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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 782

**PETITION FOR RULEMAKING – AMENDMENTS TO REGULATIONS GOVERNING
EX PARTE COMMUNICATIONS**

**COMMENTS FROM THE
RAILWAY SUPPLY INSTITUTE**

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The Railway Supply Institute (“RSI”) appreciates the opportunity to provide comments on the Surface Transportation Board’s (“Board”) April 14, 2026, Advance Notice of Proposed Rulemaking (“ANPRM”) regarding the rules governing ex parte communications, Docket No. EP 782, in response to the Association of American Railroads’ May 16, 2025, petition. 91 Fed. Reg. 19090 (April 14, 2026). As described in detail below, RSI has several concerns with proposed changes that the Board is considering to its ex parte regulations particularly because they risk undermining transparency, distorting the development of the administrative record, and disadvantaging less-resourced stakeholders.

RSI is the international trade association for the railway supply industry and acts on behalf of the suppliers to North American freight and passenger railroads and these suppliers’ 240,000-plus employees. RSI is the only trade association representing the entire rail supply industry—manufacturers, distributors, and service providers to the freight car, locomotive, maintenance-of-way, communications, signaling, leasing, and passenger rail industries. Its members offer a wide array of goods and services to freight and passenger railroads, rail

shippers, and freight car manufacturers and lessors. RSI members supply over half of all rail cars operating in North America for lease. Collectively, RSI members produce over ninety-five percent (95%) of all new railroad tank cars and own and lease more than seventy percent (70%) of the tank cars operating in North America. These tank cars transport a broad range of products vital to both commerce and daily life across the country.

I. RSI Agrees with the Board’s Decision Not to Move Forward with Two of the Requested Modifications in the AAR’s Petition

In its May 16, 2025, petition for rulemaking AAR, asked the Board to “revise and streamline” its rules governing ex parte communications set forth in 49 C.F.R. Part 1102 to improve stakeholder engagement and efficiency. Specifically, AAR asked the Board to consider the following six changes to the Board’s ex parte rules:

1. Routine, Procedural Matters. Add regulatory language clarifying that ex parte communications regarding “routine, procedural matters” in proceedings are permitted.
2. Submitted Evidence/Supplemental Evidence Requests. Revise the regulations to allow ex parte communications with Board staff regarding submitted evidence and compliance with orders requesting supplemental evidence, subject to the disclosure requirements in 49 C.F.R. § 1102.2(g)(4).
3. Uncontested Proceedings. Expressly permit ex parte communications in uncontested proceedings involving only one party (e.g., petitions for exemptions or declaratory orders).
4. Class I Transactions. Allow ex parte communications in transactions involving Class I railroads, subject to the disclosure requirements.

5. Board Staff. In informal rulemaking proceedings, allow ex parte communications between the public and Board staff (without involving a Board Member), subject to the same disclosure requirements that govern communications with Board members.
6. Cut-Off Date in Informal Rulemakings. In informal rulemaking proceedings, extend the cutoff date for ex parte communications to allow ex parte communications to occur for a prescribed period of time after reply comments are filed and to allow for written comments on meeting summaries.

In the ANPRM, the Board explains its decision not to move forward with (1) AAR's request to expressly permit ex parte communications in uncontested proceedings (Item No. 3 above) and (2) AAR's request to affirmatively allow ex parte communications in transactions involving Class I railroads (Item No. 4. above).

First, RSI agrees with the Board that expressly permitting ex parte communications in uncontested one-party proceedings is not necessary (because there is no other party without an opportunity to be present in a sole-party proceeding) and could raise fairness issues when another party is likely to join.

