

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 782

PETITION FOR RULEMAKING—AMENDMENTS TO REGULATIONS
GOVERNING EX PARTE COMMUNICATIONS

Digest:¹ The Board grants a petition to institute a rulemaking and opens a proceeding to consider revisions to the Board’s regulations governing ex parte communications, but makes no determination regarding the merits of the petition.

Decided: September 8, 2025

On May 16, 2025, the Association of American Railroads (AAR) filed a petition for rulemaking asking the Board to institute a proceeding to revise and streamline the rules governing ex parte communications set forth in 49 CFR part 1102. (Pet. 1.) AAR contends that revisions to the Board’s regulations will improve stakeholder engagement and make it easier for the agency to process matters efficiently while maintaining transparency and fairness. (Id.) AAR proposes several changes to the ex parte rules aimed at removing “unnecessarily strict regulations.” (Pet. 2.) In response to the petition, the Board received two replies. After consideration of the petition and the replies received, the Board concludes that a proceeding should be opened to consider changes to the rules governing ex parte communications. Accordingly, the Board will grant AAR’s petition to the extent that it requests that the Board open a proceeding.

BACKGROUND

Summary of the Petition. AAR argues that its proposal will facilitate more effective communications between stakeholders and the Board, encourage timely and efficient decision making, and preserve transparency and fairness. (Id. at 2.) AAR also asserts that each of the proposals in its petition is consistent with practices at other federal agencies. (Id. at 6-8, 10-11, 15.) In its petition, AAR first proposes that the Board clarify that certain forms of communication are not ex parte communications by revising the regulatory language to state that: (1) the ban on ex parte communications does not prohibit communications regarding routine, procedural matters (id. at 6); (2) communications with Board staff concerning submitted evidence and compliance with orders seeking additional information are permissible, subject to

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

the disclosure requirements in 49 CFR 1102.2(g)(4)² (*id.* at 6-7); and (3) ex parte communications are permitted in proceedings where there is only one “party” as defined in 49 CFR 1101.2(d)³ (*id.* at 7-9). AAR argues that its proposals would provide clarity to both the public and the Board with regard to what types of ex parte communications are permissible. (*Id.* at 6.) AAR also asks the Board to revise the regulatory text to permit ex parte communications in transactions involving Class I railroads, subject to the disclosure requirements in 49 CFR 1102.2(g)(4).⁴ (Pet. 9-10.) AAR asserts that allowing ex parte communications in these transactions has the potential to expedite proceedings, and argues that the documentation processes in section 1102.2(g)(4) are sufficient to “preserve fairness and transparency.” (*Id.* at 10.) Finally, AAR asks the Board to adjust the ex parte meeting rules in 49 CFR 1102.2(g)(1) by revising the regulatory text to allow: (1) ex parte communications between the public and Board staff, subject to the same requirements governing communications with Board Members; and (2) ex parte communications for a prescribed period of time after reply comments are filed.⁵ (Pet. 11-15.) AAR contends that the existing processes are inefficient and inhibit potentially useful communications between parties and the agency and argues that the proposals in its petition would provide the Board with greater flexibility in future proceedings. (*Id.* at 12-14.)

Comments Received. The Board received replies to AAR’s petition on June 5, 2025, from the Private Railcar Food and Beverage Association (PRFBA) and the Freight Rail Customer Alliance (FRCA). FRCA and PRFBA oppose AAR’s petition, arguing that AAR’s proposal is unnecessary and likely to reduce transparency in Board proceedings. (FRCA Reply 1-2; PRFBA Reply 1.) FRCA and PRFBA also argue that Board’s regulations already allow status and procedural inquiries because 49 CFR 1102.2(a)(5) defines “ex parte communications” as “an oral or written communication that concerns the merits or substantive outcome of a pending proceeding.” (FRCA Reply 1; PRFBA Reply 1.)

FRCA further argues that the other proposed clarifications in AAR’s proposal are unnecessary. (FRCA Reply 1.) FRCA asserts that Board’s Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) staff already accommodates parties’ needs for clarifying communications regarding submitted evidence and Board orders and questions the need for ex parte communications in proceedings involving only one party because such

² Section 1102.2(g)(4) outlines the disclosure requirements for ex parte communications with Board Members that are permitted, under certain circumstances, in informal rulemaking proceedings.

³ Section 1101.2(d) defines a “party” as a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding.

⁴ This proposal would reverse the Board’s policy, consistent with the discretion afforded to the Board in 49 U.S.C. 11324(f), of not entertaining ex parte communications in railroad merger proceedings. See Petition of Fieldston Co. to Establish Proc. Regarding Ex Parte Commc’ns in R.R. Merger Procs., 1 S.T.B. 1083, 1085-86 (1996).

⁵ 49 CFR 1102.2(g)(1) permits ex parte meetings until 20 days before the deadline for reply comments set forth in the notice of proposed rulemaking, and requires the Board to delegate participation in order for Board staff to attend ex parte meetings.

proceedings are typically adjudications that must take into account the interest of the public. (Id. at 1-2.) FRCA further argues that direct access to Board staff in uncontested proceedings may reveal information that proves beneficial in contested matters, thereby creating additional fairness concerns. (Id. at 2.) FRCA raises similar concerns about AAR’s proposal to allow ex parte communications in transactions involving Class I railroads, arguing AAR’s proposal is inappropriate due to what FRCA argues is the larger impact on shippers, competitors, and the public interest. (Id.) Finally, FRCA contends that extending deadlines and expanding staff roles for ex parte communications in informal rulemaking proceedings would encourage more well-resourced participants to save their strongest arguments and responses for direct communications with the agency, rather than presenting them in written comments that the public can review and respond to. (Id. at 2.)

PRFBA also argues that AAR’s proposal is inconsistent with the policy reasons underlying the existing limitations on ex parte communications. (PRFBA Reply 1.) PRFBA asserts that the Board’s ex parte communication rules are intended to promote impartial decision making, ensure due process in Board proceedings, and maintain public trust in the Board’s adjudicatory system. (Id. at 2.) PRFBA contends that because ex parte communications allow one party to discuss issues or present information without giving the opposing party an opportunity to respond, and because engaging in ex parte communications creates an appearance of impropriety, AAR’s proposal is inconsistent with these policy goals. (Id.)

DISCUSSION AND CONCLUSIONS

The Board recently conducted a series of listening sessions with practitioners, led by Vice Chairman Schultz, that generated recommendations for streamlining the Board’s processes and procedures for ex parte communications.⁶ AAR’s proposal thus raises issues that the agency has already begun to explore and the Board concludes that it is appropriate to open a rulemaking proceeding to consider the petition and the responses. Accordingly, to the extent that it requests that the Board open a proceeding, the Board will grant AAR’s petition to institute a rulemaking proceeding. However, the Board makes no determination regarding the merits of AAR’s petition at this time.

In view of the feedback received during the practitioner listening sessions, the Board also anticipates inviting the public to comment on other ways the Board’s rules on ex parte communications could be modified. The Board will establish procedures for public comment in a subsequent decision.

⁶ See STB Press Release No. 25-22, STB Gathers More Than 100 Ideas From Legal Practitioners to Streamline Board Processes, <https://www.stb.gov/wp-content/uploads/PR-25-22.pdf> (identifying “ex parte communications and the use of staff liaisons” as action item for Board consideration).

It is ordered:

1. AAR's petition to institute a rulemaking proceeding is granted, as discussed above.
2. Notice of this decision will be published in the Federal Register.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.