

longer be subject to the exemption (set forth in §1108.33) from rate challenges under Final Offer Rate Review.

(ii) *Arbitrations with decision.* The withdrawal of consent for change in law by either a complainant or carrier shall not affect arbitrations in which the arbitration panel has issued an arbitration decision.

(iii) *Arbitrations without decision.* A carrier or complainant filing a withdrawal of consent for change in law shall immediately inform the arbitration panel and opposing party. The arbitration panel shall immediately stay the arbitration. If no objection to the withdrawal of consent is filed with the Board or the Board issues a decision granting the withdrawal request, the arbitration panel shall dismiss any pending arbitration under this part, unless the change in law will not take effect until after the arbitration panel is scheduled to issue its decision pursuant to the schedule set forth in §1108.27(c). If an objection to the withdrawal of consent is filed but the Board rejects the withdrawal upon objection, the arbitration panel shall lift the stay, the arbitration shall continue, and all procedural time limits will be tolled.

(d) *Limit on the number of arbitrations.* A carrier participating in the Small Rate Case Arbitration Program is only required to participate in 25 arbitrations simultaneously. Any arbitrations initiated by the submission of the notice of intent to arbitrate a dispute to the rail carrier (pursuant to §1108.25(a)) that has reached this limit will be postponed until the carrier is once again below the limit.

(1) A carrier that has reached the limit shall notify the Board's Office of Public Assistance, Governmental Affairs, and Compliance by email (to [rcpa@stb.gov](mailto:rcpa@stb.gov)), as well as the complainant who submitted the notice of intent to arbitrate to the carrier. The Office of Public Assistance, Governmental Affairs, and Compliance shall confirm that the limitation has been reached and inform the complainant (and any other subsequent complainants) that the arbitration is being postponed, along with an approximation of when the arbitration can proceed and instructions for reactivating the arbitra-

tion once the carrier is again below the limit.

(2) For purposes of this paragraph (d), an arbitration will count toward the 25-arbitration limit only upon commencement of the first mediation session or, where one or both parties elect to forgo mediation, submission of the joint notice of intent to arbitrate to the Board under §1108.25(c). For purposes of this paragraph (d), an arbitration under this subpart is final when the arbitration panel issues its arbitration decision, or if an arbitration is dismissed or withdrawn, including due to settlement.

#### **§ 1108.24 Use of the Small Rate Case Arbitration Program.**

(a) *Eligible matters.* The arbitration program under this subpart may be used only in the following instances:

(1) Rate disputes involving shipments of regulated commodities not subject to a rail transportation contract are eligible to be arbitrated under this subpart. If the parties dispute whether a challenged rate was established pursuant to 49 U.S.C. 10709, the parties must petition the Board to resolve that dispute, which must be resolved before the parties initiate the arbitration process under this part.

(2) A complainant may challenge rates for multiple traffic lanes within a single arbitration under this part, subject to the relief cap in §1108.28 for all lanes.

(3) For movements in which more than one carrier participates, arbitration under this subpart may be used only if all carriers agree to participate (pursuant to §1108.23(a)(1) or (4)).

(b) *Eligible parties.* Any party eligible to bring or defend a rate dispute before the Board is eligible to participate in the arbitration program under this part.

(c) *Use limits.* A complainant may not bring separate arbitrations for shipments with the same origin-destination or shipments where facilities are shared.

(d) *Arbitration clauses.* Nothing in the Board's regulations in this part shall

## § 1108.25

preempt the applicability of, or otherwise supersede, any new or existing arbitration clauses contained in agreements between complainants and carriers.

### § 1108.25 Arbitration initiation procedures.

(a) *Notice of complainant intent to arbitrate dispute.* To initiate the arbitration process under this subpart against a participating carrier, a complainant must notify the carrier in writing of its intent to arbitrate a dispute under this part. The notice must include: a description of the dispute sufficient to indicate that the dispute is eligible to be arbitrated under this part; a statement that the complainant consents to extensions of the timelines set forth in 49 U.S.C. 11708(e); and a statement that the complainant consents to the appointment of arbitrators that may not be on the STB-maintained roster of arbitrators established under § 1108.6(b). The complainant must also submit a copy of the notice to the Board's Office of Public Assistance, Governmental Affairs, and Compliance by email to [rcpa@stb.gov](mailto:rcpa@stb.gov). Upon receipt of the notice of intent to arbitrate, the Office of Public Assistance, Governmental Affairs, and Compliance will provide a letter to both parties confirming that the arbitration process has been initiated, and that the parties have consented to extension of the timelines set forth in 49 U.S.C. 11708(e) and the potential appointment of arbitrators not on the Board's roster. The notice and confirmation letter from the Office of Public Assistance, Governmental Affairs, and Compliance will be confidential and specific information regarding pending arbitrations, including the identity of the parties, will not be disseminated within the Board beyond the alternative dispute resolution functions within the Office of Public Assistance, Governmental Affairs, and Compliance.

(b) *Pre-arbitration mediation.* (1) Prior to commencing arbitration, the parties to the dispute may engage in mediation if they mutually agree.

(2) Such mediation will not be conducted by the STB. The parties to the dispute must jointly designate a medi-

## 49 CFR Ch. X (10–1–24 Edition)

ator and schedule the mediation session(s).

(3) If the parties mutually agree to mediate, the parties must schedule mediation promptly and in good faith. The mediation period shall end 30 days after the date of the first mediation session, unless both parties agree to a different period.

(c) *Joint Notice of Intent to Arbitrate.*

(1) To arbitrate a rate dispute under this subpart, the parties must submit a Joint Notice of Intent to Arbitrate with the Board's Office of Public Assistance, Governmental Affairs, and Compliance, indicating the parties' intent to arbitrate under the Small Rate Case Arbitration Program. The parties must submit a copy of the notice to the Board's Office of Public Assistance, Governmental Affairs, and Compliance by email to [rcpa@stb.gov](mailto:rcpa@stb.gov). The joint notice must be filed not later than two business days following the date on which mediation ends or, in cases in which the parties mutually agree not to engage in mediation, two business days after the complainant submits its notice of intent to arbitrate (required by paragraph (a) of this section) to the carrier.

(2) The joint notice shall set forth the following information:

(i) The basis for the Board's jurisdiction; and

(ii) The basis for the parties' eligibility to use the Small Rate Case Arbitration Program, including: that the dispute being arbitrated is solely a rate dispute involving shipments of regulated commodities not subject to a rail transportation contract; that the carrier has opted into the Small Rate Case Arbitration Program; that the complainant has elected to use the Small Rate Case Arbitration Program for this particular rate dispute; and that the complainant does not have any other pending arbitrations at that time against the defendant carrier.

(3) The joint notice shall be confidential and will not be published on the Board's website and specific information regarding pending arbitrations, including the identity of the parties, will not be disseminated within the Board