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PETITION FOR RULEMAKING—
AMENDMENTS TO REGULATIONS GOVERNING
EX PARTE COMMUNICATIONS

DOCKET NO. EP 782

PETITION FOR RULEMAKING

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INTRODUCTION

The Association of American Railroads (“AAR”) respectfully files this petition pursuant to 49 C.F.R. § 1110.2(b) to request the Surface Transportation Board (“Board” or “STB”) open a deregulatory proceeding to revise its rules governing ex parte communications at 49 C.F.R. Part 1102. The Board has an opportunity to revise its regulations in a way that will improve stakeholder engagement and make it easier for the agency to process matters efficiently while maintaining transparency and fairness. The petition is timely given the announcement that Vice Chairman Schultz will hold a series of listening sessions with practitioners on ways to improve agency effectiveness and efficiency. The proposed reforms to the ex parte communications rules are designed with that shared goal in mind, namely “to streamline the Board’s processes and procedures that affect litigants and parties appearing before the agency.”¹

For decades the Board operated under a set of strict rules adopted in the 1960s and 1970s that barred most communications with the public related to any agency proceeding. In 2018, the Board correctly recognized that the prohibition of such communications in informal rulemakings was not consistent with current best practices for administrative agencies and relaxed its regulations. Following several years of experience working under these revised procedures, the Board should now consider making further modifications to its rules governing ex parte communications.

¹ Press Release, “Vice Chairman Michelle Schultz to Hold Listening Sessions on Legal Processes and Proc.,” (May 1, 2025), available at: <https://www.stb.gov/news-communications/latest-news/pr-25-16/>.

Specifically, the Board should make clear that certain forms of communication, such as communications about procedural matters or communications in uncontested proceedings in which there is only one party, are not ex parte communications. The Board should also clarify certain categories of permissible communications subject to disclosure, such as communications under 49 U.S.C. § 11324(f). And the Board should expand the time frame for ex parte communications in informal rulemakings and make it easier for stakeholders in informal rulemakings to engage with staff on technical issues.

The modifications proposed herein are intended to remove unnecessarily strict regulations that make it harder for the agency and stakeholders to effectively communicate. AAR believes that these modifications strike an appropriate balance of encouraging administrative efficiency while preserving procedural fairness and transparency. They are also consistent with the practices of other regulatory agencies. Modernizing the Board's regulations will promote better informed decision-making. It will also promote efficient and timely decision-making, and is therefore consistent with the rail transportation policy's objective of providing for the expeditious handling and resolution of proceedings. *See* 49 U.S.C. § 10101(15).

BACKGROUND

I. Identity and Interest of the Petitioner

As the Board well knows, AAR's freight railroad members include the six Class I's, as well as scores of short line and regional railroads. Together, they account for the vast majority of freight rail mileage, employees, and traffic in the U.S. Along with their Mexican and Canadian counterparts, U.S. railroads provide the world's best freight rail service. AAR and its members appear before the Board on a host of economic regulatory matters, for which enhanced ex parte communications will serve to streamline Board procedures leading to more efficient processes.

II. History of the Agency's Rules Governing Ex Parte Communications.

In 1962, the Administrative Conference of the United States ("ACUS") issued Recommendation No. 16 encouraging agencies to promulgate a "code of behavior governing ex parte contacts between persons outside and persons inside the agency."² In response to the ACUS recommendation, the Interstate Commerce Commission ("ICC") adopted a rule in 1963 barring ex parte communications concerning the merits of "any on-the-record proceeding" before the agency.³ The ICC defined an "on-the-record proceeding" to include any proceeding required by the Constitution, statute, or agency rule or order "to be decided solely upon the

² Administrative Conference of the U.S., Report of the Comm. on Internal Org. and Proc. on Recommendations for the Prohibition of Ex Parte Commc'ns Between Persons Inside and Persons Outside the Agency 169 (June 13, 1962) (Recommendation No. 16).

