2140-0039
January 2023

SUPPORTING STATEMENT
FOR REQUEST OF OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 C.F.R. § 1320

The Surface Transportation Board (STB or Board) requests approval for the information collections of the **Arbitration Program for Small Rate Disputes**.

A. Justification:

1. Need for Information in Collection. Under 49 U.S.C. § 11708, Congress has required the Board to "promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints" that are subject to the Board's jurisdiction. Various mediation and arbitration processes have been promulgated and used (i.e., Arbitration Option Notices, OMB Control No. 2140-0020, and Dispute Resolution Procedures, OMB Control No. 2140-0036). For several years, the Board has sought to modify the procedures by which shippers can challenge rail rates as unreasonable, particularly in cases where the amount in dispute is small. Toward that end, the Board issued a notice of proposed rulemaking on November 15, 2021, published in the Federal Register on November 26, 2021 (86 Fed. Reg. 67588), to modify its regulations to establish a voluntary arbitration program focused solely on resolving small rate disputes. Joint Pet. for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes, EP 765 (STB served Nov. 15, 2021). Now, in its final rule, the Board is adopting that process, subject to some changes from what was proposed in the initial rulemaking. Joint Pet. for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes, EP 765 (STB served December 19, 2022) (Final Rule). Because arbitration is voluntary, the newly proposed arbitration process is designed to encourage stakeholder participation while still providing a fair and efficient process for resolving small rate cases.

The new arbitration program will include the following components:[1]

- To incentivize railroad participation in the arbitration program, the Board will allow carriers to be exempt from rate challenges under the FORR process during their participation in the arbitration program.

- For the arbitration program to become operable, the Board will require that all Class I

[1] The Final Rule references a related rulemaking issued on the same day, in which the Board is issuing a decision adopting new rate case procedure for smaller cases called Final Offer Rate Review (FORR). Final Offer Rate Rev., EP 755 (STB served Dec. 19, 2022). Under this proposed rate review procedure, the Board would decide a case by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that adheres to firm deadlines. These separate procedures are in some circumstances connected to the Final Rule, as described below.

carriers agree to participate in the program for an initial five-year term.[2]

- Class I carriers will have a limited window—20 days from the effective date of these regulations—to decide whether to participate in the new arbitration program. If not all Class I carriers participate, the program will not become operable, and all Class I carriers will be subject to rate challenges under the FORR process.

- If the arbitration program becomes effective, Class II and III carriers may participate on a case-by-case basis (though they may also participate for the same five-year term as Class I carriers are required to do). Shippers that wish to use the arbitration program will participate on a case-by-case basis.

- If the arbitration program becomes operable, carriers may withdraw on an individual basis during the five-year term if there is a material change in the law affecting regulation of railroad rates. The withdrawal of one or more carriers on the basis of a material change in law will not terminate the arbitration program once it has become effective but will subject the withdrawing carrier to challenges under the FORR process.

- Under the new arbitration program, a carrier can be subject to no more than 25 arbitrations simultaneously.

As for procedures, the parties will have the option to mediate before beginning the arbitration; the arbitration will be overseen and ultimately decided by a panel of three arbitrators (one chosen by each side and a neutral arbitrator); there will be limits on the amount of discovery parties seek; shippers will be permitted broad flexibility in the methodologies they use to demonstrate a rate is unreasonable; decisions by the arbitration panel can be appealed to the Board; and the process will be confidential (though appeals to the Board will be public). The Board will conduct a programmatic review of the arbitration program no later than three years after the program begins.

2. Use of Data Collected. In the Final Rule, which is set forth in 49 C.F.R. part 1108, subpart B, the seven Class I rail carriers may agree to participate in the Board's arbitration

[2] Pursuant to Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers, EP 763 (STB served Apr. 5, 2021), the Board classified rail carriers into the following categories: Class I carriers have annual operating revenues of more than $900 million in 2019 dollars ($943,898,958 when adjusted for inflation using 2021 data); Class II carriers have annual operating revenues of less than $900 million in 2019 dollars ($943,898,958 when adjusted for inflation using 2021 data); and Class III carriers have annual operating revenues of $40.4 million or less in 2019 dollars ($42,370,575 when adjusted for inflation using 2021 data). The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 C.F.R. § 1201.1-1; Indexing the Ann. Operating Revenues of R.Rs., EP 748 (STB served June 29, 2022). As of the date of this document, there are currently seven Class I carriers.

program by filing a notice with the Board to "opt in" to arbitration. These "Opt-In" Notices have a five-year term, and, once a rail carrier is participating in the Board's arbitration program, it may withdraw from participation only if there is a material change in the law regarding how the railroad rates are challenged.

