

## § 1106.5

(4) If the Board approves the transaction and adopts the SIP, it will require compliance with the SIP as a condition to its approval. Each applicant involved in the transaction then shall coordinate with FRA in implementing the approved SIP, including any amendments thereto. FRA has provided in its rules at 49 CFR 244.17(g) for submitting information to the Board during implementation of an approved transaction that will assist the Board in exercising its continuing jurisdiction over the transaction. FRA also has agreed to advise the Board when, in its view, the integration of the applicants' operations has been safely completed.

(c) If a SIP is required in transactions that would not be subject to environmental review under the Board's environmental rules at 49 CFR part 1105, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented.

[67 FR 11607, Mar. 15, 2002, as amended at 83 FR 15078, Apr. 9, 2018]

### § 1106.5 Waiver.

The SIP requirements established by this part may be waived or modified by the Board where a railroad shows that relief is warranted or appropriate.

### § 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require a SIP in cases other than those enumerated in this part, or to adopt modified SIP requirements in individual cases, if it concludes that doing so is necessary in its proper consideration of the application or other request for authority.

## PART 1107 [RESERVED]

## PART 1108—ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE STATUTORY JURISDICTION OF THE SURFACE TRANSPORTATION BOARD

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AUTHORITY: 49 U.S.C. 11708, 49 U.S.C. 1321(a), and 5 U.S.C. 571 *et seq.*

SOURCE: 78 FR 29079, May 17, 2013, unless otherwise noted.

### § 1108.1 Definitions.

As used in this part:

(a) *Arbitrator* means a single person appointed to arbitrate pursuant to these rules.

(b) *Arbitrator Panel* means a group of three people appointed to arbitrate pursuant to these rules. One panel member would be selected from the roster by each side to the arbitration dispute, and the parties would mutually agree to the selection of the third-lead arbitrator under the “strike” methodology described in § 1108.6(c).

(c) *Arbitration program* means the program established by the Surface Transportation Board in this part under which participating parties, including rail carriers and shippers, have agreed voluntarily in advance, or on a case-by-case basis to resolve disputes about arbitration-program-eligible matters brought before the Board using the Board's arbitration procedures.

(d) *Arbitration-program-eligible matters* are those disputes or components of disputes, that may be resolved using the Board's arbitration program and include disputes involving one or more of the following subjects: rates; Demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation.

(e) *Counterclaim* is an independent arbitration claim filed by a respondent against a complainant arising out of the same set of circumstances or is substantially related to the underlying arbitration complaint and subject to the Board's jurisdiction.

(f) *Final arbitration decision* is the unredacted decision served upon the

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parties 30 days after the close of the arbitration's evidentiary phase.

(g) *Interstate Commerce Act* means the Interstate Commerce Act as amended by the ICC Termination Act of 1995 and the Surface Transportation Board Reauthorization Act of 2015.

(h) *Lead arbitrator or single arbitrator* means the arbitrator selected by the strike methodology outlined in § 1108.6(c).

(i) *Monetary award cap* means a limit on awardable damages of \$25,000,000 in rate disputes, including any rate prescription, and \$2,000,000 in practice disputes, unless the parties mutually agree to a lower award cap. If parties bring one or more counterclaims, such counterclaims will be subject to a separate monetary award cap.

(j) *Practice disputes* are disputes involving demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation.

(k) *Statutory jurisdiction* means the jurisdiction conferred on the STB by the Interstate Commerce Act, including jurisdiction over rail transportation or services that have been exempted from regulation.

(l) *STB or Board* means the Surface Transportation Board.

(m) *Rate disputes* are disputes involving the reasonableness of a rail carrier's rates.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69414, Oct. 6, 2016]

### § 1108.2 Statement of purpose, organization, and jurisdiction.

(a) *The Board's intent.* The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible. This section provides for the creation of a binding, voluntary arbitration program in which parties, including shippers and railroads, agree in advance to arbitrate certain types of disputes with a limit on potential liability of \$25,000,000 in rate disputes, including any rate prescription, and \$2,000,000 in other disputes unless the parties mutually agree to a lower award cap. The Board's arbitration program is open to all parties

eligible to bring or defend disputes before the Board.

(1) Except as discussed in paragraph (b) of this section, parties to arbitration may agree by mutual written consent to arbitrate additional matters and to a lower amount of potential liability than the monetary award cap identified in this section.

(2) Nothing in these rules shall be construed in a manner to prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes they may have.

(b) *Limitations to the Board's arbitration program.* These procedures shall not be available:

(1) To resolve disputes involving labor protective conditions;

(2) To obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters;

(3) To prescribe for the future any conduct, rules, or results of general, industry-wide applicability;

(4) To resolve disputes that are solely between two or more rail carriers.

Parties may only use these arbitration procedures to arbitrate matters within the statutory jurisdiction of the Board.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69414, Oct. 6, 2016]

### § 1108.3 Participation in the Board's arbitration program.

(a) *Opt-in procedures.* Any rail carrier, shipper, or other party eligible to bring or defend disputes before the Board may at any time voluntarily choose to opt into the Board's arbitration program. Opting in may be for a particular dispute or for all potential disputes before the Board unless and until the party exercises the opt-out procedures discussed in § 1108.3(b). To opt in parties may:

(1) File a notice with the Board, under Docket No. EP 699, advising the Board of the party's intent to participate in the arbitration program. Such notice may be filed at any time and shall be effective upon receipt by the Board.