

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1108 and 1109

[STB Docket No. EP 699]

Assessment of Mediation and Arbitration Procedures

Wednesday, April 18, 2012

AGENCY: Surface Transportation Board.

***23208 ACTION:** Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board has proposed regulations that would require Class I and Class II rail carriers to participate in the Board's arbitration program, unless they file a prior written notice with the Board on an annual basis opting out of the program. By contrast, Class III rail carriers wishing to participate in the Board's arbitration program could file a request for arbitration with the Board under this docket at any time, or could voluntarily agree to participate in arbitration on a case-by-case basis. A shipper wishing to participate in the Board's arbitration program could so inform the Board on a case-by-case basis following the filing of a complaint. Pursuant to the Paperwork Reduction Act and Office of Management and Budget regulations, the Board now seeks comments regarding certain information pertaining to the proposed arbitration rules.

DATES: Comments are due by June 18, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing process or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 699, 395 E Street SW., Washington, DC 20423-0001. Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street SW., Washington, DC. Copies of the comments will also be available by contacting the Board's Chief Records Officer by telephone at (202) 245-0236 or by mail at 395 E Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Virginia Strasser at (202) 245-0275. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.)

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking in **Assessment of Mediation and Arbitration** Procedures, EP 699 (STB served Mar. 28, 2012),[FN1] the Surface Transportation Board has proposed regulations that would require Class I and Class II rail carriers to participate in the Board's arbitration pro-

gram, unless they file a prior written notice with the Board on an annual basis opting out of the program. Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (PRA), and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board now seeks comments regarding: (1) Whether the particular collection of information described below and in greater detail at 77 FR 19,591 is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or *23209 other forms of information technology, when appropriate.

FN1 The Notice of Proposed Rulemaking was published in the Federal Register on April 2, 2012. (77 FR 19,591).

The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible. To that end, the Board has existing rules that encourage parties to agree voluntarily to mediate or arbitrate certain matters subject to its jurisdiction. The Board's mediation rules are set forth at 49 CFR 1109.1, 1109.3, 1109.4, 1111.2, 1111.9, and 1111.10. Its arbitration rules are set forth at 49 CFR 1108, 1109.1, 1109.2, 1109.3, and 1115.8. The proposed modifications to the Board's existing rules are intended to increase the use of mediation and arbitration in lieu of formal adjudication to resolve disputes before the Board.

The proposed changes to the mediation rules do not impose a new information collection on the public. Rather, the proposed changes to the existing mediation rules would establish procedures under which the Board could compel mediation in certain types of adjudications before the Board, on a case-specific basis, as well as grant mediation requests of parties to disputes.

The proposed changes to the arbitration rules, however, do impose a new information collection with regard to rail carriers. Class I and Class II carriers would be deemed to have agreed voluntarily to participate in the Board's proposed arbitration program unless they "opt out." To opt out, any such carrier would be required to file a notice with the Board, under Docket No. EP 699, notifying the Board of its opt-out decision, no later than 20 days after this proposed rule took effect. Any such carrier not submitting a notice by this deadline would be deemed to be a participant in the Board's arbitration program. Should the proposed rules take effect, a Class I or Class II carrier wishing to opt out of the Board's arbitration program would be required to file an opt-out notice with the Board no later than January 10 of each calendar year. Such carriers not opting out by this deadline would become participants in the Board's proposed arbitration program during that calendar year. Participating carriers could also opt out of the arbitration program at any time by providing 90 days' notice to the Board. Class I and Class II carriers that had opted out would be able to opt back into the proposed arbitration program at any time by filing a notice with the Board that would take effect immediately. They could also participate in arbitration on a case-by-case basis.

In contrast, Class III rail carriers would not be deemed to have agreed to participate in the proposed arbitration program unless they were to opt in by filing a written notice in Docket No. EP 699, so informing the Board. Such notice could be filed at any time and would take effect immediately. A Class III carrier would remain a participant in the proposed arbitration program thereafter unless it were to file an opt-out notice with the Board. Such notice would take effect 90 days after filing. Like Class I and Class II carriers, Class III carriers could also voluntarily agree to participate in arbitration on a case-by-case basis.

Shippers would choose to participate in arbitration of the proposed program-eligible disputes on a case-by-case basis following the filing of a complaint whose subject matter would be arbitration program-eligible under the proposed rule.

This proposed rule, which is detailed in the Board's decision and Federal Register notice referenced above is being submitted to OMB for review as required under the PRA, [44 U.S.C. 3507\(d\)](#), and [5 CFR 1320.11](#).

List of Subjects

49 CFR Part 1108

Administrative practice and procedure, Railroads.

49 CFR Part 1109

Administrative practice and procedure, Maritime carriers, Motor carriers, Railroads.

Decided: April 13, 2012.

Jeffrey Herzig,

Clearance Clerk.

Appendix A

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: **Assessment of Mediation and Arbitration** Procedures.

OMB Control Number: 2140-XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Class I, Class II, and Class III railroads.

Number of Respondents: A maximum of 650.

Estimated Time per Response: 1.0 hour.

Frequency: Annually.

Total Burden Hours (annually including all potential respondents): 650 hours.

Total "Non-Hour Burden" Cost: None identified.

Needs and Uses: Under [49 U.S.C. 721\(a\)](#), the Board has the authority to prescribe regulations to carry out its

statutory authority. The proposed information collection is intended to encourage greater use of arbitration as a means to resolve certain types of disputes before the Board, by establishing an arbitration program in which Class I and Class II rail carriers would agree in advance to participate in binding arbitration of those disputes unless they file an opt-out notice with the Board on an annual basis. Class III rail carriers may inform the Board of their interest in participating in this arbitration program by filing an opt-in notice at any time. Failure to collect this information would impede the Board's ability to establish the proposed arbitration program. The Board has authority to collect information from rail carriers under [49 U.S.C. 11145\(a\)](#).

Retention Period: Information in this report will be maintained on the Board's Web site for a minimum of one year and will be otherwise maintained by the Board for a minimum of two years.

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77 FR 23208-01, 2012 WL 1309129 (F.R.)
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