

## § 1106.5

the information concerning the SIP, in arriving at its decision in the case.

(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.

### § 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. 721(a).

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### § 1108.1 Definitions.

(a) *Arbitrator* means an arbitrator appointed pursuant to these provisions.

(b) *ICC* means the Interstate Commerce Commission.

(c) *Interstate Commerce Act* means the Interstate Commerce Act as amended from time to time, including the amendments made by the ICC Termination Act of 1995.

(d) *RSTAC* means the Rail-Shipper Transportation Advisory Council established pursuant to 49 U.S.C. 726.

(e) *STB* means the Surface Transportation Board.

(f) *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.

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

(a) These provisions are intended to provide a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the STB, either between two or more railroads subject to the jurisdiction of the STB or between any such railroad and any other person.

(b) These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling) or exemption, or to prescribe for the future any conduct, rules, or results of general, industry-wide applicability. Nor are they available for arbitration that is conducted pursuant to labor protective conditions. These procedures are intended for the resolution of specific disputes between specific parties involving the payment of money or involving rates

or practices related to rail transportation or service subject to the statutory jurisdiction of the STB.

(c) The alternative means of dispute resolution provided for herein are established pursuant to the authority of the STB to take such actions as are necessary and appropriate to fulfill its jurisdictional mandate and not pursuant to the Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.*

(d) On January 1, 1996, the STB replaced the ICC. For purposes of these procedures, it is immaterial whether an exemption from regulation was granted by the ICC or the STB.

#### § 1108.3 Matters subject to arbitration.

(a) Any controversy between two or more parties, subject to resolution by the STB, and subject to the limitations in § 1108.2 hereof, may be processed pursuant to the provisions of this part 1108, if all necessary parties voluntarily subject themselves to arbitration under these provisions after notice as provided herein.

(b) Arbitration under these provisions is limited to matters over which the STB has statutory jurisdiction and may include disputes arising in connection with jurisdictional transportation, including service being conducted pursuant to an exemption. An Arbitrator should decline to accept, or to render a decision regarding, any dispute that exceeds the STB's statutory jurisdiction. Such Arbitrator may resolve any dispute properly before him/her in the manner and to the extent provided herein, but only to the extent of and within the limits of the STB's statutory jurisdiction. In so resolving any such dispute, the Arbitrator will not be bound by any procedural rules or regulations adopted by the STB for the resolution of similar disputes, except as specifically provided in this part 1108; provided, however, that the Arbitrator will be guided by the Interstate Commerce Act and by STB and ICC precedent.

#### § 1108.4 Relief.

(a) Subject to specification in the complaint, as provided in § 1108.7 herein, an Arbitrator may grant the following types of relief:

(1) Monetary damages, to the extent available under the Interstate Commerce Act, with interest at a reasonable rate to be specified by the Arbitrator.

(2) Specific performance of statutory obligations (including the prescription of reasonable rates), but for a period not to exceed 3 years from the effective date of the Arbitrator's award.

(b) A party may petition an Arbitrator to modify or vacate an arbitral award in effect that directs future specific performance, based on materially changed circumstances or the criteria for vacation of an award contained in 9 U.S.C. 10.

(1) A petition to modify or vacate an award in effect should be filed with the STB. The petition will be assigned to the Arbitrator that rendered the award unless that Arbitrator is unavailable, in which event the matter will be assigned to another Arbitrator.

(2) Any such award shall continue in effect pending disposition of the request to modify or vacate. Any such request shall be handled as expeditiously as practicable with due regard to providing an opportunity for the presentation of the parties' views.

#### § 1108.5 Fees and costs.

(a) Fees will be utilized to defray the costs of the STB in administering this alternate dispute resolution program in accordance with 31 U.S.C. 9701. The fees for filing a complaint, answer, third party complaint, third party answer, appeals of arbitration decisions, and petitions to modify or vacate an arbitration award will be as set forth in 49 CFR 1002.2(f)(87). All fees are non-refundable except as specifically provided and are due with the paying party's first filing in any proceeding.

(b) The parties may agree among themselves who will bear the expenses of arbitration, including compensation of the arbitrator. Absent an agreement, each party will bear its own expenses, including, without limitation, fees of experts or counsel. Absent an agreement, the fees of the Arbitrator will be paid by the party or parties losing an arbitration entirely. If no party loses an arbitration entirely (as determined by the Arbitrator), the parties shall share equally (or pro rata if more than