

**\*\*\*TENDERED TO FTC BY HISA FOR CONSIDERATION\*\*\***

**AGENCY:** Federal Trade Commission

**ACTION:** Proposed Rule

**SUMMARY:** As directed by the “Horseracing Integrity and Safety Act of 2020”, the Federal Trade Commission (“FTC” or “Commission”) issues a set of proposed rules related to a formula or methodology for determining assessments described in 15 USC § 3052(f).

**DATES:** The effective date of this proposed rule is January 1, 2023.

The deadline for comments is \_\_\_\_\_.

**ADDRESSES:**

**FOR FURTHER INFORMATION CONTACT:**

**SUPPLEMENTARY INFORMATION:**

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020<sup>1</sup> (the “Act”) and Rule 1.142 thereunder,<sup>2</sup> on August 17, 2022, the Horseracing Integrity and Safety Authority (“HISA” or the “Authority”) filed with the Commission the proposed rules described herein, which Items have been prepared by HISA. The Commission has published notice of the proposed rule submitted by HISA and has solicited comments on the proposed rules from interested persons.

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<sup>1</sup> Pub. L. 116–260, div. FF, title XII, §1201, Dec. 27, 2020, 134 Stat. 3252, codified at 15 USC Ch. 57A §§3051-3060  
<sup>2</sup> 16 CFR Part 1 Subpart S § 1.142

# **RULE SERIES 7000**

## **ARBITRATION PROCEDURES**

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## **7000. ARBITRATION PROCEDURES**

### **Rule 7010. Applicability**

The Arbitration Procedures set forth in this Rule 7000 Series shall apply to all adjudications arising out of the Rule 3000 Series.

### **Rule 7020. Delegation of duties**

(a) Subject to Rule 3249, Anti-Doping Rule Violations arising out of the Rule 3000 Series and violations of Rule 3229 (together, **EAD Violations**) shall be adjudicated by an independent arbitral body (the **Arbitral Body**) in accordance with the Rule 3000 Series and these Arbitration Procedures. The Arbitral Body may also adjudicate any other matter referred to it under the Protocol, and any other matter that might arise from time to time under the Protocol that the Agency considers should be determined by the Arbitral Body. The Arbitral Body is selected by mutual agreement of the Authority and the Agency. The Arbitral Body will ordinarily assign a sole arbitrator to hear a case concerning an EAD Violation. However, the Arbitral Body may assign three (3) arbitrators to hear a case involving an EAD Violation upon request by the Agency, based on the nature and/or complexity of the case.

(b) Subject to Rule 3349, Controlled Medication Rule Violations arising out of the Rule 3000 Series, violations of Rule 3329, and violations of Rule 3510 (**ECM and/or Other Violations**) shall be adjudicated by an adjudication panel (the **Internal Adjudication Panel**) in accordance with the Rule 3000 Series and these Arbitration Procedures. The Internal Adjudication Panel may also adjudicate any other matter referred to it under the Protocol, and any other matter that might arise from time to time under the Protocol that the Agency considers should be determined by the Internal Adjudication Panel. The Internal Adjudication panel is selected by mutual agreement of the Authority and the Agency. The Internal Adjudication Panel will ordinarily assign a single Internal Adjudication Panel member to adjudicate a case involving an ECM or Other Violation; in exceptional circumstances only, the Internal Adjudication Panel may assign three (3) members to adjudicate a case upon request by the Agency.

(c) Final decisions issued by the Arbitral Body or Internal Adjudication Panel are subject to review as specified in section 3058 of the Act.

### **Rule 7030. Arbitral Body**

(a) The Arbitral Body shall have a pool of arbitrators consisting of a minimum of five (5) members appointed by mutual agreement of the Authority and the Agency.

(b) Arbitrators shall be appointed for four (4) year terms. Candidate arbitrators shall complete an application in a form designated by the Authority.

(c) Candidates shall not be or have been in the previous two (2) years an officer, director, trustee, employee, consultant, or official, or be in a policy making position for any Equine Constituencies or the Agency, except that this requirement does not apply to former State Racing Commission officials or employees.

