it provides to the EC's own nationals and products, does not accord immediately and unconditionally to the nationals and products of each WTO Member any advantage, favor, privilege or immunity granted to the nationals and products of other WTO Members, diminishes the legal protection for trademarks (including to prevent the use of an identical or similar sign that is likely to confuse and adequate protection against invalidation), does not provide legal means for interested parties to prevent the misleading use of a geographical indication, does not define a geographical indication in a manner that is consistent with the definition provided in the TRIPS Agreement, is not sufficiently transparent, and does not provide adequate enforcement procedures.

The U.S. panel request can be downloaded from the WTO Web site, at *http://docsonline.wto.org:80/DDFDocuments/t/WT/DS/174-20.doc.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0418@ustr.gov,* with ''EC GI's Dispute (DS174)'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of each page of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–174, EC Geographical Indications Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–4805 Filed 3–3–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14794]

Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA), a modal administration within the U.S. Department of Transportation (DOT), announces the availability of its Guidance for the use of binding arbitration in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. FMCSA will *not* agree to arbitrate maximum civil penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, or any cases that require interpretation of the regulations or analysis of important policy issues. The Guidance is located on the Internet at *http://www.dms.dot.gov,* under docket number FMCSA–2003–14794.

EFFECTIVE DATE: The Guidance becomes effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, (202) 385–2351, Federal Motor Carrier Safety Administration, Adjudications Counsel, 400 7th Street, SW., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m. e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On March 31, 2003, FMCSA published a notice in the **Federal Register** (68 FR 15549) announcing the issuance for public comment of its proposed Guidance for the use of binding arbitration as an alternative dispute resolution technique in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. In response to a petition from the parties, or as a result of the Chief Safety Officer's independent review of case pleadings, the Chief Safety Officer will determine if a case is appropriate for arbitration and notify the parties in writing that the case will be referred to arbitration with the consent of both parties. A detailed explanation of the notification and consent process is provided in the Questions and Answers portion of the Guidance. Maximum civil penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999 and cases requiring interpretation of the regulations or analysis of important policy issues will *not* be selected for binding arbitration. FMCSA will modify or terminate the use of binding arbitration if there is reason to believe that continuation of this process will be inconsistent with the goals and objectives of the Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations.

FMCSA's Guidance, developed pursuant to the Administrative Dispute Resolution Act (ADRA) of 1996 (Pub. L. 104–320, 110 Stat. 3870 (October 19, 1996) (now codified at 5 U.S.C. 571–583)), had been published in full on the

Internet. As was stated in the **Federal Register** notice published on March 31, 2003, FMCSA had submitted the Guidance to the Attorney General for consultation and received his concurrence in accordance with section 575 of the ADRA. The notice called for public comments to be received by U.S. DOT Dockets on or before May 30, 2003.

To date, no comments have been received by FMCSA on this proposal. FMCSA, nevertheless, is making a change to the Guidance. The Guidance stated that each party would present evidence supporting the penalty it considers appropriate *for each violation* and the case as a whole. It further stated that each party would present to the Arbitrator and the opposing party a sealed envelope containing the amount of its proposed penalty *for each violation* as well as a total penalty for the case. The Arbitrator, in turn, would determine the appropriate civil penalty *for each violation* as well as the total civil penalty for the case. (Emphasis added.) Upon further review, the Agency has concluded that having a civil penalty determination made for each violation as well as for the entire case could lead to unwarranted results. Under this scenario, it would be possible for the Arbitrator to select one party's proposed civil penalty for several of the violations, but select the other party's total civil penalty as being closest to his or her own figure. This will lead to confusion, and the Agency's goal of a more efficient and effective resolution of the large volume of adjudication cases before FMCSA's Chief Safety Officer may be jeopardized. Accordingly, the parties will present evidence and a proposed civil penalty only for the case as a whole. The Arbitrator, in turn, will determine the civil penalty for the entire case and select the proposal that is closer to his or her determination. FMCSA has also added language to clarify that the Arbitrator will make a payment plan determination if the carrier has requested one. The Attorney General has approved the Agency's arbitration concept and does not require that these changes be submitted for his concurrence.

FMCSA's issuance of this Guidance satisfies the requirements regarding binding arbitration specified by section 575 of the ADRA of 1996, and addresses use of binding arbitration in a manner consistent with FMCSA's dispute resolution process and its procedural rules of practice at 49 CFR part 386. The Guidance may be located on the Internet at *http://www.dms.dot.gov,* under docket number 2003–14794.

Issued on: February 17, 2004.

Annette M. Sandberg,

Administrator.

Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

Dated: February 6, 2004.

