



SURFACE TRANSPORTATION BOARD

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SURFACE TRANSPORTATION BOARD ISSUES FINAL RULE ON MARKET DOMINANCE

The Surface Transportation Board today announced the adoption of a final rule to establish a streamlined approach for pleading market dominance in rate reasonableness proceedings. The final rule provides an option for simplifying the market dominance inquiry which otherwise can be costly and time-consuming, especially in smaller cases. Today's decision is part of the Board's continuing effort to make its rate review procedures more accessible, efficient, and transparent.

In September 2019, the Board issued a notice of proposed rulemaking (NPRM) which laid out a set of factors that could establish a prima facie showing of market dominance. The Board received numerous comments on the NPRM, and after careful consideration, the Board adopted the rule proposed in the NPRM with certain modifications. The final rule sets forth the following seven factors that a complainant must demonstrate:

- The movement has a revenue-to-variable cost ratio of 180% or greater;
- The movement would exceed 500 highway miles between origin and destination;
- There is no intramodal competition from other railroads;
- There is no barge competition;
- There is no pipeline competition;
- The complainant has used trucks for 10% or less of its volume (by tonnage) subject to the rate at issue over a five-year period; and
- The complainant has no practical build-out alternative (regardless of transportation mode) due to physical, regulatory, financial, or other issues (or combination of issues).

Complainants who cannot make the showing under these seven factors would still have the option to utilize the non-streamlined market dominance approach to prove market dominance. Under either approach, defendant railroads would continue to have the opportunity to rebut a complainant's evidence.

Finally, after considering stakeholder comments regarding commodity-specific mileage thresholds, the Board announced that it would soon initiate a proceeding to further explore the adoption of various commodity-specific thresholds, including for chlorine and agricultural products.

The final rule will be effective on September 5, 2020 (30 days from publication).

The Board's final rule in Market Dominance Streamlined Approach, Docket No. EP 756, may be viewed and downloaded from the Board's website [here](#)

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