(d) Candidate arbitrators shall be required to submit on request to a background check before appointment and shall commit in writing to accept appointment to all cases to which they are selected except:

- (1) when they have been involved in the Provisional Hearing for the matter;
- (2) when they have an actual or perceived conflict of interest; or
- (3) for personal hardship (candidates shall agree not to decline appointment for personal hardship in more than two (2) cases in any twelve (12)-month period, except in exceptional circumstances).

(e) If an arbitrator dies, resigns, becomes incapacitated during the arbitrator's term (legal incapacity is not required), or is removed for an ethical breach or deficiency in carrying out his or her duties, a new arbitrator shall be selected and appointed for a full four (4)-year term, following the procedures set forth in this Rule 7030.

#### **Rule 7040. Internal Adjudication Panel**

(a) The Internal Adjudication Panel shall consist of impartial members appointed by mutual agreement of the Authority and the Agency to hear ECM and Other Violations (**IAP members**). The Internal Adjudication Panel shall have a pool of IAP members. The Authority and the Agency may appoint as many IAP members as they consider necessary to the pool of IAP members in accordance with the Arbitration Procedures.

(b) Candidate IAP members shall be required to submit on request to a background check before appointment and shall commit in writing to accept appointment to all cases to which they are selected except:

- (1) when they have been involved in the Provisional Hearing for the matter;
- (2) when they have an actual or perceived conflict of interest; or
- (3) for personal hardship (candidates shall agree to not decline appointment for personal hardship in more than two (2) cases in any twelve (12)-month period, except in exceptional circumstances).

(c) IAP members are appointed for four (4)-year terms.

(d) Apart from appointment to the Internal Adjudication Panel, IAP members shall not have any business or economic interest with a party in a case.

(e) If an IAP member dies, resigns, becomes incapacitated during the IAP member's term (legal incapacity is not required), or commits an ethical breach or deficiency, the Authority or the Agency may remove the IAP member from the Internal Adjudication Panel. The Agency will publish a list of members of the Internal Adjudication Panel on its website.

(f) A person is not precluded from serving as an IAP member concomitantly with his or her service as an association or state steward, provided that doing so does not put that him or her in a position of actual or perceived conflict of interest.

### **Rule 7050. Training of arbitrators and IAP members**

Arbitrators and IAP members shall receive at least two (2) hours of continuing education each year on issues related to proper and efficient handling of cases. The education must be approved by the Authority. Failure to complete this required continuing education is grounds for immediate dismissal.

### **Rule 7060. Initiation by the Agency**

(a) *EAD Violations.* Unless Rule 3249 applies, if the Agency charges a Covered Person with an EAD Violation, the Agency shall initiate proceedings with the Arbitral Body. If a Covered Person is charged with both an EAD Violation and an ECM and/or Other Violation, the procedures for EAD Violations apply. The parties to the proceeding shall be the Agency and the Covered Person(s) charged. The Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case. In the context of EAD Violation cases, the Owner may be permitted to intervene and make written and/or oral submissions.

(b) *ECM and Other Violations.* Unless Rule 3349 applies, if the Agency charges a Covered Person with an ECM and/or Other Violation, the Agency shall initiate proceedings with the Internal Adjudication Panel. The Covered Person may request a hearing before the Internal Adjudication Panel. However, the Internal Adjudication Panel may decide in its sole discretion to determine the matter based solely on the written submissions without a hearing, if the Internal Adjudication Panel considers itself sufficiently well-informed to render a decision on the written submissions alone. The parties to the proceeding shall be the Agency and the Covered Person(s) charged. The Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case. In the context of ECM and Other Violation cases, the Owner shall not be permitted to intervene or make written and/or oral submissions.

(c) Only the following persons may attend hearings as the Owner of the Covered Horse, unless otherwise agreed by the hearing panel:

(i) if the Covered Horse is owned by one individual, that individual;

(ii) if the Covered Horse is owned by more than one individual or by a partnership, corporation, limited liability company, syndicate, or other association or entity, the Designated Owner and/or Managing Owner.