Summary

The primary mission of the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) is to prevent commercial motor vehicle-related fatalities and injuries. FMCSA contributes to reducing crashes and ensuring commercial motor vehicle safety through its enforcement of safety regulations, including the assessment of civil penalties.

Because of the large volume of cases before FMCSA's Chief Safety Officer for adjudication, the FMCSA has begun to explore whether alternative dispute resolution might lead to a more efficient and effective enforcement program. This Guidance for the Use of Binding Arbitration is being proposed to expand the options for adjudication available to motor carriers, brokers, shippers, freight forwarders, and other individuals or entities engaged in the use of commercial motor vehicles in interstate transportation (hereafter referred to collectively as ''carriers''). Rather than submit to the Chief Safety Officer cases that only involve a question of the amount of civil penalty or terms of payment, carriers may elect to enter into binding arbitration.

This Guidance explains arbitration and addresses critical issues relating to the use of binding arbitration. This Guidance provides that the use of binding arbitration is entirely voluntary. FMCSA believes that, in many cases, the use of binding arbitration can provide significant benefits for the agency and the carriers and that this Guidance would provide FMCSA with another tool to help achieve its goal of effective, efficient, and fair resolution of civil penalty enforcement cases. This program may be terminated, modified, or permanently adopted as part of the FMCSA's enforcement program in the discretion of the Chief Safety Officer (CSO).

This Guidance is being issued after consultation with the Attorney General, pursuant to 5 U.S.C. 575(c).

Background

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) describes a variety of problem-solving processes available to parties who are ready, willing and able to try them in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR gives parties an opportunity to talk with each other directly under the guidance of a dispute resolution professional. ADR processes are generally designed to reduce costs, avoid the delays of judicial proceedings, protect the privacy of the parties, and increase the level of compliance by involving decisionmakers in the process.

In 1990, President George H.W. Bush signed into law the Administrative Dispute Resolution Act of 1990.[1] The Act defines ''alternative means of dispute resolution'' to include any procedure that is used to resolve issues in controversy, including mediation, facilitation, conciliation, fact-finding, mini-trials, use of an ombuds, and arbitration. The use of ADR processes was intended to be and is voluntary (''if the parties agree to such proceeding'' [2]), and it is used in place of traditional adjudication or other formal processes. Among other things, the Act required agencies to adopt an ADR policy and provide ADR training. These procedural requirements have resulted in the increased use of ADR within the Federal government.

The 1990 Act expressly authorized the use of arbitration among several ADR techniques available to federal agencies for purposes of dispute resolution, but specifically permitted agency heads to ''opt out'' of arbitration awards:

(c) The head of any agency that is a party to an arbitration proceeding conducted under this subchapter is authorized to terminate the arbitration proceeding or vacate any award issued pursuant to the proceeding before the award becomes final by serving on all other parties a written notice to that effect, in which case the award shall be null and void.

The Administrative Dispute Resolution Act of 1996 [3] was enacted because of the sunset of the 1990 Act. The primary purpose of this new statute was to reauthorize the 1990 Act. In addition, it enhanced confidentiality protections, simplified the process for acquiring neutrals by addressing the development of procedures for obtaining neutral third parties as mediators on an expedited basis, and

[1] Pub. L. 101–552, 104 Stat. 2736 (codified at 5 U.S.C. 571).

[2] ''An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the partis agree to such proceeding.'' *Id.* at § 572(a).

[3] Pub. L. 104–320, 110 Stat. 3870 (codified at 5 U.S.C. 571).

authorized fully binding arbitration. The ''opt out'' feature of the 1990 Act—which rendered federal agency arbitrations less than ''binding''—was eliminated. The 1996 Act specifically permits federal agencies to use ''binding arbitration'' to resolve ''issues in controversy.'' In addition, the 1996 Act requires that agencies issue guidance as a prerequisite to agencies' use of binding arbitration, in consultation with the Attorney General. 5 U.S.C. 575(c).

In August 2000, the Federal ADR Council under the leadership of the Attorney General approved and endorsed a publication entitled ''Developing Guidance for Binding Arbitration: *A Handbook for Federal Agencies* (the ''Handbook''). The Handbook was created to assist agencies in developing policy for the use of binding arbitration.

In June 2002, Secretary of Transportation Norman Y. Mineta announced a Statement of Policy on ADR. The Department of Transportation is committed to advancing its national transportation goals through ADR. The Department is using ADR in a variety of areas including workplace issues, issuance of regulations, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community. Because of the volume of cases awaiting a decision of its Chief Safety Officer, FMCSA has begun to explore whether ADR may lead to a more efficient and effective enforcement program.

