

BEFORE THE SURFACE TRANSPORTATION BOARD

EX PARTE No. 782

PETITION FOR RULEMAKING-AMENDMENTS TO REGULATIONS GOVERNING EX PARTE COMMUNICATIONS

Advanced Notice of Proposed Rulemaking

COMMENTS OF AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS

I. Introduction

The American Fuel & Petrochemical Manufacturers (“AFPM”) respectfully submits these comments on the Surface Transportation Board’s (“STB” or “The Board”) Federal Register notice titled, “Petition for Rulemaking—Amendments to Regulations Governing Ex Parte Communications” (“Proposed Rule”).¹ The Board received a petition seeking six changes to the current ex parte rules, and is exploring whether and how to modify its regulations to harness the benefits of ex parte communications.² Specifically, STB is seeking comments on revising the rules governing ex parte communications set forth in 49 CFR part 1102. The Board also invites interested persons to identify additional options for revisions to the existing ex parte communications rules. AFPM supports the following provisions in the advanced notice of proposed rulemaking (“ANPRM”):

1. AFPM supports the Board clarifying that routine procedural and status communications are not considered ex parte.
2. AFPM conditionally supports allowing narrowly defined technical or clarifying communications with Board staff, provided such communications are limited to information on record, exclude discussion of outcomes or advocacy, and are subject to prompt public disclosure under existing rules.

¹ See 91 Fed. Reg. 19090, “[Petition for Rulemaking-Amendments to Regulations Governing Ex Parte Communications](#)” STB—2026-07230; published April 14, 2026.

² *Id.* at 19094.

3. AFPM supports allowing meetings with Board staff, excluding Board Members, during informal rulemakings, subject to the same disclosure standards as meetings with Board Members to avoid perceptions of preferential treatment.
4. AFPM supports greater flexibility in scheduling ex parte meetings on a case-by-case basis, provided procedural fairness is preserved.
5. AFPM supports the Board's decision to not grant blanket ex parte authority in purported single-party proceedings and to not relax the longstanding prohibition on ex parte communications in Class I railroad mergers.

II. AFPM Interest in the Proceeding

AFPM is the leading trade association representing manufacturers of the fuels that keep America moving and the base petrochemicals that are essential building blocks for plastic products that make modern life possible and improve the health, safety, and living conditions of humankind. AFPM members are committed to sustainably manufacturing safe, high-performing fuels and the petrochemicals and derivatives that growing global populations and economies need to thrive.

Refineries and petrochemical manufacturers rely on a healthy rail network as a vital part of their supply chains. Annually in the United States, over 2.8 million carloads of our members' feedstocks and products, including crude oil, natural gas liquids, refined products, plastics, and synthetic resins, are transported by rail.³ AFPM appreciates STB's role in safeguarding competition and ensuring an efficient rail network. AFPM welcomes STB's proposal to consider targeted revisions to the current ex parte rules to promote efficiency while safeguarding a fair and predictable administrative process. In general, AFPM supports a competitive, reliable, accountable rail system and believes that STB should pursue reforms that promote a free, open, and reliable rail system. However, these efforts must be grounded in regulatory proceedings that need to first ensure transparency, integrity, and equal access for all stakeholders.

III. Current Rules and Policies on Ex Parte Communications

According to the Board's existing regulations, an "ex parte communication" is defined 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".⁴ Although ex parte communications with Board members and staff are mostly prohibited during open rulemakings and dockets, the current rules do except some ex parte communications, which in short, cover communications that occur during informal rulemaking proceedings prior to the issuance of a NPRM and any communications formally allowed by the Board on an ex parte basis.⁵ Additionally, Board members may participate in ex parte communications during prescribed periods after the issuance of an NPRM, which is explicitly

³ See Association of American Railroads – Data Center "[Annual Rail Traffic](#)" accessed May 2026 calculated using 2022 data.

⁴ 49 CFR 1102.2(a)(5)

⁵ See 91 Fed. Reg. 19091, "[Petition for Rulemaking-Amendments to Regulations Governing Ex Parte Communications](#)" STB—2026-07230; published April 14, 2026.

until 20 days before the deadline for reply comments.⁶ However, these exceptional meetings are subject to the disclosure requirements of section 1102.2(g)(4), requiring public disclosure of such ex parte discussions.⁷ Finally, the Board was permitted by Congress to entertain ex parte discussions related to railroad merger proceedings in the ICC Termination Act of 1995, Pub. L. No. 104-33 88, 109 Stat. 803 (ICCTA); however, the Board adopted a policy of not entertaining such ex parte communications in Class I railroad mergers.

