



Freight Rail
Customer Alliance

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June 5, 2025

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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 Freight Rail Customer Alliance (“FRCA”), an umbrella organization that includes trade associations representing more than 3,500 manufacturing, agriculture chemical, alternative fuels companies, electric utilities, and their customers, hereby responds in opposition to the Petition for Rulemaking (“Petition” or “Pet.”) that the Association of American Railroads (“AAR”) filed on May 16, 2025. The AAR’s proposals are not needed at this time, rest on a defective premises, and effectively represent “solutions” in search of problems that either do not exist or that can be better addressed in some other manner. Furthermore, the Surface Transportation Board (“Board” or “STB”) does not need to be distracted by such matters at this time.

First, 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.

Second, with respect to communicating with staff (Pet. at 6-7), the Board has made clear that such communications are to be directed to its Office of Public Assistance, Government Affairs, and Compliance (“OPAGAC”), including its Rail Customer and Public Assistance (“RCPA”) service. “RCPA can also help parties needing information about areas in which the STB regulates. Staff members are thoroughly knowledgeable about the STB and its processes, as well as the operational components of the rail industry. They are available to answer questions about the STB’s official decisions, pending cases, and the laws that the agency implements.” See <https://www.stb.gov/about-stb/offices/opagac/>.

OPAGAC and RCPA already provide a reasonable accommodation of the needs the AAR mentions (Pet. at 6-7). Their staff is knowledgeable, experienced, and responsive. The AAR’s petition does not identify any deficiency in their services. The AAR mentions that other agencies, the Federal Communications Commission and Federal Regulatory Commission, may do things differently. Those other agencies appear to have at least ten times the number of employees, and a central contact point may not work as well for matters before the Board. Those agencies also have greater resources and recover all or most of their operating costs from user fees. One size or approach should not be presumed to fit all, especially when the Board, a much smaller agency, is operating with such constrained resources.



Third, the need for different treatment “in proceedings where there is only one party” (Pet. at 7-8) is anything but self-evident. Such proceedings are typically adjudications, not rulemakings, and the public interest is, or should, always be part of such proceedings. The AAR has not explained why OPAGAC and/or RCPA is an inadequate conduit for legitimate concerns that applicants would have. Communications directly to staff have the potential to divert attention from other matters. Also, direct access in uncontested matters may lead to information and understanding that will prove beneficial in contested proceedings, thereby creating or exacerbating an already unlevel playing field.

Fourth, the need for ex parte communication restrictions is increased, not diminished for transactions involving Class I railroads. Pet. at 9-10. A proceeding that involves a Class I railroad inherently carries the potential for more, not less, impact on shippers, competitors, and the public interest. The Board should not create a playing field where Class I railroads are allowed to play under a more favorable set of rules, especially for rail mergers and consolidations, which would appear to be the AAR’s intent.

Fifth, the AAR’s final proposal, to extend the deadlines and expand the role of staff for ex parte communications in informal rulemakings (Pet. at 11-15) is also problematic. One AAR statement is especially telling. “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.” *Id.* at 14.

The AAR seeks to create an environment where the real presentations occur not in written comments that the public can see and comment upon, but only in direct, person-to-person communications which those with the greater financial and staff resources and larger financial motivations (AAR and its members) are more likely to be able to undertake. The incentive would be to hold the best arguments and responses to the end, defeating the decision-making process. The AAR’s proposal is not one for greater transparency, but one that encourages and rewards delayed disclosure of one’s position and arguments.

In the current environment, new rulemakings are apt to be limited. To the extent there are some, any needed relaxation of the *ex parte* rules can be done on an *ad hoc* basis as needed, and not as a general rule.

For the reasons stated above, the Board should deny the Petition.

Respectfully submitted,

Ann Warner LLC
Spokesperson for FRCA