FMCSA's Enforcement Program

The civil penalty enforcement process begins with a compliance review that is conducted by an FMCSA Safety Investigator or by State enforcement personnel pursuant to the Federal Motor Carrier Safety Assistance Program. (Both hereafter referred to as ''SI''). After conducting a review of a carrier's operations, the SI discusses the review with carrier management personnel. The SI reports on the violations discovered, makes recommendations about corrective action and future compliance, and provides the motor carrier with a proposed safety rating (satisfactory, conditional, or unsatisfactory).

FMCSA's State Director or Division Administrator ultimately reviews the case presented by the SI and decides whether the violations documented during the CR warrant a civil penalty enforcement action. If so, the agency issues a Notice of Claim (NOC) to the carrier. The NOC notifies the carrier of the violations discovered during the CR, asserts a claim for the civil penalty applicable to each violation and the case in total, and informs the carrier how to respond to the NOC.

A carrier may respond to the NOC by paying the civil penalty, requesting a hearing before an Administrative Law Judge, or requesting the CSO to consider the merits of the case on the written record. As part of its reply, the carrier may request an opportunity for settlement discussion. If the carrier ignores the NOC or does not timely reply, the Field Administrator may advise the carrier that it has defaulted, that the NOC has become the final agency order, and that the carrier owes the civil penalty asserted in the NOC.

The Service Center Enforcement Team is led by an Enforcement Program Manager who negotiates with the carrier over the amount of the civil penalty and the terms for payment. To allow the parties an opportunity to resolve the matters without resorting to formal proceedings, the CSO encourages negotiation of the civil penalty and the terms of payment, especially where there is evidence that the carrier has undertaken corrective action prior to issuance of the NOC. See, *e.g.*, In the Matter of Four Star Transport, Inc., Docket No. FMCSA 2000–7070–6, March 9, 2001 and In the Matter of AGG Enterprises, Inc., Docket No. FMCSA–2001–8689–3, December 17, 2001.

When the agency and the carrier cannot agree that a violation occurred or agree to the amount of the civil penalty, agency attorneys will file before the CSO a Motion for Final Order, which is the equivalent of a motion for summary judgment. The carrier typically responds to the motion and, based on the submission of the parties, the CSO issues the final agency decision addressing the violations and, if appropriate, assessing the civil penalty.

Pursuant to 49 U.S.C. 521(b)(2)(D), the amount of the civil penalty for violations of the Federal Motor Carrier Safety Regulations shall take into effect ''the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.'' The amount of the civil penalty for violations of the Hazardous Materials Regulations shall take into account the factors listed at 49 U.S.C. 5123(c), which are nearly identical to those listed in 49 U.S.C. 521(b)(2)(D).

Binding Arbitration

Binding arbitration is the dispute resolution process most like adjudication. In binding arbitration, the parties agree to use a mutually selected decisionmaker to hear their dispute and resolve it by rendering a decision or award that is binding on the parties. Like litigation, binding arbitration is an adversarial, adjudicative process designed to resolve the specific issues submitted by the parties. Binding arbitration differs significantly from litigation in that it does not require conformity with the legal rules of evidence, and the proceeding is conducted in a private rather than a public forum. Binding arbitration awards typically are enforceable by courts, absent defects in the arbitration procedure. Appeal from arbitration awards, pursuant to the Federal Arbitration Act, 9 U.S.C. 10, is generally limited to fraud or misconduct in the proceedings.

FMCSA will use a form of arbitration referred to as ''Night Baseball.'' Under this format, the Arbitrator will determine the appropriate civil penalty without knowledge of the parties' proposals. The actual award will be the party's figure that is closer to the Arbitrator's determination. The process for reaching the final award will be as follows: Each party will present evidence supporting the penalty it considers appropriate for the case as a whole. Evidence will be presented in accordance with the procedures established by the parties within the Arbitration Agreement. No evidence shall be offered or accepted concerning whether the violation(s) occurred because the parties concede the violations as a condition of arbitration. Neither written submissions nor oral argument will contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the Arbitrator, each party will present to the Arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty for the case and, if necessary, a proposed payment plan supported by the evidence. Before opening the envelopes, the Arbitrator will determine the total civil penalty and, if necessary, a payment plan. His determination will be provided in writing to the parties. The Arbitrator will then open the envelopes and select the civil penalty and payment plan closer to the Arbitrator's determinations. The actual award will be the party's figure and payment plan that is closer to the Arbitrator's determination. It is possible for the Arbitrator to select the

civil penalty proposed by one party and the payment plan proposed by the other party.

As discussed later in this guidance, the civil penalty amount proposed by the parties may not be set lower than the statutory minimum for any violation nor higher then the amount assessed in the NOC. Because the 1996 Act requires the parties to agree on a maximum award, FMCSA proposes that the maximum award be set at the amount assessed in the NOC.