On May 16th, 2025, the Association of American Railroads (AAR) filed a petition to initiate a proceeding under 49 CFR 1110.2(b) seeking six changes to the rules governing ex parte communications. AAR described three requests as seeking further clarification of the rules and ultimately argued that the proposed amendments are consistent with other agencies' practices. AAR also requested that STB permit routine procedural communications, allow technical communications with staff subject to public disclosure requirements, and allow ex parte communications in single-party proceedings.

IV. AFPM Comments on Potential Amendments to Ex Parte Communications

a. Status Requests and Procedural Issues

In their petition, AAR requested that the Board add language to clarify that the ban on ex parte communications does not prohibit communications occurring in any proceeding regarding routine, procedural matters. The Board has previously clarified 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. However, despite this clarification the Board recognizes that currently such status requests and procedural communications are not unambiguously authorized in part 1102 and perhaps should be.⁸

AFPM supports clarifying that routine procedural and status communications (such as filing logistics, deadlines, service, and compliance questions) are not, nor should be considered ex parte. Formalizing these distinctions would reduce uncertainty and improve administrative efficiency without affecting substantive decision-making. This would benefit stakeholders by helping them determine what does and does not constitute an ex parte communication without the need for additional research and resources. Clear guidelines could also promote the expeditious handling and resolution of proceedings before the Board by helping Board employees quickly and easily determine whether it is appropriate for them to respond to stakeholder questions.

b. Technical and Clarifying Communications

In their petition, AAR suggests that the Board should revise its rules to clarify that communications with Board staff concerning submitted evidence and compliance with orders seeking additional information are permissible, and subject to the disclosure requirements in 49

⁶ *Id.* at 19091.

⁷ *Id.* at 19091.

⁸ See 91 Fed. Reg. 19097, "[Petition for Rulemaking-Amendments to Regulations Governing Ex Parte Communications](#)" STB—2026-07230; published April 14, 2026.

CFR 1102.2(g)(4).⁹ AAR argues that permitting communications, subject to public disclosure, with Board staff about submitted evidence and compliance with orders would enable efficient resolution of technical questions without time-consuming formal filings and motions. In response the Board is exploring amending the existing regulatory language to permit technical and clarifying communications with Board staff concerning submitted evidence and compliance with orders seeking additional information, subject to the disclosure requirements in 49 CFR 1102.2(g)(4), as well as any statutory limitations applicable to the proceeding.¹⁰

AFPM conditionally supports allowing narrowly defined technical or clarifying communications with Board staff, provided such communications are limited to explaining or clarifying information already in the record, exclude any discussion of outcomes or advocacy, and are subject to prompt public disclosure under existing rules. Clear regulatory definitions distinguishing permissible clarification from prohibited advocacy are critical. This proposal could improve efficiency as it would allow Board staff to resolve technical and clarifying questions quickly. In the NPRM the Board recognizes concerns related to fairness, due process, and impartiality, and acknowledges that even where questions are strictly technical and clarifying in nature, the answer might have implications for the outcome of the case. However, STB also acknowledges that allowing staff to resolve such questions via a short discussion would save time and resources on all ends of parties involved. To this end, AFPM stresses that clear demarcations and justifications of what is and isn't permitted are needed and these would need to be supported by analysis that shows what is deemed permissible would not have impacts or influence on the outcome of case.

c. Ex Parte Meetings in Informal Rulemakings and the Role of Board Staff

In their petition, AAR requests that the Board revise 49 CFR 1102.2(g)(1) to authorize ex parte communications between the public and Board staff in informal rulemaking proceedings, subject to the same requirements that govern communications with Board Members.¹¹ While this could offer several potential benefits, allowing ex parte meetings with Board staff during informal rulemaking proceedings also raises several concerns. AFPM sees potential value in permitting meetings with Board staff (not Board Members) during informal rulemakings, subject to the same disclosure standards and safeguards to ensure even-handed access and avoid perceptions of preferential treatment. AFPM also supports subjecting meetings with Board staff to the same disclosure requirements as meetings with Board Members. This change has the potential to promote efficiency and improve decision-making. Expanding the available options for ex parte meetings during these proceedings could increase the number of opportunities available for stakeholders and members of the public to discuss pending rulemakings with the Board, but it may raise risks or drawbacks regarding fairness during the rulemaking process. The Board should consider allowing office directors to delegate Board staff to participate in such meetings to mitigate the expected influx of meetings and to facilitate coordination better. Taken together, subjecting meetings with Board staff to the same disclosure requirements as meetings with Board Members, *see* 49 CFR 1102.2(g)(4), may mitigate these issues.¹²

⁹ *See* [49 CFR 1102.2\(g\)\(4\)](#)

