

## § 1108.7

his or her duties, a replacement arbitrator shall be promptly selected by either of the following processes:

(1) If the incapacitated arbitrator was appointed directly by a party to the arbitration, the appointing party shall, without delay, appoint a replacement arbitrator pursuant to the procedures set forth in § 1108.6(d).

(2) If the incapacitated arbitrator was the lead or single arbitrator, the parties shall promptly inform the Board of the arbitrator's incapacitation and the selection procedures set forth in paragraph (c) of this section shall apply.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69415, Oct. 6, 2016]

### § 1108.7 Arbitration procedures.

(a) *Initiation.* With the exception of rate dispute arbitration proceedings, the Board shall initiate the arbitration process within 40 days after submission of a written complaint or joint notice filed under § 1108.5(e). In arbitrations involving rate disputes, the Board shall initiate the arbitration process within 10 days after the Board issues a decision determining that the rail carrier has market dominance.

(b) *Arbitration evidentiary phase timetable.* Whether the parties select a single arbitrator or a panel of three arbitrators, the lead or single arbitrator shall establish all rules deemed necessary for each arbitration proceeding, including with regard to discovery, the submission of evidence, and the treatment of confidential information, subject to the requirement that this evidentiary phase shall be completed within 90 days from the date on which the arbitration process is initiated, unless a party requests an extension, and the arbitrator or panel of arbitrators, as applicable, grants such extension request.

(c) *Written decision timetable.* The lead or single arbitrator will be responsible for writing the arbitration decision. The unredacted arbitration decision must be served on the parties within 30 days of completion of the evidentiary phase. A redacted copy of the arbitration decision must be served upon the Board within 60 days of the close of the evidentiary phase for publication on the Board's Web site.

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(d) *Extensions to the arbitration timetable.* The Board may extend any deadlines in the arbitration timetable provided in this subpart upon agreement of all parties to the dispute.

(e) *Protective orders.* Any party, on either side of an arbitration proceeding, may request that discovery and the submission of evidence be conducted pursuant to a standard protective order agreement.

[81 FR 69416, Oct. 6, 2016, as amended at 88 FR 729, Jan. 4, 2023]

### § 1108.8 Relief.

(a) *Relief available.* An arbitrator may grant relief in the form of monetary damages or a rate prescription in rate disputes to the extent they are available under this subpart or as agreed to in writing by the parties. A rate prescription shall not exceed 5 years.

(b) *Relief not available.* No injunctive relief shall be available in Board arbitration proceedings.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69416, Oct. 6, 2016; 88 FR 729, Jan. 4, 2023]

### § 1108.9 Decisions.

(a) *Decision requirements.* Whether by a panel of arbitrators or a single arbitrator, all arbitration decisions shall be in writing and shall contain findings of fact and conclusions of law. All arbitration decisions must be consistent with sound principles of rail regulation economics. The arbitrator shall provide an unredacted draft of the arbitration decision to the parties to the dispute, in accordance with any protective order governing the release of confidential and highly confidential information pursuant to § 1108.7(e).

(b) *Redacting arbitration decision.* The lead or single arbitrator shall also provide the parties with a draft of the decision that redacts or omits all proprietary business information and confidential information pursuant to any such requests of the parties under the arbitration agreement.

(c) *Party input.* The parties may then suggest what, if any, additional redactions they think are required to protect against the disclosure of proprietary and confidential information in the decision.