

Agreement to Administer Alternative Dispute Resolution

A detailed summary of the agreement

- BNSF Railway, Montana Farm Bureau Federation, and Montana Grain Growers Association are the signatories.
- All parties agree to work together to resolve wheat and barley rate disputes through mediation and binding arbitration.
- Producer Organizations will determine the merit of a producer's claim, and will represent the producer in the mediation/arbitration process.
- Parties agree to designate a panel of at least 5 arbitrators who are experienced and knowledgeable in ag marketing and transportation.
- Producer Organizations' steering committee will determine the merit of claims, then execute attached Exhibit 1 for mediation of the issue within 30 days.
- All parties agree to send representatives to mediation with authority to resolve the dispute. Cost of a mediator, if necessary, will be shared.
- If mediation fails and the steering committee elects arbitration, three arbitrators shall be mutually selected from the pool.
- JAMS Dispute Resolution (jamsadr.com) shall administer the arbitration, using rules identical to those of National Grain and Feed Association.
- Arbitrators will issue a written decision, binding in any court of law. Evidence submitted will be confidential.
- This agreement remains in effect for 2 years, automatically renewed unless any party gives 90 days notice to terminate.
- Each Producer Organization agrees to designate as many as three representatives to the steering committee to act on behalf of the organizations.
- The parties to this agreement are Montana Grain Growers Association, Montana Farm Bureau Federation, and BNSF Railway Company.

Exhibit 1 to Agreement to Administer ADR

Agreement to Mediate and Arbitrate entered into by BNSF Railway, grain producer, and Producer Organization.

BNSF Railway indicates willingness to have certain disputes involving rates charged for the transportation of wheat/barley resolved through voluntary mediation or binding arbitration with Producer Organizations as an alternative to litigation before the STB.

Producer Organization wishes to facilitate ADR between its producer members and BNSF Railway for wheat/barley rates, as the producer's sole representative.

Producer(s) wish to pursue this ADR, and declare themselves eligible under the terms of this agreement.

Upon execution of this agreement, Producer Organization, BNSF Railway, and such initial producers who execute this agreement, agree to pursue mediation and arbitration as detailed in this agreement.

Eligibility is limited to producers who own and/or actively farm wheat or barley in Montana and who are represented by the Producer Organization and tender their wheat/barley to a BNSF-served origin elevator from where the wheat/barley is shipped by BNSF to a BNSF-served destination greater than 250 miles from the origin.

The rate at issue will be the current published rate, including applicable fuel surcharge, less allowances paid or credited by BNSF on the origin/destination movement for the one-year time period prior to commencement of the proceeding.

Parties agree to use their best efforts to resolve rate disputes through mediation before resorting to arbitration. If a mediator is desired, cost will be shared equally between BNSF and Producer Organization.

Having found merit in a producer's claim, Producer Organization shall notify BNSF of intent to pursue mediation and advise producer members of the action. Parties agree to mediate the dispute within 30 days.

Unsuccessful mediations will proceed to binding arbitration administered by JAMS (jamsadr.org). Additional producers who execute this agreement prior to the commencement of arbitration may also participate.

A panel of three arbitrators, established in accord with the Agreement to Administer ADR, shall decide the case under conduct pursuant to NGFA arbitration rules. The panel will issue a reasoned written decision enforceable in any court of competent jurisdiction.

By entering into this Agreement, participating producers and Producer Organizations waive any right to challenge, for one year, in any other forum, an adjusted or affirmed freight rate. Producer Organization will defend such rate before the STB on BNSF request.

Producer(s) and Producer Organization(s) agree to hold each other harmless in the handling and progression of the dispute.

The outcome of an arbitration shall have no precedent effect on any subsequent arbitration of a rate dispute brought under this ADR program.

Commercial, financial, and cost information exchanged under this arbitration process shall be confidential.

The panel of arbitrators shall prepare a report upon completion of arbitration, identifying the parties to the dispute, any award made, the origin(s)/destination(s) involved, and a summary of the panel's reasoning and conclusions.

Relief obtained by producers under this arbitration shall be for a time period no more than one year from issuance of the award, and fourteen months prior to commencement of arbitration.

Prospective relief is limited to adjustment of the Issue Rate. There is no authority to adjust fuel surcharge, or to adjust rates below 180% R/VC for non-shuttle moves or 195% R/VC for shuttle shipments.

Reparations, if any, awarded by the panel, would be available for the period 14 months prior to the commencement of arbitration, to be tendered by BNSF to the Producer Organization without interest.

Relief in the form of a rate prescription would be available for the one-year period following issuance of an award by the panel.

Producer Organizations are responsible for distribution of any award to the producers, net of costs and in its sole discretion, according to relative bushel utilization of a given Issue Rate.

Parties will direct the arbitration panel to evaluate and take into account competitive alternatives to the transportation, capital requirements of the rail system used for the move in question, revenue available to sustain the network, rate levels on comparable traffic, applicable market factors comparing similar origins and markets for the same commodity, and the overall cost of providing the service. Relief would not be justified if available truck rates were lower than the contested rail rate.

Revenue to Variable Cost (R/VC) ratios will be calculated using the issue rate, less allowances paid by BNSF, plus any applicable fuel surcharge, divided by the variable costs incurred, as indicated in the current Unified Rail Costing System (URCS) model and adjusted to reflect fuel surcharges for the period in question and the most recent cost data per quarterly SEC filing.

Parties will advise JAMS and the arbitration panel of the target date for completion, but not more than 120 days from the date of initiation.

BNSF will pay JAMS and the arbitrator's fees and expenses, and the Producer Organization(s) will reimburse BNSF for such costs if the producer is not awarded relief.

If the Producer Organization(s) elect to proceed to arbitration, they shall do so within 45 days of completion of mediation.

The complaint filed shall include specification of the shipment quantity, origin, destination, issue rate, rate authority, and STCC for the prior annual period. Also included shall be the volume of traffic moved under that rate or a previous rate over the prior two years and projected for the next two years, including other commodities. Evidence of the absence of intramodal and intermodal competition, and evidence of relevant market factors shall be included, plus the producer-calculated R/VC for the move at issue and any other evidence thought by the producer to be relevant to the arbitrators' charge.

BNSF response to producer complaint shall include: response to allegation of absence of competition, identification of other traffic which should be included in the complaint, claim of grain draw argument defense, effects of reduced revenue on the movement, BNSF R/VC calculation, and any other evidence thought by BNSF to be relevant to the arbitrators' charge.

At any time after the effective date of ADR initiation, through the BNSF response, either party may file written discovery requests of no more than 5 for production of documents and no more than 20 interrogatories. Depositions are not permitted. The arbitration panel will resolve disputes regarding discovery. If a hearing is held, each party will present the live testimony of at least one witness.