³ 28 Fed. Reg. 7095 (July 11, 1963) (codified at 49 C.F.R. § 1.4(e) and Appendix C).

record made in a Commission hearing.”⁴ The rule exempted three limited classes of communications from the bar.⁵

In the 1970s, the ICC undertook a substantial review and revision of its Rules of Practice “to clarify and simplify [the] existing rules and make more efficient the procedures employed in proceedings.”⁶ The ICC proposed changes to bring the rule governing ex parte communications into conformity with 5 U.S.C. § 557(d)(1)(A), which prohibits ex parte communications in formal agency proceedings where a hearing on the record is required by law.⁷ The ICC also clarified that the prohibition on ex parte communications extended to informal rulemaking proceedings.⁸

In 1982, the ICC revised and redesignated its procedural regulations, including revising and recodifying its ex parte communications rules at 49 C.F.R. Part 1102.⁹ The ICC reinserted “concerning the merits” to the definition of ex parte communications in response to commenter suggestions that the agency adopt a “specific provision authorizing the making of [ex parte] communications not related to the merits.”¹⁰

For the next several decades, the agency made only minor, non-substantive changes to those rules.¹¹

⁴ *Id.* at 7096 (49 C.F.R. Part 1, App’x C at 3(b)).

⁵ *Id.* (49 C.F.R. Part 1, App’x C at 3(c)(1)–(3)).

⁶ *Revised Rules of Practice*, 358 I.C.C. 189 (1977) (final rule).

⁷ *Revised Rules of Practice*, 41 Fed. Reg. 49282, 49425 (Nov. 8, 1976) (notice of proposed rulemaking).

⁸ *See Revised Rules of Practice*, 358 I.C.C. 323, 345 (1977) (interim report); *Revised Rules of Practice*, 41 Fed. Reg. at 49425.

⁹ *Revision and Redesignation of the Rules of Practice*, 47 Fed. Reg. 49534 (Nov. 1, 1982).

¹⁰ *Id.* at 49535.

¹¹ *Improving Regul. and Regul. Review*, Docket No. EP 712 (STB served Feb. 18, 2016) (eliminating references to agency positions that no longer existed); *Removal of Delegations of Auth. to Sec’y*, Docket No. EP 685 (STB served

In fact, the Board’s only substantive revision since 1982 to the rules governing ex parte communications occurred in 2018, when the agency loosened the prohibition for informal rulemakings.¹² This revision was driven in part by guidance to administrative agencies from the ACUS recommending that “a general prohibition on ex parte communications in informal rulemaking proceedings is neither required nor advisable.”¹³

The 2018 amendments permitted ex parte communications in informal rulemaking proceedings after issuance of a notice of proposed rulemaking and up until 20 days before the deadline for written reply comments.¹⁴ Each such ex parte meeting must be disclosed in the public docket via a written meeting summary of the participants, the date and time, and “the arguments, information, and data presented at each meeting and a copy of any handouts given or presented.”¹⁵ Presenting parties must submit written summaries within two business days of the ex parte communications and those summaries are posted within five days of submission.¹⁶ The Board modified the rules to define “communications related to an informal

Oct. 15, 2009) (revisions transferring responsibility for publicly docketing ex parte communications from the Secretary to the Chief, Section of Administration); *Reguls. Governing Conduct of Interstate Com. Comm’n Emps.*, 58 Fed. Reg. 42026, 42027 (Aug. 6, 1993) (revisions to clarify that the agency’s Designated Agency Ethics Official, rather than the General Counsel, is responsible for “providing rulings to ICC staff on matters concerning ex parte communications.”).

¹² See *Ex Parte Commc’ns In Informal Rulemaking Proc.*, Docket No. EP 739 (STB served Feb. 28, 2018); 83 Fed. Reg. 9222 (Mar. 5, 2018).

¹³ *Ex Parte Commc’ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 3 (citing *Ex Parte Commc’ns in Informal Rulemaking Proc. (2014 ACUS Recommendation)*, 79 Fed. Reg. 35,988, 35,994 (June 25, 2014)).

¹⁴ *Id.* at 11; see *id.* at 5 (defining “Informal rulemaking proceeding” in § 1102.2(a) to include “any proceeding to issue, amend, or repeal rules pursuant to 49 C.F.R. part 1110 and 5 U.S.C. § 553”).

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 20, 26 (requirements set forth in § 1102.2(g)(4)).

rulemaking proceeding prior to the issuance of an NPRM” as permissible ex parte communications not subject to the disclosure requirements.¹⁷

ARGUMENT

AAR recommends the Board revise the regulations governing ex parte communications as described below.