Second, RSI agrees that wholesale reversal of the Board's long-standing policy of not entertaining ex parte communication in railroad merger proceedings would be inappropriate. As noted in the ANPRM, since 1996, consistent with the Board's congressional grant of discretion in the ICC Termination Act of 1995 (ICCTA), the Board has maintained a policy of not entertaining ex parte communications in railroad merger proceedings. *See Pet. of Fieldston Co. to Establish Procs. Regarding Ex Parte Commc'ns in R.R. Merger Proc. (Fieldston)*, 1 S.T.B. 1083, 1085-86 (1996). RSI agrees there is no reason to abandon the Board's *Fieldston* policy and replace the existing case-by-case waiver process, whereby the Board already has the ability

to allow ex parte communications. Furthermore, we share the Board's concern that AAR's suggestion to only entertain ex parte communications that would "increase efficiency" is unworkable in practice and introduces significant fairness risks into the Board's procedures by giving the appearance of unequal access. As the Board notes, because "transactions involving Class I railroads carry significant, wide-ranging public interest implications," introducing transparency and fairness risks into these procedures by permitting ex parte communications is unwarranted and the existing waiver process adequately addresses the scenario where ex parte communications may have particular value or address a specific need.

II. Risks and Practical Concerns with the Proposed Expansion of Ex Parte Communications

Based on the remaining four requests in the AAR's petition, the responsive comments the Board received to the AAR petition, and feedback received during the listening sessions, the Board is soliciting public comments on the following potential changes to its ex parte communication regulations that relate to:

- (1) clarifying routine and procedural communications;
- (2) allowing technical and clarifying communications with Board staff concerning submitted evidence and compliance with orders seeking additional information;
- (3) permitting ex parte meetings with Board staff, as opposed to only Board Members, and
- (4) modifying the end date for ex parte meetings during informal rulemaking to be on a discretionary case-by-case basis.

The Board states that these potential changes are "intended to improve stakeholder engagement, facilitate well-informed decision-making, and make agency processes more efficient." ANPRM at p. 19093.

At the outset, RSI notes that these proposed changes raise several concerns about fairness, actual and perceived, particularly regarding the impact on less-resourced entities. The ex parte communications regulatory framework is structured, in part, to protect both the practicality and perception of fairness in Board proceedings. Indeed, as noted in *Fieldston*, both the actual fairness and the public’s perception of and confidence in the Board’s proceedings are integral considerations. *Fieldston* at p. 1085-86. RSI is concerned that expanding ex parte communications will disadvantage less-resourced parties by increasing reliance on resource-intensive engagement mechanisms—such as repeated meetings, monitoring disclosure filings, and rapid response—that smaller entities are less equipped to sustain. For this reason, an expansion of ex parte communications could inhibit less-resourced parties’ ability to meaningfully engage in proceedings.

In addition, across the Board’s proposed changes, several common concerns arise that warrant careful consideration. First, these expansions of permissible ex parte communications risk a blurring of procedural and substantive boundaries. Several proposals rely on distinctions—such as “procedural” versus “substantive” or “technical” versus “advocacy”—that are difficult to administer in practice. These categories are inherently subjective, increasing the risk of inconsistent application and creating opportunities for parties to frame substantive advocacy as permissible communication. Second, there is an increased reliance on informal engagement at the expense of the public record. The existing framework emphasizes formal filings, which allow for full transparency and adversarial testing. Expanding ex parte communications risks shifting meaningful engagement away from the written record and into informal discussions, even if summarized later. Disclosure summaries are not a substitute for fully developed public filings. Third, some of these proposals may lead to unequal access and resource imbalance, as

expanded opportunities for ex parte engagement are likely to be disproportionately utilized by well-resourced stakeholders. Fourth, as discussed in more detail below, changes to the timing and scope of permissible ex parte communications may incentivize parties to reserve their strongest arguments for direct discussions with the Board, rather than presenting them in written comments subject to public scrutiny and response. This dynamic weakens the integrity and completeness of the administrative record. Taken together, these concerns suggest that any expansion of ex parte communications should be approached with caution and should include robust safeguards to preserve fairness, transparency, and the integrity of the record.

