

49 U.S. Code § 11708. Voluntary arbitration of certain rail rates and practices disputes

- [U.S. Code](#)
 - [Notes](#)
-

[prev](#) [next](#)

(a) IN GENERAL.—

Not later than 1 year after the date of the enactment of the Surface Transportation Board Reauthorization Act of 2015, the [Board](#) shall promulgate regulations to establish a voluntary and binding arbitration process to resolve rail [rate](#) and practice complaints subject to the jurisdiction of the [Board](#).

(b) COVERED DISPUTES.—The voluntary and binding arbitration process established pursuant to subsection (a)—

(1) shall apply to disputes involving—

(A)

[rates](#), demurrage, accessorial charges, misrouting, or mishandling of rail cars; or

(B)

a carrier's published rules and practices as applied to particular rail [transportation](#);

(2) shall not apply to disputes—

(A)

to obtain the grant, denial, stay, or revocation of any license, authorization, or exemption;

(B)

to prescribe for the future any conduct, rules, or results of general, industry-wide applicability;

(C)

to enforce a labor protective condition; or

(D)

that are solely between 2 or more [rail carriers](#); and

(3)

shall not prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes the parties may have.

(c) ARBITRATION PROCEDURES.—

(1) IN GENERAL.—The [Board](#)—

(A)

may make the voluntary and binding arbitration process established pursuant to subsection (a) available only to the relevant parties;

(B) may make the voluntary and binding arbitration process available only—

(i)

after receiving the written consent to arbitrate from all relevant parties; and

(ii)

(I)

after the filing of a written complaint; or

(II)

through other procedures adopted by the [Board](#) in a rulemaking proceeding;

(C)

with respect to [rate](#) disputes, may make the voluntary and binding arbitration process available only to the relevant parties if the [rail carrier](#) has market dominance (as determined under [section 10707](#)); and

(D)

may initiate the voluntary and binding arbitration process not later than 40 days after the date on which a written complaint is filed or through other procedures adopted by the [Board](#) in a rulemaking proceeding.

(2) LIMITATION.—

Initiation of the voluntary and binding arbitration process shall preclude the [Board](#) from separately reviewing a complaint or dispute related to the same rail [rate](#) or practice in a covered dispute involving the same parties.

(3) RATES.—

In resolving a covered dispute involving the reasonableness of a [rail carrier's rates](#), the arbitrator or panel of arbitrators, as applicable, shall consider the [Board's](#) methodologies for setting maximum lawful [rates](#), giving due consideration to the need for differential pricing to permit a [rail carrier](#) to collect adequate revenues (as determined under [section 10704\(a\)\(2\)](#)).

(d) ARBITRATION DECISIONS.—Any decision reached in an arbitration process under this section—

(1)

shall be consistent with sound principles of rail regulation economics;

(2)

shall be in writing;

(3)

shall contain findings of fact and conclusions;

(4)

shall be binding upon the parties; and

(5)

shall not have any precedential effect in any other or subsequent arbitration dispute.

(e) TIMELINES.—

(1) SELECTION.—

An arbitrator or panel of arbitrators shall be selected not later than 14 days after the date of the [Board](#)'s decision to initiate arbitration.

(2) EVIDENTIARY PROCESS.—The evidentiary process of the voluntary and binding arbitration process shall be completed not later than 90 days after the date on which the arbitration process is initiated unless—

(A)

a party requests an extension; and

(B)

the arbitrator or panel of arbitrators, as applicable, grants such extension request.

(3) DECISION.—

The arbitrator or panel of arbitrators, as applicable, shall issue a decision not later than 30 days after the date on which the evidentiary record is closed.

(4) EXTENSIONS.—

The [Board](#) may extend any of the timelines under this subsection upon the agreement of all parties in the dispute.

(f) ARBITRATORS.—

(1) IN GENERAL.—

Unless otherwise agreed by all of the parties, an arbitration under this section shall be conducted by an arbitrator or panel of arbitrators, which shall be selected from a roster, maintained by the [Board](#), of [persons](#) with rail [transportation](#), economic regulation, professional or business experience, including agriculture, in the private sector.

(2) INDEPENDENCE.—

In an arbitration under this section, the arbitrators shall perform their duties with diligence, good faith, and in a manner consistent with the requirements of impartiality and independence.

(3) SELECTION.—

(A) In general.—

If the parties cannot mutually agree on an arbitrator, or the lead arbitrator of a panel of arbitrators, the parties shall select the arbitrator or lead arbitrator from the roster by alternately striking names from the roster until only 1 name remains meeting the criteria set forth in paragraph (1).

(B) Panel of arbitrators.—If the parties agree to select a panel of arbitrators, instead of a single arbitrator, the panel shall be selected under this subsection as follows:

(i)

The parties to a dispute may mutually select 1 arbitrator from the roster to serve as the lead arbitrator of the panel of arbitrators.

(ii)

If the parties cannot mutually agree on a lead arbitrator, the parties shall select a lead arbitrator using the process described in subparagraph (A).

(iii)

In addition to the lead arbitrator selected under this subparagraph, each party to a dispute shall select 1 additional arbitrator from the roster, regardless of whether the other party struck out the arbitrator's name under subparagraph (A).

(4) COST.—

The parties shall share the costs incurred by the [Board](#) and arbitrators equally, with each party responsible for paying its own legal and other associated arbitration costs.

(g) RELIEF.—

(1) IN GENERAL.—

Subject to the limitations set forth in paragraphs (2) and (3), an arbitral decision under this section may award the payment of damages or [rate](#) prescriptive relief.

(2) PRACTICE DISPUTES.—

The damage award for practice disputes may not exceed \$2,000,000.

(3) RATE DISPUTES.—

(A) Monetary limit.—

The damage award for [rate](#) disputes, including any [rate](#) prescription, may not exceed \$25,000,000.

(B) Time limit.—

Any [rate](#) prescription shall be limited to not longer than 5 years from the date of the arbitral decision.

(h) BOARD REVIEW.—If a party appeals a decision under this section to the [Board](#), the [Board](#) may review the decision under this section to determine if—

(1)

the decision is consistent with sound principles of rail regulation economics;

(2)

a clear abuse of arbitral authority or discretion occurred;

(3)

the decision directly contravenes statutory authority; or

(4)

the award limitation under subsection (g) was violated.

(Added [Pub. L. 114-110, § 13\(a\)](#), Dec. 18, 2015, [129 Stat. 2235](#).)