### **Rule 7070. New or additional charges**

If after charging a Covered Person with a violation, the Agency has cause to bring any new or different charge(s) against the Covered Person, the charge shall be made in writing and filed with the other party or parties and (as applicable) the Internal Adjudication Panel or Arbitral Body. The arbitrator(s) or IAP member(s) appointed to hear the case shall decide whether the charges should be consolidated and heard in the same proceedings or whether the new or additional charge(s) should be heard separately.

### **Rule 7080. Expedited procedures**

(a) At the request of any party, any time period set forth in the Arbitration Procedures may be shortened by the arbitrator(s) or IAP member(s) if doing so is reasonably necessary to resolve any Covered Person's or Covered Horse's eligibility before a Covered Horserace, while continuing to protect the right of a Covered Person to a fair process.

(b) Pursuant to Rule 3262 or Rule 3362, the Agency may, in its sole discretion, shorten any deadlines within the Arbitration Procedures proportionately to ensure resolution prior to a Covered Horserace.

(c) If the Agency does not agree to the process being expedited, the arbitrator(s) or IAP member(s), as applicable, shall determine whether the adjudication process shall be expedited and the schedule pursuant to which the process shall proceed.

#### **Rule 7090. Jurisdiction**

(a) An arbitrator or IAP member shall have the authority to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the applicable rules.

(b) A party must object to the jurisdiction of the arbitrator(s) or IAP member(s) or to the arbitrability of a charge by the Agency no later than the filing of the answering statement to the charge that gives rise to the objection. The arbitrator(s) or IAP member(s) may rule on such objections as a preliminary matter or as part of the final decision, in his or her sole discretion.

#### **Rule 7100. Consolidation**

Matters involving more than one Covered Person may, in the Agency's discretion, be consolidated into a single matter. If an EAD Violation is alleged by the Agency against any of the Covered Persons who are parties in the consolidated matter, the process for EAD Violations will be followed.

#### **Rule 7110. Location and means of conducting hearings**

(a) Hearings regarding EAD Violations shall take place in person, unless the arbitrator(s) order(s) the hearing (or parts thereof) to take place by use of an audio-visual teleconferencing system.

(b) Hearings regarding ECM and/or Other Violations shall take place by use of an audio-visual teleconferencing system, unless the IAP member(s) order(s) the hearing to take place in person.

(c) In-person hearings shall be held in the United States at a location determined by the arbitrator(s) or IAP member(s).

#### **Rule 7120. Qualifications**

Any arbitrator(s) or IAP member(s) appointed pursuant to Rule 7130 shall be subject to disqualification for the reasons specified in Rule 7140.

#### **Rule 7130. Appointment of hearing panels to adjudicate cases**

(a) The arbitrator(s) shall be appointed in the following manner: immediately after the initiation of a proceeding by the Agency as set forth in Rule 7060, the Arbitral Body shall appoint a single arbitrator or three (3) arbitrators from the pool of arbitrator(s) on a rotating basis, after confirming that the arbitrator(s) will not decline the appointment due to personal hardship. The arbitrator(s) adjudicating the Provisional Hearing shall not serve as an arbitrator determining the merits of the charge against the Covered Person. The Arbitral Body shall communicate to the parties the name of the arbitrator(s) appointed to hear the matter within three (3) days of initiation by the Agency.

(b) The IAP member(s) shall be appointed in the following manner: Immediately after the initiation of a proceeding by the Agency as set forth in Rule 7060, the Internal Adjudication Panel shall appoint a



single IAP member (or in exceptional cases three IAP members) from the pool of IAP members on a rotating basis, after confirming that the IAP member(s) will not decline the appointment due to personal hardship. The IAP member(s) adjudicating the Provisional Hearing shall not serve as the IAP member(s) determining the merits of the charge against the Covered Person. The Internal Adjudication Panel shall communicate to the parties the name of the IAP member(s) appointed to hear the matter within three (3) days of initiation by the Agency.

