



FR-4

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## SURFACE TRANSPORTATION BOARD

49 CFR Part 1108

[Docket No. EP 765]

Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes

AGENCY: Surface Transportation Board.

ACTION: Petition for rulemaking.

SUMMARY: The Board institutes a rulemaking proceeding to consider a proposal to establish a new, voluntary arbitration program intended to help resolve small rate disputes.

DATES: Published in the Federal Register on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the Board will provide an opportunity for additional public participation in a subsequent decision.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at [www.stb.gov](http://www.stb.gov) and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On July 31, 2020, five railroad parties—Canadian National Railway Company (CN); CSX Transportation, Inc. (CSXT); The Kansas City Southern Railway Company (KCS); Norfolk Southern Corporation; and Union Pacific Railroad Company (UP) (collectively, Petitioners)<sup>1</sup>—filed a petition for

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<sup>1</sup> The petition lists one of the petitioners only as “CN.” In their supplemental filing, Petitioners identify this party as the “U.S. operating subsidiaries of CN.” Although not identified in either filing, the Board understands “CN” to mean Canadian

rulemaking to create a new, voluntary small rate case arbitration program, to be codified at 49 CFR part 1108a, which would function alongside the Board's existing arbitration program at 49 CFR part 1108. Petitioners pledge to participate in their proposed arbitration program for a period of five years, provided the Board adopts the program according to the terms set forth in the petition, including (among other things) a right to withdraw from the program if the Board adopts the Final Offer Rate Review (FORR) process<sup>2</sup> without exempting carriers that participate in the program from the FORR process. (Pet. 2, 17.)

Replies to the petition were filed on August 20, 2020, by the National Grain and Feed Association (NGFA); Olin Corporation (Olin); the American Fuel & Petrochemical Manufacturers (AFPM); and (filing jointly) the American Chemistry Council, Corn Refiners Association, Institute of Scrap Recycling Industries, National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute (Joint Shippers). The U.S. Department of Agriculture (USDA) also filed a reply. Olin, AFPM, and the Joint Shippers generally object to the Petitioners' requested program.<sup>3</sup> While USDA and NGFA express support for commencing a rulemaking proceeding, they advocate for certain changes to the program requested by the Petitioners. (USDA Reply 1; NGFA Reply 1-2.) By decision issued on August 26, 2020, the Director of the Office of Proceedings directed Petitioners to submit a supplemental pleading responding to the replies and allowed other interested persons to respond as well.

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National Railway Company. Another petitioner is listed as Norfolk Southern Corp., but in the supplemental filing, the party is identified as Norfolk Southern Railway Company (NSR), the operating affiliate of Norfolk Southern Corp.

<sup>2</sup> The Board proposed FORR in Final Offer Rate Review, EP 755 (STB served Sept. 12, 2019).

<sup>3</sup> In a comment filed in Docket No. EP 755, the U.S. Wheat Associates Transportation Working Group (U.S. Wheat) also expressed "several concerns" regarding the Petitioners' requested program. See U.S. Wheat Comment 6, Aug. 12, 2020, Final Offer Rate Review, EP 755.

On September 10, 2020, Petitioners submitted a supplemental filing, as did AFPM, U.S. Wheat, and the Joint Shippers. Petitioners state that they are agreeable to some modifications to their proposed program, but not to the modifications suggested by other interested parties on confidentiality, exemption from FORR, and a prohibition on revenue adequacy considerations. The shipper groups renewed their objections to Petitioners' proposed program.

The Board favors the resolution of disputes through alternative dispute resolution whenever possible, see 49 CFR 1109.1, and has also been actively working to expand access to rate relief, particularly for smaller disputes. The Rate Reform Task Force (RRTF), which the Board established in 2018 to develop recommendations for rate reform, recommended legislation that would permit mandatory arbitration of small disputes, in addition to a Board-administered final offer decision-making process,<sup>4</sup> the latter of which the Board has proposed in Docket No. EP 755. (RRTF Report 14-20.) In order for the Board to give further consideration to providing a new arbitration program under which parties would voluntarily participate to resolve rate disputes, the Board concludes that it is appropriate to institute a rulemaking proceeding to consider Petitioners' proposal.<sup>5</sup> The Board will provide an opportunity for additional public participation in a subsequent decision.

List of Subjects in 49 CFR 1108

Administrative practice and procedure, Railroads.

It is ordered:

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<sup>4</sup> The RRTF issued its report on April 25, 2019. The RRTF Report is available on the Board's website at <https://prod.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf>.

<sup>5</sup> The Board also notes the Petitioners' proposed interrelationship between their proposed arbitration program and the Board's proposal in Docket No. EP 755.

1. Petitioners' request to initiate 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.

Decided: November 24, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020-26506 Filed: 12/2/2020 8:45 am; Publication Date: 12/3/2020]