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SERVICE DATE – JUNE 28, 2012

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. EP 699

ASSESSMENT OF MEDIATION AND ARBITRATION PROCEDURES

Decided: June 28, 2012

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: In a decision served on March 28, 2012, the Surface Transportation Board (Board) proposed regulations intended to increase the use of mediation and arbitration in lieu of formal adjudication to resolve disputes before the Board. Interested parties were asked to file written comments on these proposed regulations by May 17, 2012, and replies by June 18, 2012. The Board will hold a public hearing on August 2, 2012, to explore the issues raised in these comments and replies.

DATES: The hearing will begin at 9:30 a.m., on Thursday, August 2, 2012, in the Board's hearing room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. The hearing will be open for public observation. Anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages), no later than July 19, 2012.<sup>1</sup> All witnesses are encouraged to use their hearing time to call attention to the points they believe are particularly important. Witnesses should present a short oral statement of their comments and be prepared to answer questions from the Board.

ADDRESSES: All filings may be submitted either via the Board's e-filing format 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 "www.stb.dot.gov" website. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 699, 395 E Street, S.W., Washington, DC 20423-0001.

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<sup>1</sup> Notices of intent to participate and the summaries of testimony are not required to be served on the Parties of Record in this proceeding. The notices and summaries will be posted to the Board's website when they are filed.

Copies of written submissions will be posted to the Board's website and will be available for viewing and self-copying in the Board's public docket room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION, CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTAL INFORMATION: The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible.<sup>2</sup> 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 C.F.R. §§ 1109.1, 1109.3, 1109.4, 1111.2, 1111.9, and 1111.10. Its arbitration rules are set forth at 49 C.F.R. §§ 1108, 1109.1, 1109.2, 1109.3, and 1115.8. In a decision served on August 20, 2010,<sup>3</sup> and published in the Federal Register on August 24, 2010,<sup>4</sup> the Board sought input regarding measures it might implement to encourage or require greater use of mediation, and to encourage greater voluntary use of arbitration, including making changes to the Board's existing rules and establishing new rules. The Board also sought input regarding possible changes to its rules to permit the use of Board-facilitated mediation procedures without the filing of a formal complaint.

The Board received input and issued a decision proposing new regulations on March 28, 2012.<sup>5</sup> These proposed regulations would require parties to participate in mediation in certain types of cases and would modify the agency's existing regulations that permit parties to engage voluntarily in mediation. The Board also proposed an arbitration program under which carriers and shippers would agree voluntarily to arbitrate certain types of disputes that come before the Board. Class I and Class II rail carriers would be deemed to agree voluntarily to participate in the proposed arbitration program unless they "opt out." Finally, the Board proposed modifications to clarify and to simplify its existing rules governing the use of arbitration in other disputes.

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<sup>2</sup> Mediation is a process in which parties attempt to negotiate an agreement that resolves some or all of the issues in dispute, with the assistance of a trained, neutral, third-party mediator. Arbitration, by comparison, is an informal evidentiary process conducted by a trained, neutral, third-party arbitrator with expertise in the subject matter of the dispute. By agreeing to participate in arbitration, the parties agree to be bound (with limited appeal rights) by the arbitral decision.

<sup>3</sup> Assessment of Mediation and Arbitration Procedures, EP 699 (STB served Aug. 20, 2010).

<sup>4</sup> Assessment of Mediation and Arbitration Procedures, 75 Fed. Reg. 52,054.

<sup>5</sup> Assessment of Mediation and Arbitration Procedures, EP 699 (STB served Mar. 28, 2012). Assessment of Mediation and Arbitration Procedures, 77 Fed. Reg. 19,591.

The Board sought comments on the proposed regulations by May 17, 2012, and replies by June 18, 2012. It received filings from the U.S. Department of Agriculture, railroad and shipper interests, and other interested parties. The Board has reviewed these submissions, and it will hold a public hearing to gather further information on these comments and replies and to question the parties about their positions.

**BOARD RELEASES AND LIVE VIDEO STREAMING AVAILABLE VIA THE INTERNET:** Decisions and notices of the Board, including this notice, are available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov). This hearing will be available on the Board's website by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 9:00 a.m. on August 2, 2012.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on Thursday, August 2, 2012, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.
2. By July 19, 2012, anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages).
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.