



# SURFACE TRANSPORTATION BOARD

FOR RELEASE

12/19/2022 (Monday)  
No. 22-55  
[www.stb.gov](http://www.stb.gov)

Contact:  
Michael Booth  
202-245-1760  
FedRelay 1-800-877-8339

## **SURFACE TRANSPORTATION BOARD ADOPTS NEW RULES FOR SMALLER RATE DISPUTES**

The Surface Transportation Board today adopted two final rules establishing new rate reasonableness procedures which provide two streamlined approaches for shippers and railroads to resolve smaller rate disputes. The Board established a voluntary arbitration program and an entirely new procedure for rate challenges, known as Final Offer Rate Review (FORR). Either rate review mechanism will substantially improve shippers' access to rate reasonableness reviews for smaller rate disputes.

In establishing these two new rate reasonableness procedures, the Board provided that the voluntary arbitration program will become operative only if all seven Class I carriers commit to participating in the program for 5 years and do so within 50 days of the date of publication of the final rule in the Federal Register. If all Class I carriers do so, they will be exempt from the FORR procedure.

In September 2019, the Board issued a notice of proposed rulemaking (NPRM) and sought public comment on its proposal for the new FORR procedure. Subsequently, five Class I railroads filed a joint petition urging the Board to exempt them from the FORR procedure, promising in return to agree to resolve rate challenges through binding arbitration, a methodology in which the carriers had previously refused to participate for many years. The Board reviewed that petition and explored whether establishing a voluntary arbitration program would provide a practical alternative dispute resolution mechanism to address smaller rate disputes. In November 2021, following this effort, the Board advanced rulemakings in both FORR and the establishment of a voluntary arbitration program. Today's action is the culmination of this rigorous project.

Both review mechanisms are limited to rate disputes worth up to \$4 million in relief over two years. Under the new FORR procedure, if the Board finds a rate to be unreasonable, the Board will decide the rate by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that adheres to firm deadlines. Under the arbitration program, Class I rail carriers would commit for a period of five years to arbitrate rate disputes, under a similarly expedited schedule. The final rule establishing the arbitration program is effective 30

days from the date of publication in the Federal Register, and the final rule establishing the FORR procedure is effective 60 days from the date of publication in the Federal Register.

Statement from Chairman Martin Oberman:

“The Board today has taken great strides in its long-term quest to make the adjudication of smaller rate disputes more accessible, reasonable, and less time-consuming. I want to underscore the leadership of former Chairman Ann Begeman in establishing the Rate Reform Task Force in 2018 whose thorough effort led to the ideas incorporated in these two new procedures.

“The two rules attempt to strike a balance between the competing interests of various stakeholders. While much of the shipper community has expressed a preference for FORR and the railroad community pursued a voluntary arbitration program in lieu of FORR, both rules have much in common – they both offer relief under similar timeframes, allow for flexibility to use different methodologies, and have the same monetary limits. I am confident that either program will provide shippers with access to more meaningful rate relief than was previously available to them. I want to thank all of the Board’s stakeholders for their engagement during these rulemaking processes, and I applaud the Board’s staff for all of their hard work and dedication in bringing these rules to fruition.

“The Board has long sought a suitable method of making adjudication of smaller rate disputes accessible, reasonable, and less time-consuming for affected parties. Experience has shown that the Board’s prior efforts to provide rate review methods suitable for smaller disputes have been rarely used by shippers.

“I am optimistic that this time the Board’s efforts will achieve this long-desired goal. I encourage the Class I railroads to accept the opportunity afforded by the new rule and sign up for the arbitration program they clearly prefer. However, if they do not, in my view, FORR also provides a strong rate relief mechanism, and its availability would also streamline rate review processes in small rate cases. To be clear, regardless of some differences of opinion about the most preferable way forward, all Board Members are committed to ensuring review of rate challenges are practical and affordable.”

The Board’s decision in [Final Offer Rate Review](#), Docket No. EP 755 (with two Board Members dissenting), may be viewed and downloaded [here](#). The Board’s decision in [Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes](#), Docket No. EP 765 (with two Board Members concurring), may be viewed and downloaded [here](#).

**POSTED: 12/19/2022 4:50 PM**