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800 Independence Avenue, S.W.  
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RE: *Ex Parte* During Informal Rulemaking

Dear Mr. Poulakidas,

The Aeronautical Repair Station Association ([ARSA](#)) represents the worldwide civil aviation maintenance industry—from global corporations to small, independent businesses. Its representatives have been appointed to numerous rulemaking committees and the undersigned has been a member of the Aviation Rulemaking Advisory Committee since its inception.

It has come to the association's attention that an attorney from the Office of Chief Counsel publicly reprimanded an agency representative for stepping over the line of the supposed *ex parte* communication prohibition during informal rulemaking.<sup>1</sup> Attendees at the public forum report that the FAA was merely updating the audience on the proposed rule's status and basic content. The agency did not accept substantive comments or information from the audience. Even if such was the case the Department of Transportation General Counsel's guidance on external communications<sup>2</sup> makes clear that a contemporaneous memorandum to the docket would have removed any stigma.

This is not the first time the agency has used *ex parte* as a reason for refusing to engage with stakeholders.<sup>3</sup> Nor is ARSA the only one concerned about the agency's use of *ex parte* as an excuse for not engaging with stakeholders. Sec. [302](#) of the recent FAA Reauthorization Act expressed Congress' sense that the agency should engage with

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<sup>1</sup> Title 5 U.S.C. § [553](#) does not prohibit *ex parte* communications.

<sup>2</sup> U.S. Department of Transportation, General Counsel, "Guidance on Communication with Parties Outside of the Federal Executive Branch ([Ex Parte Communications](#))", Memorandum for Secretarial Officers and Heads of Operating Administrations, April 19, 2022, Informal Rulemaking, page 5..

<sup>3</sup> See, Aviation Rulemaking Advisory Committee (ARAC) minutes from meeting package for March [2022](#), wherein the Office of Chief Counsel noted that contrary to the DOT's *ex parte* communications memorandum such "communications are discouraged more from a policy perspective than from a legal perspective." See, also, minutes from July [2023](#), September [2023](#), and December [2023](#) minutes in which *ex parte* was used as the reason for not meeting with a working group on a task assigned by the agency. Finally, the subject was raised but not clarified by the Administrator during the 2024 FAA-EASA International Aviation Safety Conference.

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aviation stakeholder groups to the greatest extent practicable, properly docketed *ex parte* discussions during rulemaking activities in order to inform and assist the Administrator in developing the scope of a rule; thus help reduce the timeline for issuance of proposed and final rules. The sense of Congress is fully consistent with the *Ex Parte* Communications memorandum issued by the DOT.

While agency “personnel cannot discuss or negotiate...the substance of a rulemaking while engaging in [*ex parte*] contacts” (emphasis added), if such an exchange takes place, it must be memorialized in the docket. The memorandum, made by either the agency or the public, would include a “summary of the issues discussed in addition to [the] basic meeting information.” The agency would then add the “substance of material information submitted by the public as part of an *ex parte* communication (with appropriate protections for confidential information)” (emphasis added) to the docket.<sup>4</sup>

Attorneys in the Office of Chief Counsel must clearly understand, communicate, and support the standards contained in the cited *Ex Parte* Communications memorandum. That document clearly encourages open and continued dialogue with the public throughout the informal rulemaking process.

The undersigned would like to provide a workshop to the Office of Chief Counsel’s attorneys on the subject with an open dialogue on the types of communication that would trigger the need for a memorandum. Otherwise, a meeting is requested with the Chief Counsel to discuss this issue and receive his office’s full support for the DOT’s *Ex Parte* Communications memorandum.

Your Servant,



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<sup>4</sup> *Supra*, at footnote 2, **Informal Rulemaking**, page 5.