

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 782

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

**COMMENTS FROM
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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May 29, 2026

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I. INTRODUCTION

The American Short Line and Regional Railroad Association (“ASLRRA”) submits these comments in response to the Surface Transportation Board’s (“STB” or “Board”) Advance Notice of Proposed Rulemaking in Docket No. EP 782 concerning potential amendments to its regulations governing ex parte communications.¹ The Board seeks comments on targeted revisions intended to improve efficiency and stakeholder engagement while preserving fairness, transparency, and due process. Additionally, the Board invites commenters to identify additional options for revisions to the Board’s ex parte communications rules. ASLRRA agrees with the Board that clarifying what communications are not ex parte, and identifying narrow circumstances in which controlled ex parte communications may be appropriate, would provide meaningful benefits without undermining confidence in the Board’s processes.

Interest of the ASLRRA in this Proceeding

The ASLRRA is a national trade association representing the interests of about 600 short line and regional railroad members in legislative and regulatory matters. Short lines operate approximately 50,000 miles of track in the United States, or about 30% of the national freight

¹ 91 Fed. Reg. 19090 (April 14, 2026).

network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. Short lines are predominantly small businesses that rely on clear, predictable, and efficient regulatory processes at the STB. Ambiguity surrounding permissible communications with the agency can impose disproportionate compliance costs on short lines, discourage informal problem-solving, and delay projects or transactions that are critical to maintaining rail service for local communities. Accordingly, ASLRRA has a strong interest in ensuring that the Board's ex parte rules are clear, workable, and suited to the realities faced by small rail carriers.

II. BRIEF DISCUSSION OF THE PROPOSED CHANGES

The Board's regulations define an "ex parte communication" as "an oral or written communication that concerns the merits or substantive outcome of a pending proceeding; is made without notice to all parties and without an opportunity for all parties to be present; and could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision." 49 CFR § 1102.2(a)(5). The regulations generally prohibit ex parte communications with Board members and staff, and violations are subject to sanctions. 49 CFR § 1102.2(c) & (f). However, the Board's rules except some ex parte communications from this general prohibition, such as communications that occur during informal rulemaking proceedings prior to the issuance of a notice of proposed rulemaking ("NPRM"), and in meeting during periods after the issuance of an NPRM until 20 days before the deadline for reply comments. 49 CFR § 1102.2(b), (g). Finally, the Board has adopted 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).

The Association of American Railroads (“AAR”) filed a petition in May 2025 requesting that the Board revise and streamline its ex parte rules to improve efficiency and clarity. AAR proposed six principal changes, including:

1. Clarifying that routine procedural and status communications are not prohibited ex parte contacts;
2. Allowing technical and clarifying communications with Board staff regarding evidence and compliance with Board orders, subject to disclosure;
3. Permitting ex parte communications in uncontested, single-party proceedings;
4. Reversing the Board’s long-standing *Fieldston* policy to allow ex parte communications in Class I railroad merger cases (with disclosure);
5. Expanding the role of Board staff in ex parte meetings during informal rulemakings; and
6. Extending the time window during which ex parte meetings are permitted in informal rulemaking proceedings.

The Freight Rail Customer Alliance (“FRCA”) and the Private Railcar Food & Beverage Association (“PRFBA”) opposed the petition, arguing that existing rules already allow procedural and status inquiries, AAR’s proposed changes could reduce transparency and undermine public confidence, and expanding ex parte access would disproportionately benefit well-resourced parties and erode the integrity of Board proceedings.

The Board declined to consider AAR’s requested change involving uncontested one-party proceedings, as these communications are generally not ex parte under the existing definitions. It further explained that, when the sole party in a proceeding communicates with the Board, there is no other party without an opportunity to be present. The Board also stated it did not intend to

modify the regulation to allow ex parte communications in merger transactions involving Class I railroads, as it is not persuaded to reverse the *Fieldston* policy prohibiting ex parte communications in such cases, citing significant public-interest concerns and risks to perceived fairness. Case-by-case waivers will remain available.

III. SUPPORT FOR PROPOSED CHANGES

ASLRRA supports the Board's consideration of regulatory language clearly stating that routine status inquiries and procedural communications do not constitute prohibited ex parte communications. For short line railroads, clear codified guidance would reduce the risk of inadvertent violations and encourage appropriate communication that can expedite proceedings without affecting substantive outcomes.

ASLRRA also appreciates the Board's exploration of allowing technical and clarifying communications with Board staff regarding submitted evidence or compliance with Board orders, subject to prompt public disclosure. Brief, targeted communication with knowledgeable staff could resolve issues far more efficiently than formal motions practice. Because such communications would be documented on the public record, transparency and fairness would be preserved while reducing costs and delays that disproportionately burden small carriers. ASLRRA encourages the Board, in any final rule, to define "technical and clarifying" communications narrowly to ensure they are not used for substantive advocacy, consistent with the Board's stated objectives.

Additionally, ASLRRA generally supports the Board's consideration of allowing ex parte meetings with Board staff during informal rulemaking proceedings, subject to the same disclosure requirements as meetings with Board Members and appropriate safeguards to manage volume and coordination. STB staff expertise is often critical in understanding the real-world

operational and economic impacts of proposed rules. Allowing structured, transparent engagement with staff could improve the quality of the rulemaking record and help ensure that the Board fully understands the implications of regulatory changes for small rail carriers.

Finally, ASLRRA supports the Board's consideration of a case-by-case approach to setting the end date for ex parte meetings in informal rulemakings. Fixed deadlines may not account for the complexity of certain proceedings or the limited resources of small entities attempting to engage meaningfully in the process. A flexible framework, combined with disclosure and opportunities for response where appropriate, would better serve the public interest.

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ASLRRA commends the Board for undertaking a careful review of its ex parte communications rules and for seeking public input on targeted reforms. Clarifying permissible communications, facilitating limited technical and procedural engagement with staff, and introducing flexibility where appropriate would meaningfully improve regulatory efficiency without sacrificing transparency or due process. ASLRRA appreciates the opportunity to provide these comments and looks forward to continued engagement with the Board as this proceeding moves forward.

Respectfully submitted,



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