(c) Once appointed, the arbitrator(s) and IAP member(s) shall receive an electronic copy of the charge letter, Arbitration Procedures, Rule 3000 Series and related rule series, and the Billing Standards.

#### **Rule 7140. Disclosure and challenge procedure**

(a) Each arbitrator and IAP member appointed to hear a particular case shall disclose to the parties any circumstance likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the case, or any past or present relationship with the parties or their representatives.

(b) Upon objection of a party to the continued service of an arbitrator or IAP member, the Arbitral Body or Internal Adjudication Panel (as applicable) shall determine whether the arbitrator or IAP member is evidently partial, and (if so) the arbitrator or IAP member shall be disqualified. The Arbitral Body or Internal Adjudication Panel shall inform the parties of its decision, which shall be final and not subject to review or any other challenge.

#### **Rule 7150. Communication**

Once appointed, no party and no Person acting on behalf of any party shall communicate unilaterally concerning the case with any arbitrator or IAP member appointed to hear the case. All communications with the Arbitral Body or Internal Adjudication Panel or any arbitrator or IAP member concerning the case shall include the other party or parties.

#### **Rule 7160. Vacancies**

If for any reason following assignment to the case an arbitrator or IAP member becomes unable to perform his or her duties in a particular case, the Arbitral Body or Internal Adjudication Panel (as applicable) may fill the vacancy on a rotating basis as described in these rules.

#### **Rule 7170. Procedures for EAD Violations**

(a) For matters involving an alleged EAD Violation arising from an Adverse Analytical Finding, each Covered Person's pre-hearing submission must be filed with the Arbitral Body on or before fourteen (14) days after submitting a request for a hearing (or after the deadline to make such request expires), and the Agency's pre-hearing submission must be filed with the Arbitral Body on or before fourteen (14) days after the last Covered Person's pre-hearing submission. There shall be no reply pre-hearing submission unless ordered otherwise by the arbitrator(s), but each party may present rebuttal evidence at the hearing.

(b) For matters involving an alleged EAD Violation involving a non-analytical violation or a violation of Rule 3229, the Agency's initial pre-hearing submission must be filed with the Arbitral Body on or before fourteen (14) days after the last Covered Person requests a hearing (or after the deadline to make such request expires). Each Covered Person's pre-hearing submission must be filed with the Arbitral Body on or before fourteen (14) days after the Agency's initial pre-hearing submission, and the Agency's reply pre-

hearing submission must be filed with the Arbitral Body seven (7) days after the last Covered Person's pre-hearing submission.

(c) A Covered Person's pre-hearing submission shall include a brief not to exceed thirty (30) double-spaced single-sided pages and shall include all exhibits, schedules, witness statements, expert reports, and all other evidence (except summaries and demonstrative aides) that the Covered Person intends to rely upon at the hearing. The Covered Person's pre-hearing submission shall include a designation of witnesses providing the identity of witnesses, or name of the organization (in the case of an organization representative) expected to be called to testify at the hearing, along with signed statements for each of those witnesses. For expert witnesses, the pre-hearing submission shall include a C.V. and expert report, identifying all opinions to which they will testify and the facts and scientific methods upon which those opinions are based, as well as to identify all scientific treatises, studies, or articles on which the expert relies in rendering their opinion(s), for each expert included in the witness designations.

(d) The Agency's initial pre-hearing submission shall include a brief not to exceed thirty (30) single-sided double-spaced pages for each Covered Person charged in the case and shall include all exhibits, schedules, witness statements, expert reports, and all other evidence (except impeachment evidence, summaries, and demonstrative aides) that the Agency intends to rely upon at the hearing. The Agency's initial pre-hearing submission shall include a designation of witnesses providing the identity of witnesses, or name of the organization (in the case of an organization representative) expected to be called to testify at the hearing, along with signed statements for each of those witnesses. For expert witnesses, the initial pre-hearing submission shall include a C.V. and expert report, identifying all opinions to which the expert will testify, and the facts and scientific methods upon which those opinions are based. The submission shall identify all scientific treatises, studies, or articles on which the expert relies in rendering his or her opinion(s), for each expert included in the witness designations. The Agency's reply pre-hearing submission shall include all additional evidence upon which it intends to rely for rebuttal (except impeachment evidence, summaries, and demonstrative aides) and a reply brief not to exceed fifteen (15) single-sided double-spaced pages for each Covered Person charged in the case.