I. The Board Should Clarify Certain Categories of Permissible Communications.

The Board should revise its regulations to expressly add certain categories of permissible communications to provide clarity to the public and the Board.

First, the Board should add language to clarify that the ban on ex parte communications does not prohibit communications occurring in any proceeding regarding routine, procedural matters. While the Board affirmed this “generally understood concept” in 2018,¹⁸ it did not make changes to its regulations. In practice, the Board has been reluctant or unwilling to engage with parties to a proceeding on such non-substantive matters. Providing explicit direction in the regulations that such communications are permissible will provide clear guideposts to all stakeholders. Indeed, other agencies have promulgated regulations explicitly stating that these types of communications are permissible.¹⁹

Second, and relatedly, the Board should consider revising its regulations to explicitly provide that certain types of clarifying communications with staff are permissible. For example,

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 6 (highlighting “communications about purely procedural issues” or “communications that solely concern the status of a proceeding” as examples of “permissible communications”).

¹⁹ *See, e.g.*, 47 C.F.R. § 1.1202 (excluding from the Federal Communication Commission’s term “presentation” certain categories of communications); 18 C.F.R. § 385.2201(5)(i)-(iii) (defining “relevant to the merits” in FERC’s regulations as excluding certain categories of communications).

the Board has in several recent cases issued orders requesting specific and technical supplemental evidence. There is currently no explicit mechanism for parties to ask clarifying questions about such orders absent formal written filings and motions. Similarly, if Board staff has clarifying questions about technical evidence submitted by parties in the record, those have historically been addressed through written decisions and responsive filings, which unnecessarily expend time and resources. The Board could provide that such communications are permissible subject to the disclosure requirements in § 1102.2(g)(4) that have been employed in the informal rulemaking context for several years now. The FCC, for example, provides that communications about the clarification or adduction of evidence are exempt from their regulations subject to certain limitations, with clarifying information requests resulting in any new information subject to the permit-but-disclose requirements. *See, e.g.*, 47 C.F.R. § 1.1204(a)(10) (addressing presentations requested by the Commission or staff for the clarification or adduction of evidence). The Board should consider revising its rules to clarify that communications with Board staff concerning submitted evidence and compliance with orders seeking additional information are permissible, subject to the disclosure requirements in § 1102.2(g)(4).

Third, the regulations should clarify that communications are permissible in proceedings where there is only one party. As the ACUS explained in Recommendation No. 16, “there c[an] be no ex parte communications . . . in a proceeding in which there is only a single private party[.]”²⁰ While the Board appears to observe this practice in notice of exemption

²⁰ ACUS, Recommendation No. 16 at 177.

proceedings,²¹ the Board does not appear to have extended this practice to other types of uncontested proceedings with only one party, such as petitions for exemption or petitions for declaratory order.²² Revising § 1102.2(b) to explicitly permit communications in uncontested proceedings where there is only one “party,” as that term is defined in 49 C.F.R. § 1101.2(d), would provide much needed clarity and would be in line with other agencies.

For example, the Federal Energy Regulatory Commission’s (“FERC’s”) regulations require that a proceeding be “contested” before any ex parte rules attach, which the agency defines to include (among other things) proceedings where no intervenor or party “disputes any material issue.”²³ The requirement that a proceeding be contested “reflects the notion that procedural requirements and constraints originally developed to preserve the rights of parties in an adjudication have no place in an administrative proceeding in which there is no ‘contest’ comparable to the controversy in a judicial case.”²⁴ Communications between filers and FERC are thus permitted “until such time as a protest or intervention in opposition to an application has been filed.”²⁵

²¹ For example, Board staff occasionally contacts the filer for additional information or to seek clarification in notice of exemption proceedings where only one party has entered an appearance. *See, e.g., Macquarie Infrastructure Partners V GP, LLC, et al.—Control Exemption—Hondo Railway, LLC*, Docket No. FD 36802 (filed Sep. 11, 2024); *Seminole Gulf Ry.—Exempt Abandonment—In Sarasota Cnty., Fla.*, Docket No. AB 400 (Sub-No. 6X) (filed Oct. 26, 2017).

