

ARTICLE II — ARBITRATION

The CCSB's disposition of a docketed proposal may be set for arbitration by any party of record to that proposal subject to the following rules:

Rule 1. Request for Arbitration

The party or parties seeking relief shall be referred to as the claimant(s) and the CCSB shall be referred to as the respondent. Within thirty (30) days of a classification decision, claimant(s) shall notify the Chairman of the CCSB by mail, email or facsimile that arbitration is requested of the action on the docketed proposal.

Rule 2. Selection of Arbitrator

- a) The Chairman of the CCSB shall post on NMFTA's website a list of not less than ten (10) neutral arbitrators selected by an independent arbitration association. If a person does not have Internet capability, upon notice by that party that it wishes to seek arbitration, the Chairman, within two (2) business days after that notice, will provide the list of not less than ten (10) neutral arbitrators by overnight delivery, email or facsimile. The claimant(s) and the Chairman of the CCSB shall confer by telephone, email or facsimile within three (3) business days after the list of neutral arbitrators has been received by the claimant(s) or was available to the claimant(s) on NMFTA's website to mutually agree to a neutral arbitrator. If the claimant(s) and the Chairman select different neutral arbitrators, and cannot agree on a single neutral arbitrator, they will so notify the arbitration association, and the two selected arbitrators will choose the arbitrator to handle the matter from the remaining arbitrators on the list who were not selected. The arbitration association shall be notified by telephone, email or facsimile of the selection of the neutral arbitrator, and the arbitration association shall determine whether the selected neutral arbitrator has a conflict of interest. The claimant(s) and the Chairman of the CCSB shall be notified promptly of the results of that inquiry. If the neutral arbitrator selected has a conflict of interest, the two originally selected arbitrators will choose another neutral arbitrator until no conflict of interest exists.
- b) The list of neutral arbitrators will be utilized unless, within seven (7) business days after notice of arbitration is provided by a claimant, the parties mutually agree to utilize a neutral arbitrator not identified on the list.

Rule 3. Commencing the Arbitration Process

Prior to the commencement of the review by the neutral arbitrator, claimant(s) and the Chairman of the CCSB will be required to execute an arbitration agreement. Upon receipt of the signed arbitration agreement, the arbitration association shall direct the selected neutral arbitrator to commence the proceeding and shall notify claimant(s) and the Chairman of the CCSB by email or facsimile that the proceeding has commenced. The claimant(s) and NMFTA will share equally in the fees charged for the arbitration process by the arbitration association, except that each will bear their own legal or representation fees and administrative costs.

Rule 4. Transmittal of Public Record

Within one (1) business day after receiving notice that the proceeding has commenced, the Chairman of the CCSB shall forward to the arbitrator and the claimant(s) by overnight delivery a complete copy of the CCSB public docket file.

Rule 5. Parties' Statements of Position

- a) Within seven (7) business days after receiving notice that the proceeding has commenced, the claimant(s) may submit to the arbitrator a statement of position as to why the classification action is not in conformity with established classification standards. A copy of the statement shall be provided by overnight delivery, email or facsimile to the Chairman of the CCSB. Within ten (10) business days after the receipt of claimant's(s') statement(s) the CCSB may submit a response by overnight delivery, email or facsimile to the arbitrator, and send a copy by overnight delivery, email or facsimile to the claimant(s). At the arbitrator's discretion, rebuttal statement(s) may be submitted by the claimant(s) by overnight delivery, email or facsimile within five (5) business days after receipt of the CCSB's reply. A copy of the rebuttal(s) must be served contemporaneously by overnight delivery, email or facsimile to the Chairman of the CCSB.
- b) If either the claimant(s) or the CCSB believes that a submitted statement includes erroneous, misleading or inappropriate evidence or issues, a motion may be filed to bring same to the attention of the arbitrator. Such motion must be submitted within three (3) business days after receipt of the statement involved, and the other party(ies) may respond thereto within three (3) business days after receipt of the motion. Motion and response shall be transmitted to the arbitrator and other party(ies) by overnight delivery, email or facsimile.

Rule 6. Decision of Arbitrator

Within thirty (30) days after the receipt of the parties' statements of position, the arbitrator shall issue a written decision determining whether or not to affirm the challenged classification action. The arbitrator's decision will consider statements on appeal submitted by the parties, but such statements must not include inappropriate evidence or issues and must not seek or constitute a de novo review. The arbitrator's conclusions shall be governed by the established regulatory and legal standards and precedent for evaluating the reasonableness of classification provisions. The reasonableness of the class(es) proposed for any commodity shall be determined exclusively by comparison of that commodity's four recognized transportation characteristics (density, stowability, handling and liability, as defined by the Interstate Commerce Commission in Ex Parte No. MC-98 (Sub-No. 1), Investigation Into Motor Carrier Classification, 367 I.C.C. 243 (1983) and related cases) with the transportation characteristics of other commodities that are assigned a comparable class(es). The decision will set forth the essential reasoning that was relied upon in reaching these conclusions. The arbitrator's decision shall be final. Amendments to the NMFC resulting from decisions of an arbitrator under these Procedures shall be published in a Supplement to be issued not less than fifteen (15) days after arbitrator issues his or her written decision.