¹⁰ *Id.*

¹¹ *See* [49 CFR 1102.2\(g\)\(1\)](#)

¹² *See* note 10.

d. Timing for Ex Parte Meetings in Informal Rulemakings

AAR asks the Board to extend and revise the timeframe for ex parte meetings in informal rulemakings beyond the current cutoff limits to address the current compressed timeline, which they argue restricts meaningful discussion regarding all parties' concerns and arguments. Currently, Board members are allowed to attend ex parte meetings during the rulemaking proceedings from the time an NPRM is issued until 20 days before the deadline for reply comments. However, stakeholders typically request ex parte meetings during this brief period between close of comments and the date 20 days before the reply deadline. Due to this tendency, the Board's resources are taxed during such a compressed time frame to accommodate all meetings. Therefore, the Board is exploring amending the regulatory text to allow the Board to set the end date for ex parte meetings on a case-by-case basis.

With respect to timing, AFPM is open to greater flexibility in scheduling ex parte meetings on a case-by-case basis, provided procedural fairness is preserved and all parties retain meaningful opportunities to respond. As the Board acknowledges, moving the end date closer to the end of the reply period could prove difficult for stakeholders to reply to information that comes from ex parte meetings. Additionally, if the end date is moved beyond the deadline for replies, then stakeholders may attempt to withhold information in public comments and instead present such information after the reply period has ended. AFPM supports flexibility but would importantly caution against lengthy extensions that could potentially further slow progress on rulemakings.

e. Single-Party Proceedings and Mergers

In their petition, AAR argues to revise the Board's Fieldston policy by allowing ex parte communications in major Class I railroad transactions, subject to disclosure requirements, arguing that this would improve efficiency if the Board uses its discretion afforded by 49 U.S.C. 11324(f) rather than requiring stakeholders to submit documentation of ex parte communications.¹³ Consistent with this congressional grant of discretion, the Board adopted a policy of not entertaining ex parte communications in railroad merger proceedings. While parties maintain the option to seek a waiver of the ex parte prohibition in Fieldston, STB will not wholly reverse its longstanding policy for various reasons. AAR also argues that permitting ex parte communications in single-party proceedings would provide better clarity and flexibility. However, the Board finds it unnecessary to revise section 1102.2(b) to permit ex parte communications in uncontested single-party proceedings. The Board is adhering to its definition of ex parte communications, which requires multiple parties with unequal access, and a one-party proceeding does not exclude any party; therefore, AAR's request falls outside the definition of ex parte communications and no regulatory change is necessary.¹⁴

AFPM strongly supports the STB's decision **not** to grant blanket ex parte authority in purported single-party proceedings and **not** to relax the longstanding prohibition on ex parte

¹³ See 97 Fed. Reg. 1147, "[Petition of Fieldston Co., Inc. To Establish Procedures Regarding Ex Parte Communications in Railroad Merger Proceedings](#)" STB—1997-364; published January 8, 1997

¹⁴ See 91 Fed. Reg. 19095, "[Petition for Rulemaking-Amendments to Regulations Governing Ex Parte Communications](#)" STB—2026-07230; published April 14, 2026.

communications in Class I railroad mergers. Maintaining these limits is essential to transparency, fairness, and confidence in Board proceedings like these that could have outsized impacts. The Board rightfully notes that there is a risk of premature substantive engagement that could create a perception of unequal access or influence if such engagement is made with the original filer when it is clear and more than likely that another party will join the matter. The Board also recognizes that merger proceedings involving Class I railroads maintain a high level of public interest, so if ex parte communications were allowed then efficiency and effectiveness would be reduced. Furthermore, the Board correctly rejects the idea of differentiating between communications within a rail merger proceeding as it risks undermining fairness in procedures. STB does and should continue to prioritize maintaining confidence in the integrity of its decisions, especially in discussing matters of high-profile merger proceedings where public scrutiny is intense and the ramifications of the Board's decision can drastically impact industry, consumers and the public.

V. Conclusion

AFPM appreciates the Board's attention to this matter and its consideration of AFPM's comments. Overall, AFPM views the ANPRM as an opportunity to advance targeted clarifications and enhance procedural communications, while preserving the integrity of core procedural protections. AFPM will continue to emphasize that clarity, disclosure, and bright-line guardrails are essential to prevent back-door advocacy.

Respectfully submitted by:

A handwritten signature in blue ink, appearing to read "Rob Benedict". The signature is fluid and cursive, with the first name "Rob" and last name "Benedict" clearly distinguishable.

Rob Benedict, Vice President, Petrochemicals & Midstream
American Fuel & Petrochemical Manufacturers