(e) Each party is responsible for updating its disclosures as such information becomes available. If a party should have submitted evidence in the party's pre-hearing submission but did not submit such evidence, the arbitrator(s) shall not admit such evidence absent a showing of good cause.

(f) The hearing should take place no more than sixty (60) days from the date the last Covered Person requested a hearing in a particular case.

(g) At the request of any party, or at the discretion of the arbitrator(s), the arbitrator(s) may schedule, as soon as practicable, a preliminary hearing with the parties or their representatives. The preliminary hearing shall be conducted by telephone or video conference. During the preliminary hearing, the parties and the arbitrator(s) shall discuss any preliminary matters to ensure compliance with the procedures herein.

(h) Upon a showing of exceptional circumstances, the arbitrator(s) may extend any of the deadlines set forth in Rule 7170 for the minimum time necessary to address the circumstance. If all parties agree to an alternative schedule in a particular case, the arbitrator(s) shall alter dates accordingly.

(i) If any of the dates described in Rule 7170 fall on a weekend or a federal holiday, they shall be moved to the next business day.

### **Rule 7180. Procedures for ECM and Other Violations**

(a) Subject to paragraph (b) below, the IAP member(s) may determine to hold a hearing and require written submissions to be filed prior to the hearing, or to require written submissions and determine the matter based solely on the written submissions without a hearing. The IAP member(s) shall have wide discretion to determine the conduct of the proceedings in order to ensure that they are commensurate to the violations at issue. The IAP member(s) may issue directions to the parties as necessary. The IAP member(s) shall also have discretion to amend any time limits as they see fit in the circumstances, but any extension of deadlines shall be granted only for the minimum time necessary to address the circumstance, as all matters before the IAP member(s) shall proceed expeditiously.

(b) A person charged with a violation may request that the IAP member waive the requirement that written submissions be filed by the parties, and permit the person charged to make an oral presentation at a hearing. The IAP member may grant the request in the interest of justice, if the conduct of the hearing will not prejudice any of the other parties. The IAP member(s) shall provide the Agency the opportunity to respond to the oral presentation and shall have wide discretion to determine the conduct and scope of the hearing. The person charged may request that he or she be assisted by legal counsel or other representative at the hearing.

(c) If the IAP member(s) order the parties to produce written submissions, and the matter involves an alleged ECM and/or Other Violation arising from an Adverse Analytical Finding, each Covered Person's submission must be filed with the Internal Adjudication Panel on or before seven (7) days after submitting a request for a hearing before the Internal Adjudication Panel (or after the deadline to make such request expires), and the Agency's submission must be filed with the Arbitral Body on or before seven (7) days after the last Covered Person's submission. There shall be no reply submissions unless ordered otherwise by the IAP member(s).

(d) If the IAP member(s) order the parties to produce written submissions, and the matter involves a non-analytical ECM Violation and/or Other Violation, the Agency's initial submission must be filed with the Internal Adjudication Panel on or before seven (7) days after the last Covered Person requests a hearing before the Internal Adjudication Panel (or after the deadline to make such request expires). Each Covered Person's submission must be filed with the Arbitral Body on or before seven (7) days after the Agency's initial submission. There shall be no reply submissions unless ordered otherwise by the IAP member(s).

(e) If the IAP member(s) order the parties to produce written submissions, the submissions of each party shall ordinarily not exceed fifteen (15) single-sided double-spaced pages and shall include all supporting documentation on which the party relies. If any party intends to call a witness or expert to testify at the hearing, a signed witness statement and expert report (as applicable) shall be filed with the written submission.

(f) If any of the dates described in Rule 7180 fall on a weekend or a federal holiday, the date shall be moved to the next business day.