Finally, many of the AAR's requested revisions and the regulatory changes that the Board is proposing are already sufficiently achieved through the existing ex parte communications framework which gives the Board sufficient discretion to allow ex parte communication or waive certain restrictions following a formal determination. 49 C.F.R. 1102.2(b)(1). The Board uses this broad authority judiciously—the same cautionary approach should govern any expansion of ex parte communications.

RSI addresses each of the Board's proposals in turn.

A. Status Requests and Procedural Issues

In the ANPRM the Board acknowledges that it has previously stated that “communications about purely procedural issues and communications that solely concern the status of a proceeding are permissible because they naturally do not concern the merits or substantive outcome of pending proceedings. ANPRM at 19093 (citing *Ex. Parte Commc'ns in Informal Rulemaking Proc.*, EP 739, slip op. at 6 (STB served Feb. 28, 2018)). Nevertheless, the Board is considering whether to explicitly state this principle directly in the regulatory text by

clarifying that “routine, procedural communications” are a permissible exception in part 1102 together with definitions or explanations of “routine” and “procedural.”

From RSI’s perspective, the definition of ex parte communications is already sufficiently narrow to allow for routine and procedural communications. By definition, an ex parte communication under the Board’s regulations is a communication regarding substance or outcome that is intended to influence decisions. In practice, routine and procedural communications should be neither. Adding regulatory text to expressly permit “routine, procedural communications” risks creating ambiguity rather than clarity by introducing new interpretive disputes over what qualifies and increasing the potential for inconsistent application and perceived selective access.

B. Technical and Clarifying Communications

Consistent with AAR’s petition, the Board is considering 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 Section 1102.2 (g)(4). The Board compares this to the informal guidance provided by the Rail Customer and Public Assistance (RCPA) service or the technical conference held in matters requiring extensive technical discussions. RSI agrees there may be a benefit to the Board by allowing Board staff to resolve technical and clarifying questions via a brief ex parte discussion because it “could save time and conserve Board resources by reducing the need for motions requesting clarifications and subsequent written decisions.”

However, such a revision also introduces the risk that parties will avail themselves of this ex parte process to narrow the scope of such orders, prompting the fairness, due process, and impartiality issues raised in the ANPRM. Even with a potential definition of “technical and

clarifying,” it will be difficult in practice to prevent their use for de facto substantive advocacy due to the inherently discretionary nature of determining clarification from argument. As a result, these communications risk becoming a backchannel for influencing the outcome outside the formal record.

The rail industry is highly technical, and “technical” discussions can materially influence outcomes. Ensuring that technical clarifications occur on the public record allows all parties to understand, evaluate, and respond to those issues equally, resulting in a more robust record. Further, RSI shares the Freight Rail Customer Alliance’s view that the Board’s Office of Public Assistance, Governmental Affairs, and Compliance is already well positioned to handle discrete clarifying questions, making an expansion of ex parte communications here a risk without sufficient return. *Freight Rail Customer Alliance June 5, 2025 Comment Letter, Petition for Rulemaking – Amendments to Regulations Governing Ex Parte Communications*, Docket No. EP 782, at 1. Accordingly, RSI is concerned that the risks associated with this proposed expansion of ex parte communications outweigh the potential benefits.

C. Ex Parte Meetings in Informal Rulemakings – Role of Board Staff

Under the Board’s current rules regarding informal rulemakings, ex parte meetings are permitted but can only be scheduled with Board Members (which may subsequently invite staff to attend). As explained in the ANPRM, stakeholders cannot meet with Board staff without a Board Member present, unless the entire Board formally delegates its participation to Board staff (see § 1102.2(g)(1)), which is a practice that has never been used by the Board since it adopted this rule. The Board has previously considered such an expansion of the role of Board staff but declined to do so “based on concerns that stakeholders would attempt to meet individually with multiple staff members during each rulemaking proceeding, thereby drastically increasing the

number of ex parte contacts and complicating the disclosure of the process.” ANPRM at 19094 (citing *Ex Parte Commc’ns in Informal Rulemaking Proc.*, EP 739, slip op. at 20).