²² *Cf.* 49 C.F.R. § 1.1206(a)(3) (identifying a declaratory ruling proceeding as a permit-but-disclose proceeding, but nonetheless subject to Note 3).

²³ 18 C.F.R. § 385.2201(c)(1)(i)–(ii).

²⁴ *Reguls. Governing Off-the-Record Commc’ns*, Fed. Energy Regul. Comm’n, 63 Fed. Reg. 51312, 51314 (Sept. 25, 1998); *see* 18 C.F.R. § 385.2201(b) (prohibiting ex parte communications “in any contested on-the-record proceeding”).

²⁵ 63 Fed. Reg. at 51314.

Similarly, before the Federal Communications Commission (“FCC”), in both “restricted proceedings” and “permit-but-disclose” proceedings, the regulations make clear that in a proceeding involving only one “party” as defined in the agency’s regulations, “the party and the Commission may freely make presentations to each other” and need not comply with the disclosure requirements.²⁶

Finally, the Board should clarify that communications in transactions involving Class I railroads are permissible, subject to disclosure, pursuant to 49 U.S.C. § 11324(f). AAR has previously recommended that the Board clarify that permissible communications include those permitted by statute, including specifically § 11324(f).²⁷ Congress enacted this “express authorization” in ICCTA and left whether to entertain ex parte communications in any given proceeding up to the Board’s discretion.²⁸ Notwithstanding this statutory provision and the flexibility to decline ex parte communications, the STB adopted a blanket prohibition on “ex parte communications in railroad merger proceedings” in *Fieldston*.²⁹

This blanket prohibition, despite Congressional authorization, was partially premised on an efficiency justification that is no longer valid. In *Fieldston* the Board expressed concern that entertaining ex parte communications would “burden” the agency with “reducing any oral communication to writing and placing it in the public docket.”³⁰ But for nearly seven years now

²⁶ 47 C.F.R. § 1.1206(a), Note 3 to paragraph (a); 47 C.F.R. § 1.1208, Note 1.

²⁷ AAR Comments, *Ex Parte Commc’ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 7 (filed Nov. 1, 2017).

²⁸ H.R. Rep. No. 104-422, at 191 (Dec. 18, 1995) (conf. rep.) (describing the “principal procedure change” to § 11324 in the ICC Termination Act of 1995); 49 U.S.C. § 11324(f)(4).

²⁹ *Petition of Fieldston Co., Inc. to Establish Procedures Regarding Ex Parte Commc’ns in R.R. Merger Proceedings*, Docket No. EP 619, at 2 (STB served Dec. 31, 1996).

³⁰ *Id.* at 2.

since Ex Parte 739, the Board’s regulations governing ex parte communications in informal rulemaking proceedings require participating stakeholders to draft and submit a memorandum summarizing the date, time, attendees, data, and arguments presented and discussed during the ex parte communication.³¹ The Board reviews and posts these summaries in the public docket.³² This process works well, minimizes the use of agency resources, and is employed by other agencies.³³

The Board was also concerned that entertaining ex parte communications would impede the Board’s ability to “issue decisions promptly” by adhering to a “strict timetable” and procedural schedule.³⁴ But the Board retains discretion to decline “to engage in any ex parte communication with any person” or to only employ them where they would be useful for efficient and timely decision-making. Indeed, the Board should not restrict itself from using a tool that could in some circumstances expedite proceedings. The procedural safeguards employed by the Board at 49 C.F.R. § 1102.2(g)(4) to “preserve fairness and transparency”³⁵ can be employed just as effectively in proceedings under 49 U.S.C. § 11324 as in informal rulemaking proceedings.³⁶

³¹ 49 C.F.R. § 1102.2(g)(4)(i).

³² *Id.* § 1102.2(g)(4)(ii), (vi).

³³ *See, e.g.*, 18 C.F.R. § 385.2201(g)(1) (FERC regulations require submission to the agency of any “document, or a summary of the substance of any oral communication,” for filing in the public docket).

³⁴ *Fieldston*, Docket No. EP 619, at 2.

³⁵ *Ex Parte Commc’ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 13; *see also* 63 Fed. Reg. at 51319 (FERC concluding that public disclosure of the substance of ex parte communications is “consistent” with “due process principles” relating to “the actual and apparent integrity of the administrative processes”).