### **Rule 7190. Exchange of information**

Information shall be exchanged electronically, unless otherwise agreed by the parties. The arbitrator(s) and IAP member(s) are authorized to resolve any disputes concerning the exchange of information between the parties consistent with the expedited nature of the proceedings.

### **Rule 7200. Participation**

The Arbitral Body and Internal Adjudication Panel (and their respective members) shall maintain the confidentiality of the proceedings. The arbitrator(s) or IAP member(s) may proceed without the participation of any party or representative who, after due notice, fails to be present or make a submission. If a party defaults, the arbitrator(s) or IAP member(s) may require the party who is present to submit such evidence and documents as the arbitrator(s) or IAP member(s) may require for the making of a final decision.

Hearings are not open to the media or the public. However, the arbitrator(s) or IAP member(s) may permit one or more third parties to attend the hearing.

### **Rule 7210. Representation**

Any party may be represented by legal counsel or other representative. The legal counsel or other representative shall provide a letter of representation notifying the other party and the Arbitral Body or Internal Adjudication Panel (as applicable) of his or her name, phone number, email, and mailing address. A party shall be bound by the statements made and positions taken by its legal counsel or other representative.

### **Rule 7220. Oaths**

All testimony at hearings shall be taken under oath or affirmation.

### **Rule 7230. Stenographic record**

Any party desiring a stenographic record of all or a portion of the hearing shall notify the other parties of the request at least seven (7) days in advance of the start of the hearing, unless ordered otherwise by the arbitrator(s) or IAP member(s). The Agency shall identify the court reporter to be used for transcription services, and an electronic copy of the transcript shall be provided to the arbitrator(s) or IAP member(s) (as applicable) and to the parties. Parties are responsible for the costs of any transcript they request.

### **Rule 7240. Interpreters**

All proceedings shall take place in English. Any party wishing to have an interpreter present during proceedings shall make all arrangements directly with the interpreter. Interpreters shall have no prior relationship with a party or have any interest in the proceeding, and the arbitrator(s) or IAP member(s) (as applicable) must approve the interpreter in advance. The costs of the interpreter shall be split between the parties. Any document that is not in English shall be officially translated by a certified translator paid for by the party offering or relying upon the document.

### **Rule 7250. Conduct of hearings**

(a) The Agency shall present evidence to support its charge. The Covered Person(s) charged shall then present evidence to support the Covered Person(s) defense. The Agency is then entitled to present rebuttal evidence. Witnesses for each party shall also submit to questions from the arbitrator(s) or IAP member(s) and the adverse party. The arbitrator(s) or IAP member(s) may vary this procedure, provided that the parties are treated equally and that each party has the right to be heard and is given a fair opportunity to present its case.

(b) The arbitrator(s) or IAP member(s) shall have the power to require the sequestration of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be within the discretion of the arbitrator(s) or IAP member(s) to determine the propriety of the attendance of any other person other than (i) a party and its representatives and (ii) the observers identified in Rule 7060.

(c) The arbitrator(s) or IAP member(s) may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(d) The parties may agree to waive oral hearings.

#### **Rule 7260. Evidence**

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator(s) or IAP member(s) may deem necessary to make a determination in a case.

(b) Prior to or during the hearing, a party may also request the arbitrator(s) or IAP member(s) to order production of any document which the party believes to be relevant and material to the dispute. The arbitrator(s) or IAP member(s) shall have discretion to grant or reject such a request as they see fit in the circumstances. However, requests for discovery and wide-ranging or otherwise disproportionate document requests shall not be permitted.

(c) The arbitrator(s) or IAP member(s) may only retain an expert or seek independent evidence if (i) agreed to by all of the parties and (ii) the parties or the Agency agree(s) to pay for the cost of such expert or independent evidence. The parties shall have the right to examine any expert retained by the arbitrator(s) or IAP member(s) and shall have the right to respond to any independent evidence obtained by the arbitrator(s) or IAP member(s).