RSI agrees that allowing direct ex parte meetings with Board staff during informal rulemaking could be efficient and improve decision-making by leveraging Board staff’s knowledge and experience. This is similar to other agencies where stakeholders are permitted to engage with staff, such as the FCC which has generally adopted a “permit-but-disclose” regime. *See generally* 47 C.F.R. § 1.1200 (FCC ex parte communications rules that describe a “permit-but-disclose” approach for certain proceedings).

Nevertheless, this is another example of where less-resourced stakeholders will be at a disadvantage, raising significant fairness questions. The ANPRM states that the Board is considering allowing office directors to delegate Board staff to participate in ex parte meeting and to specify the manner in which such meetings may be request. However, this approach does not address the underlying resource imbalance, nor does it mitigate the risk that larger stakeholders may engage in repeated or strategic interactions with multiple staff members, resulting in unequal influence over the decision-making process.

Disclosure summaries are inherently less detailed and less rigorous than formal filings and are rarely substantively comparable. Replacing or supplementing public filings with such summaries limits the ability of other parties to meaningfully respond and undermines the completeness of the record.

Should the Board proceed with expanding the role of Board staff, RSI strongly urges the STB to ensure adequate disclosure safeguards are in place such as filing a copy of written presentations and filing a summary of oral presentations (including meetings) to preserve transparency as well as the quality of the record.

D. Timing for Ex Parte meetings in Informal Rulemakings

Finally, the Board is considering amending its regulations to allow the Board to set the end date for ex parte meeting on a case-by-case basis as opposed to the current rules, which prohibit ex parte meetings within 20 days of the reply deadline.

First, RSI has concerns about the impact on fairness in the Board proceedings. As the Board notes, moving the date closer to the end of the reply period may force stakeholders to scramble to reply to information presented in an ex parte meeting, a burden that would disproportionately hit entities with fewer resources to rapidly respond. Extending the timeframe for ex parte meetings beyond the reply period may incentivize parties to withhold information from public comments and instead present it directly to the Board. Even if the comment period is reopened, meaningful response depends on the adequacy and specificity of disclosure summaries, which may not capture the full substance of those communications. Maintaining fairness and transparency will be heavily predicated on adequate disclosure summaries of the ex parte meetings. Requiring greater detail in disclosure summaries for ex parte meetings during informal rulemakings or requiring entities to explain in a disclosure summary why a comment was not raised during the public comment period would serve to improve transparency.

Second, this type of an expansion may reduce the quality and timeliness of the record in an informal rulemaking proceeding. These changes increase the risk that new arguments are introduced outside the formal record late in the process, leaving little or no opportunity for response and potentially requiring additional rounds of comments. This would both delay proceedings and weaken the quality of the administrative record. RSI shares the concern that parties may be incentivized to save their strongest arguments for direct meetings with the Board under a belief that face-to-face communication is more persuasive than a public filing and to take

advantage of the light disclosure summary requirements. *Freight Rail Customer Alliance June 5, 2025 Comment Letter, Petition for Rulemaking – Amendments to Regulations Governing Ex Parte Communications*, Docket No. EP 782, at 2.

On balance, RSI supports the Board’s ability to take a discretionary, case-by-case approach to setting ex parte deadlines only if accompanied by meaningful safeguards, including enhanced disclosure requirements and consideration of impacts on less-resourced parties.

Conclusion

The RSI appreciates the opportunity to comment on the Board’s Advance Notice of Proposed Rulemaking regarding ex parte communications. The RSI supports the Board’s efforts to ensure efficient and effective communications, ex parte and otherwise, regarding regulatory matters and to maintain fairness, transparency, and due process in its proceedings.

Please contact me if you have any questions regarding the information provided.

Respectfully submitted,

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