³⁶ The Board also asserted that judicial review would be “greatly complicated” by allowing communications subject to disclosure, though it cited no factual or legal support for that assumption. *Fieldston*, Docket No. EP 619, at 3. Other agencies have concluded that public disclosure of the substance of ex parte communications is “consistent” with “the creation of an agency decision-making record capable of judicial review.” *See, e.g.*, 63 Fed.

II. The Board Should Expand the Use of Ex Parte Communications in Informal Rulemakings by Enhancing the Role of Agency Staff and Extending the Deadline for Such Communications.

The Board's 2018 rule made significant changes to the Board's rules on ex parte communications in informal rulemakings. Having operated under these regulations for nearly seven years, AAR believes that certain additional modifications would be beneficial.

First, the current rule restricts permissible ex parte communications in informal rulemaking proceedings to "Board Members" and any Board staff invited by the Board Member to be present.³⁷ For ex parte meetings to occur solely with staff, the Board would need to "delegate its participation in such ex parte communications to Board staff."³⁸ By contrast, at other agencies, agency personnel are authorized to engage in ex parte communications in informal rulemaking proceedings.³⁹

The Board should not require a delegation for agency staff to communicate with the public in informal rulemakings, so long as those communications are subject to the disclosure procedures in Part 1102. AAR raised a concern that this requirement was unnecessarily formalistic in 2017, and indeed, since adoption of the 2018 rule, such a delegation has not occurred.⁴⁰

Reg. at 51319 (FERC).

³⁷ 49 C.F.R. § 1102.2(g)(1); *see Ex Parte Commc'ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 19 ("The Board clarifies here that, under the proposal, no delegation would be required for Board staff to attend ex parte meetings scheduled with a Board Member (at that Member's request).").

³⁸ 49 C.F.R. § 1102.2(g)(1).

³⁹ *See, e.g.*, 49 C.F.R. § 5.5(a) (permitting DOT personnel to "have meetings or other contacts with interested members of the public concerning an informal rulemaking" subject to disclosure requirements); *Letters of Credit for Recipients of High-Cost Competitive Bidding Support*, WC Docket No. 10-90, Notice of Ex Parte Presentation (FCC filed Nov. 20, 2024) (ex parte notice regarding meeting with FCC staff on pending notice of proposed rulemaking following the submission of comments and reply comments).

⁴⁰ AAR Comments, *Ex Parte Commc'ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 7 (filed Nov. 1, 2017).

Requiring a formal delegation is unnecessarily time-consuming and inhibits potentially useful communications. Board staff often have particular expertise in technical, economic, or reporting issues, and enabling communications on these types of matters would promote efficiency and ultimately, better decision making. The Board should revise § 1102.2(g)(1) to authorize ex parte communications between the public and Board staff subject to the same requirements that govern communications with Board Members.

Second, the Board should expand the timeframe in which it allows ex parte meetings subject to public disclosure. The Board’s current regulations permit “ex parte communications with Board Members in informal rulemaking proceedings” from the day the notice of proposed rulemaking is issued “until 20 days before the deadline for reply comments” as established by the Board.⁴¹ This process theoretically provides interested persons and the Board sufficient time to engage in ex parte meetings. However, in practice, ex parte meetings have generally occurred in the short period of time after opening comments are submitted and before the cutoff 20 days before replies are due. And because the reply period is often relatively short (30 days or less), the schedule for such meetings is frequently compressed.⁴² Indeed, in at least one recent informal rulemaking proceeding, the procedural schedule outright foreclosed ex parte meetings after opening statements were submitted because the reply period was just 14 days.⁴³

⁴¹ 49 C.F.R. § 1102.2(g)(1); *see id.* § 1102.2(g)(4) (disclosure requirements).

⁴² *See, e.g., Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 1 (STB served Sept. 7, 2023) (establishing an initial schedule of 46 days for opening comments and 29 days for replies); *Revisions to Reguls. For Expedited Relief for Service Emergencies*, Docket No. EP 762, at 1 (STB served Apr. 22, 2022) (establishing an initial schedule of 31 days for opening comments and 14 days for replies).

⁴³ *Revisions to Reguls. For Expedited Relief for Service Emergencies*, Docket No. EP 762, at 1.