To initiate an actual arbitration over a rate dispute, a shipper may submit an Initial Notice of Intent to Arbitrate to the railroad stating that it wishes to invoke the arbitration process. The parties can then decide if they want to engage in mediation before proceeding to the arbitration. If the parties choose not to mediate, or mediation is unsuccessful, the parties may send a Joint Notice to Arbitrate to the Board's Office of Public Assistance, Governmental Affairs, and Compliance, alerting that office that they intend to proceed to the arbitration phase of the program. If the parties proceed to arbitration, certain confidential data from the Board's Carload Waybill Sample will be made available to them.[3]

Upon conclusion of the arbitration, the arbitrator's decision is confidential and not filed with the Board. The parties are required, however, to provide a post-arbitration summary to the Board within 14 days after the arbitrators' decision. The confidential summary shall provide only the following information to the Board with regard to the dispute arbitrated under this part: (i) Geographic region of the movement(s) at issue; (ii) Commodities shipped; (iii) Number of calendar days from the commencement of the arbitration proceeding to the conclusion of the arbitration; (iv) Resolution of the arbitration, limited to the following descriptions: settled, withdrawn, dismissed on market dominance, challenged rate(s) found unreasonable/reasonable; and (v) Any agreement to a different relief cap or period than set forth in § 1108.28(b).

Finally, the parties may appeal an arbitration decision, requesting that the Board vacate or modify the arbitrators' decision (at which time, a confidential version of the arbitration decision would be provided to the Board). The petition to the Board seeking to appeal the arbitration decision and the opposing side's reply are public, but the parties may redact confidential information. The Board's decision ruling on the appeal is also public, but the Board "shall maintain the confidentiality of the arbitration decision to the maximum extent possible." 49 C.F.R. § 1108.31(d).

Under the Final Rule, the Board may publish on its website public quarterly reports on the final disposition of arbitrated rate disputes under this new arbitration program. However, the quarterly reports on the Small Rate Case Arbitration Program shall disclose only the five categories of information listed the confidential summaries. The parties to the arbitration shall not be disclosed.

The Final Rule implements these steps that provide for the collection of information under the PRA.

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[3] The Carload Waybill Sample is a statistical sampling of railroad waybills that is collected and maintained for use by the Board and by the public (with appropriate restrictions to protect the confidentiality of individual traffic data). See 49 C.F.R. pt. 1244.

3. Reduction through Improved Technology. The Board expects all respondents to file any of the proposed notices, summaries, and appeals electronically.

4. Identification of Duplication. No other federal agency collects the information in these collections, and the information in these collections is not available from any other source.

5. Minimizing Burden for Small Business. None of these collections will have a significant economic impact on a substantial number of small entities. The collections allow parties to resolve potential small rate disputes more quickly and efficiently.

6. Consequences if Collection not Conducted or Conducted Less Frequently. Without these collections, the Board could not encourage greater use of arbitration, and rail carriers and shippers may not have access to the Board's dispute resolution program in some situations.

7. Special Circumstances. No special circumstances apply to this collection.

8. Compliance with 5 C.F.R. § 1320.8. As required, the Board published its proposed rule change in Small Disputes Arbitration NPRM (86 Fed. Reg. 67588 (November 26, 2021)), which provided for a 49-day comment period through January 14, 2022 (and an additional 60-day period for reply comments through March 15, 2022) regarding this collection, with specific reference to concerns detailed in the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521 and Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1320.8(d)(3). The comment period was extended in Small Disputes Arbitration NPRM (87 Fed. Reg. 536 (January 5, 2022)), which provided for an additional 31-day period for reply comments through April 15, 2022. The Final Rule was published (88 Fed. Reg. 700 (Jan. 4, 2023)), with a 30-day effective date. Once the Final Rule is effective, Class I carriers will have 20 days to inform the Board if they will opt into the arbitration program.

9. Payments or Gifts. The Board does not provide any payment or gifts for this collection.

10. Assurance of Confidentiality. All information collected through this report will be subject to the Board's confidentiality procedures.

11. Sensitive Information. This collection may contain sensitive information, but it is necessary to process information for the Board's arbitration program, and sensitive information is collected and handled consistent with the Board's rules.

12. Estimated Burden Hours. 277 hours. As provided in *Table – Total Estimated Annual Burden Hours* below (using sum of estimated hours per response x number of annual responses for each type of filing).

Table – Total Estimated Annual Burden Hours

Type of filing	Hours per response	Annual number of filings	Total annual burden hours
"Opt-In" Notices*	1	7	7
Initial Notices	1	21	21
Joint Notices	2	18	36
Post-Arbitration Summaries	3	21	63
Appeals of Arbitrators' Decision	25	6	150
Total annual burden hours		73	277

* Each of the seven "Opt-In" Notices have a five-year term.

13. Estimated Total Annual Cost to Respondents. There are no non-hourly burden costs for this collection. The itemized collections may be filed electronically.

14. Annualized Cost to the Federal Government. We estimate that the maximum cost to the Board of entering the documents into the Board's e-Library under the appropriate docket and posting the searchable pdfs to the website would total no more than 73 staff hours (one hour per notice X 73 notices filed (for notices, summaries, and appeals)) at a GS-12 pay grade.

15. Explanation of Program Changes or Adjustments. This ICR is due to the Board creating a new arbitration program for small rate disputes that did not exist.

16. Plans for tabulation and publication. The information in this collection that is not confidential will be posted on the Board's website, located at www.stb.gov.

17. Display of expiration date for OMB approval. The new expiration date for this collection will be published in the Federal Register when the collection is approved by OMB.

18. Exceptions to Certification Statement. Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.