(d) The arbitrator(s) or IAP member(s) shall determine the admissibility, relevance, and materiality of the evidence offered, including hearsay evidence, and may exclude evidence deemed cumulative or irrelevant. Conformity to legal rules of evidence shall not be necessary, but the federal rules of evidence may be used for guidance. Evidentiary and other rules for proving violations of the Protocol are also set out in Rule 3120.

(e) The arbitrator(s) or IAP member(s) shall apply relevant principles of legal privilege, including those involving the confidentiality of communications between an attorney and client and the investigative privilege.

(f) The arbitrator(s) or IAP member(s) may issue subpoenas for witnesses, documents, information, or other evidence upon the request of any party, keeping in mind the expedited nature of the proceedings and the procedures set forth in Rules 7170 and 7180. The arbitrator(s) or IAP member(s) shall not issue a subpoena for a deposition, because depositions (along with formal written discovery in civil litigation) are not in keeping with the expedited nature of the Arbitration Procedures.

#### **Rule 7270. Inspection**

If the arbitrator(s) or IAP member(s) consider it necessary to make an inspection in connection with a proceeding, the arbitrator(s) or IAP member(s) shall so advise the parties. The arbitrator(s) or IAP member(s) shall set the date and time that shall not delay the procedures in Rules 7170 and 7180 and shall notify the parties. Any party who so desires may be present at such an inspection. If one or all parties are

not present at the inspection, the arbitrator(s) or IAP member(s) shall make an oral or written report to the parties and afford them an opportunity to comment.

**Rule 7280. Interim rulings and measures**

The arbitrator(s) or IAP member(s) may make interim rulings and orders, and may order whatever interim measures they deem necessary to provide any party an immediate protection of rights.

**Rule 7290. Provisional Hearings**

Hearings to resolve challenges to Provisional Suspensions shall be held in accordance with Rule 3247 or 3347, as applicable. Hearsay evidence shall be admissible in a Provisional Hearing.

**Rule 7300. Closing of hearing**

Subject to Rule 7310, the arbitrator(s) or IAP member(s) shall declare the hearing closed after the conclusion of closing arguments. Post-hearing briefs shall not be permitted, except as ordered by the arbitrator(s) or IAP members(s) in complex or otherwise exceptional cases. The time limit to issue the final decision shall commence upon the closing of the hearing.

**Rule 7310. Reopening of hearing**

To avoid manifest injustice, the hearing may be reopened on the initiative of the arbitrator(s) or IAP member(s), or upon application of a party, at any time before the final decision is made. At the request of a party, the arbitrator(s) or IAP member(s) will determine if the applicable standard has been met to reopen the hearing.

**Rule 7320. Waiver of rules**

Any party who proceeds with the adjudication under these rules after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

**Rule 7330. Serving of notice**

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of a proceeding under these rules, and any final decision made under these rules may be served by mail or email addressed to the party or its representative at the last known address or by personal service in or outside the state where the arbitration is to be held.

(b) Unless otherwise instructed by the Arbitral Body or Internal Adjudication Panel, any documents submitted by any party to the Arbitral Body or Internal Adjudication Panel shall simultaneously be provided to the other party or parties to the proceeding.

**Rule 7340. Final decision**

A final decision shall be in writing and signed by the arbitrator(s) or IAP member(s). The arbitrator(s) shall issue the final decision on or before fourteen (14) days after the close of the hearing. The IAP member(s) shall issue the final decision on or before fourteen (14) days after the last written submission contemplated in Rule 7180 or after the close of the hearing (as applicable). The fourteen (14) day time limit may be extended if additional time is needed due to the complexity of the case or exceptional circumstances.

**Rule 7350. Scope of final decision**

Arbitrators and IAP members may grant any remedy or relief authorized by the Act or the Rules issued pursuant to the Act.

**Rule 7360. Case resolution during proceedings**

If the parties settle the case during the course of the proceedings in accordance with Rule 3249 or 3349, the Arbitral Body or the Internal Adjudication Panel shall issue an order terminating the proceedings.

**Rule 7370. Notification of final decision**

(a) The final decision shall be served on all parties by first class mail, email, or personal service. Interested Parties shall also be notified of the final decision.