When the reply period does afford time for ex parte meetings following opening comments, the compressed schedule taxes both stakeholders and the agency. For example, in the recent rulemaking in Docket No. EP 711 (Sub-No. 2), the agency ultimately held 34 meetings in a 28-day period.

In 2017, when commenting on the Board's proposed modifications to the ex parte rules, the National Grain and Feed Association ("NGFA") "recommend[ed] strongly" that the Board extend the cut-off date because "its strict application could result in the Board missing out on valuable input from stakeholders after the opening round of comments on a proposed rule, as they formulate their responses in reply comments to the submissions of other parties."⁴⁴ NGFA also noted that "the Board itself may have more insightful and relevant questions once reviewing the opening comments thoroughly."⁴⁵ Likewise, the Rail Customer Coalition ("RCC") argued that this cut-off would both impact the ability of parties to participate in ex parte meetings and also diminish the value of ex parte communications for both parties and the Board.⁴⁶ AAR also supported a modification that would allow communications after the submission of the last round of comments.⁴⁷

The Board itself has found it necessary to waive this requirement in the past. For example, in *Final Offer Rate Review*, the Board recognized that ex parte discussions after reply

⁴⁴ NGFA Opening Comments, *Ex Parte Commc'ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 4 (filed Nov. 1, 2017).

⁴⁵ *Id.*

⁴⁶ RCC Joint Opening Comments, *Ex Parte Commc'ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 4–6 (filed Nov. 1, 2017).

⁴⁷ AAR Reply Comments, *Ex Parte Commc'ns In Informal Rulemaking Proc.*, Docket No. EP 739, at 4 (filed Nov. 16, 2017).

comments were “warranted to ensure the Board understands” stakeholder comments addressed to the mechanics of a rule and the “principles and evidence” that may be relevant in a proceeding under the proposed rules if adopted.⁴⁸ To hold these discussions, the Board waived its regulations “to permit post-comment period ex parte discussions with stakeholders” for a defined period of 45 days and afforded parties “20 business days from the close of the ex parte communication period to submit written comments in response to the [disclosure] memoranda and other submitted materials.”⁴⁹

In short, the Board’s current ex parte regulations make it difficult for parties and the agency to effectively discuss ideas that might have been raised in another party’s opening comments. And the regulations render it utterly impossible to discuss arguments or evidence presented in reply comments absent a Board order in a particular proceeding extending the time for ex parte meetings. Issues can and do arise in reply comments for which public engagement could be beneficial, especially in rulemakings in which technical data is sought or submitted. The current policy of prohibiting communications after the cutoff of 20 days before replies are due—even if such communications are publicly disclosed—inhibits discussions on all of the issues in the record, which could clarify evidence and arguments presented and facilitate a more informed decision-making process.

AAR suggests the Board remove its bar on ex parte communications within 20 days of reply comments, and instead allow such communications for a prescribed period of time after

⁴⁸ *Final Offer Rate Review*, Docket No. EP 755, at 1–2 (STB served May 15, 2020 (waiving the “general prohibition on ex parte communications to permit post-comment period ex parte discussions with stakeholders”).

⁴⁹ *See, e.g., Id.* at 1, 3.

reply comments are filed. This revision would not obligate the Board to hold ex parte meetings, but would provide it with flexibility in future proceedings and would avoid the need to issue decisions waiving its regulations on a case-by-case basis. Further, this revision would be in line with the approach used by other federal agencies.⁵⁰ Implementing this proposed extension of the ex parte period together with public disclosure by summary and a modest opportunity to submit written comments in response to those summaries is sufficient to balance the importance of allowing engagement on issues raised on reply without unreasonably extending informal rulemaking proceedings.

CONCLUSION

For the foregoing reasons, the Board should open a proceeding to remove unnecessarily strict regulations governing ex parte communications.

Respectfully submitted,



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⁵⁰ See, e.g., 49 C.F.R. § 5.5(a)(1)–(5) (procedures governing informal rulemakings of the Department of Transportation and its operating administrations permit ex parte communications with members of the public “at any stage of the rulemaking process,” including “after the close of the comment period,” so long as the substance of such communications is “adequately disclosed and described in the public rulemaking docket such that all interested persons have notice of the information and an opportunity to comment on its accuracy and relevance”).