the bills may be months old.

- Increase the number of "free days" allowed to unload and load rail cars and unit trains. This fix ties into the PSR practices discussed earlier. Due to reduced train crews, elimination of hump yards, increasing train lengths, and the lack of fluidity in the rail network, cars tend to get "bunched-up" at pivotal points along the route. As an example, a PRFBA member can receive, without advanced notice or even coordination from the railroads, 15 cars rather than 5 cars. It takes additional equipment and crews (which are not always readily available) for the PRFBA member to load, unload and turn around the rail cars where the typical 48 hours for loading and 72 hours for unloading is not nearly enough time before demurrage fees kick-in especially when the need for shippers to have more time is because of the railroads' poor service.

- Consider reverse demurrage, in that the railroads will pay the private car owners a daily fee when those private rail assets are held up due to railroad operating issues or allow charge backs to the railroads for daily car hire fees to offset the cost of additional transit days experienced by car owners.

These problems again correspond to the need for the Board to require the Class I railroads to provide FMLM data, in the aggregate, to the STB as PRFBA and other shippers have requested and as the Board is considering.

RAILROADS ARE FINANCIALLY STRONG

The ***Staggers Rail Act of 1980*** had two primary objectives: instill competition and stabilize the financial health of the railroads. As discussed above, the first has yet to be accomplished – competition has not only deteriorated but it continues to weaken. When looking at the second objective, it has been met – the railroads and their shareholders are enjoying significantly strong financial health because of a lack of railroad-to-railroad competition and PSR.

Under PSR, the railroads have sought to improve their operating ratios by reducing capital expenditures and lowering overhead costs. The improved operating ratios also have resulted in high returns spurring an excess in capital, which the railroads have distributed through repeated dividend increases to their stockholders, and via sizeable stock buybacks. Rather than investing in their networks to improve service or reduce rates, the railroads are reducing capacity and focusing on rewarding their investors.

One measure of the financial health of a Class I rail carrier is the Board's annual determination of "revenue adequacy." The Board's website provides information on the number of Class I carriers that have been deemed "revenue adequate" from 2000 through 2020 where there is a trend of a growing number of Class I railroads not only achieving "revenue adequacy" but maintaining it.

For 2020, the most current year for which determinations are available, six railroads were deemed "revenue adequate: BNSF, CSX, Grand Trunk Corp., KCS, Soo Line, and UP. Kansas City Southern has been acquired by a Canadian Pacific Railway and at a massive premium.

A second measure of the financial health of the railroad industry is noted with their respective publicly available quarterly earnings reports. Per information pulled from the Class I's respective website, the following chart illustrates the financial strength of the railroads despite the reductions in railcar volume, while at the same time, driven by Wall Street, the railroads are increasing their profits every year.

4th QTR 2021 Year-to-Year Percentage Change of Class 1 Railroads

Publicly available Financial Results

			BNSF	CSX	NS	UP	KCS	CN	CP	Average
Volume in Carloads			-3.10%	-1.80%	-3.60%	-3.90%	-0.30%	-10.00%	-9.90%	-4.40%
Total Revenue			10.70%	21.30%	10.80%	11.50%	7.80%	2.70%	1.40%	11.30%
Revenue per Carload			13.00%	13.00%	15.00%	14.70%	7.10%	13.60%	12.50%	12.70%
Operation Ratios			61.30%	57.60%	60.40%	57.40%	60.10%	57.90%	57.50%	59.00%

COMMON CARRIER OBLIGATION

Railroads are conveniently using the "common carrier obligation" to "get away with" poor service and high rates mainly because there is: 1) no clear definition of the "common carrier obligation;" 2) no standard for which to measure it by; or 3) no meaningful consequence to the railroads if the obligations are not met. As such, PRFBA asks Congress to clarify via statute, the definition of "common carrier obligation."

In theory, it means that railroads are to provide service on reasonable request -- railroads are to provide a level a service that meets a shipper's reasonable needs. Considering there is no clear statutory definition, railroads have been able and continue to provide service that is poor even though asserting that they are meeting the "common carrier obligation." The railroads have been prioritizing what commodities to serve while "demarketing" others and still claiming they are meeting the "common carrier obligation."

Along with a statutory definition clarification, it would be helpful for Congress to direct the STB to develop a standard by which railroad service performance can be measured. This ties in to how important it is that the Board is beginning to consider requiring the Class Is to report, in the aggregate, FMLM data. PRFBA appreciates, to a point, that the Board would need some flexibility in applying a statutorily clarified definition with a standard that includes not just FMLM data, but other elements for meeting the common carrier obligation which might vary from one railroad to another and from one shipper to another. As such, the STB should be encouraged to also review and evaluate the extent to which railroad operating, financial, investment, marketing, and other business practices may be impairing the ability of and incentives for railroads to fulfill their common carrier obligations, in the aggregate, and provide adequate and economical service to their customers.

STB already has the statutory authority to impose fines or penalties. PRFBA suggests Congress should expand the situations when the Board can assess fines or penalties that would allow shippers to recover appropriate damages to the extent the Board finds that railroads are not fulfilling their common carrier obligations, in the aggregate, as well as individually and are not providing adequate and economical service to their customers.

In addition, the Board, under current statutory authority, can assess a penalty up to $8,700 per violation. This is far from consequential or punitive. Congress needs to consider establishing a higher penalty amount(s) and allowing the STB to apply a penalty to each carload and/or each day a carload is delayed. Another option for Congress to consider is to statutorily provide larger penalties tied to the overall level of service. This might have to be applied to both contract movements and movements that fall to the jurisdiction of the STB for if not, the railroads might use contracts to avoid their common carrier obligation.

NEW AUTHORIZATION

PRFBA supports a multi-year authorization and at the highest authorization and appropriation funding levels possible. Our nation relies on a strong, vibrant freight rail industry – which includes the railroads, shippers, receivers, and other stakeholders – to bring food products to our homes and business in a cost-effective and reliable manner.

Along with the PRFBA recommendations discussed in this written testimony, PRFBA also encourages you to consider the results, once released, of the study underway on the impacts of PSR being conducted by the General Accountability Office (GAO). PRFBA sincerely thanks you, Chair DeFazio, and you, Chair Payne, for requesting the GAO conduct this study last Spring in preparation for the new authorization.

CONCLUSION

Thank you for holding this important hearing. On behalf of PRFBA, we are asking for Congress to take further steps that will provide the STB with the necessary authority – either clarifying existing authority or granting new authority – to provide effective oversight of the freight rail industry in today's environment, to further help the STB streamline its processes so it can act faster to provide our shippers with a fair marketplace. I am more than happy to answer any questions you might have.