(b) The final decision shall be Publicly Disclosed and shall not be considered confidential, unless provided otherwise in the applicable rules.

**Rule 7380. Modification of final decision**

Within seven (7) days after the issuance of a final decision, any party, upon notice to the other parties, may request the Arbitral Body or Internal Adjudication Panel to correct any clerical, typographical, or computational errors in the final decision. The other parties shall ordinarily be given five (5) days to respond to the request.

**Rule 7390. Release of documents for judicial proceedings**

The Arbitral Body and Internal Adjudication Panel (as applicable) shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the Arbitral Body's or Internal Adjudication Panel's possession that may be required in judicial proceedings relating to the proceeding. If the matter is subject to review by an administrative law judge in accordance with the Act, the Arbitral Body and Internal Adjudication Panel (as applicable) shall furnish copies of any documents requested by the administrative law judge to such judge in connection with that proceeding.

**Rule 7400. Right of review**

The final decision of the Arbitral Body or Internal Adjudication Panel is subject to review in accordance with section 3058 of the Act. Notwithstanding any provision set forth in these Arbitration Procedures, nothing herein shall alter the standards of review set forth in the Act.

**Rule 7410. Applications to court and exclusion of liability**

(a) Arbitration is intended to be the exclusive remedy in all cases arising under the Rule 3000 Series, subject to appeal as described in the Rule 3000 Series and the Act.

(b) No civil action commenced by a party relating to the subject matter of the proceeding under the Arbitration Procedures shall be deemed a waiver of any party's right to adjudicate that party's case under the Arbitration Procedures.

(c) Neither the Arbitral Body nor the Internal Adjudication Panel (nor any arbitrator or IAP member) in a proceeding under these rules is a necessary party in judicial proceedings relating to that proceeding.

(d) Parties to a proceeding under the Arbitration Procedures shall be deemed to have consented that a final decision may be entered in any federal or state court having jurisdiction, unless the party seeks review pursuant to section 3058 of the Act.

(e) None of the Authority, Agency, Arbitral Body, Internal Adjudication Panel, arbitrators, or IAP members shall be liable to any party for any act or omission in connection with any proceedings conducted under these Arbitration Procedures.

#### **Rule 7420. Costs**

(a) The Arbitral Body shall prescribe filing and other administrative fees and service charges to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The Arbitral Body's filing fee and any other administrative fee or charge shall be split equally amongst the parties, and the Agency's portion shall be paid by the Authority.

(b) The Arbitral Body shall split the costs of the proceeding before an arbitrator (including arbitrator fees and expenses, but excluding attorney, witness, and party expert fees) equally amongst the parties with the Agency's portion being paid by the Authority. The Arbitral Body, in its discretion, may require advanced costs be paid by the parties to ensure payment is made.

(c) A party's failure to pay costs or advanced costs by the deadlines imposed by the Arbitral Body will, if not rectified immediately, result in a waiver of charges or defenses to charges (as applicable) and result in imposition and publication of sanctions requested by the Agency.

(d) The Authority shall be solely responsible for the administrative costs stemming from IAP member-resolved cases as described in the Arbitration Procedures.

#### **Rule 7430. Expenses**

The expenses of witnesses for any party shall be paid by the party producing such witnesses. Each party shall bear its own attorneys' fees and other expenses.

#### **Rule 7440. Arbitrator's compensation**

(a) Arbitrators shall be compensated and reimbursed in a manner consistent with the Billing Standards.

(b) If there is disagreement concerning the terms of compensation, the disagreement shall be resolved as described in the Billing Standards.

(c) Any arrangement for the compensation or reimbursement of an arbitrator shall be made through the Arbitral Body and not directly between the parties and the arbitrator.

(d) Arbitrator fees and IAP member fees shall be paid in accordance with Rule 7420.

#### **Rule 7450. Application of Rules**

The Rule 1000-9000 Series shall be considered part of the agreement to arbitrate and in all instances the arbitrators and IAP members are required to apply the provisions of that arbitration agreement and conform to its terms.