Statutory Considerations for Not Using Arbitration

The 1996 Act states that agencies should not consider using any form of ADR, including binding arbitration, if:

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; or

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement. *See* 5 U.S.C. 572(b).

Accordingly, unless the Chief Safety Officer determines that the use of binding arbitration will be in the best interests of the government, a case will not be submitted to binding arbitration.

Other Statutory Considerations

The 1996 Act includes a number of provisions relating to arbitration. FMCSA's use of binding arbitration will be modeled on these provisions.

Authorization of Arbitration

1. The decision to arbitrate must be voluntary on the part of all parties to the arbitration. (*See* 5 U.S.C. 575(a)(1)).

2. An agreement to arbitrate must be in writing. It must set forth the subject matter submitted to the arbitrator, and must specify the maximum award that may be granted by the arbitrator. (*See* 5 U.S.C. 575(a)(2)).

3. FMCSA shall not require anyone to consent to arbitration as a condition of entering into a contract or obtaining any other benefit. (See 5 U.S.C. 575(a)(3)).

4. The Field Administrator who offers to use arbitration has the authority to enter into a settlement concerning the matter after consent to the use of arbitration by the Chief Safety Officer. (*See* 5 U.S.C. 575(b)(1) and (2)).

Enforcement of Arbitration Agreements (5 U.S.C. 576).

Arbitration agreements are enforceable pursuant to 9 U.S.C 4.

Arbitrators (5 U.S.C. 577)

1. The parties to an arbitration are entitled to participate in selecting an arbitrator. (*See* 5 U.S.C. 577(a)).

2. An arbitrator shall not have an official financial or personal conflict of interest with respect to the issue in controversy, unless that interest is fully disclosed in writing and all parties agree that he/she may serve as the arbitrator. (*See* 5 U.S.C. 573, 577(b)).

Authority of the Arbitrator (5 U.S.C. 578)

1. An arbitrator may regulate the course and conduct of the arbitration hearing. (*See* 5 U.S.C. 578(1)).

2. An arbitrator may administer oaths and affirmations. (*See* 5 U.S.C. 578(2)).

3. An arbitrator may compel the attendance of witnesses and the production of documents only to the same extent the agency involved is otherwise authorized by law to do so. (*See* 5 U.S.C. 578(3)).

4. An arbitrator may make awards. (*See* 5 U.S.C. 578(4)).

Arbitration Proceedings (5 U.S.C. 579)

1. The arbitrator shall set the time and place for the arbitration hearing and shall notify the parties of same at least five days before the hearing is to take place. (*See* 5 U.S.C. 579(a)

2. Parties are entitled to a record of the arbitration hearing. Any party wishing a record shall: (1) Make the arrangements for it; (2) notify the arbitrator and other parties that a record is being prepared; (3) supply copies to the arbitrator and the other parties; and (4) pay all costs, unless the parties have agreed to share the costs or the arbitrator determines that the costs should be apportioned. (*See* 5 U.S.C. 579(b)(1)-(4)).

3. At any arbitration hearing, parties are entitled to be heard, to present evidence, and to cross-examine witnesses. The arbitrator may, with the consent of the parties, conduct the hearing by telephone, television, computer or other electronic means, if each party has the opportunity to participate. (*See* 5 U.S.C. 579(c)(1) and (2)).

4. The arbitrator may receive any oral or documentary evidence that is not irrelevant, immaterial, unduly repetitious, or privileged. (*See* 5 U.S.C. 579(4)).

5. The arbitrator shall interpret and apply any relevant statutes, regulations, legal precedents and policy directives. (*See* 5 U.S.C. 579(5)).

6. No party shall have any unauthorized *ex parte* communication with the arbitrator relevant to the merits of the proceeding, unless the parties agree. If a party violates this provision, the arbitrator shall ensure that a memorandum of the communication is included in the record, and that an opportunity for rebuttal is allowed. The arbitrator may require the party who engages in an unauthorized *ex parte* communication to show cause why the issue in controversy should not be resolved against it for the improper conduct. (*See* 5 U.S.C. 579(d)).

Arbitration Awards

1. An arbitration award shall include a brief informal discussion of the factual and legal bases for the award. Formal findings of fact and law are not required. (*See* 5 U.S.C. 580(a)(1)).

2. A final award is binding on the parties and may be enforced pursuant to 9 U.S.C. 9–13. (*See* 5 U.S.C. 580(c)).

3. An arbitration award may not serve as an estoppel in any other proceeding and may not be used as precedent in any factually unrelated proceeding. (*See* 5 U.S.C. 580(d)).

Judicial Review (5 U.S.C. 581)

1. Any action for review of an arbitration award must be made pursuant to sections 9 through 13 of title 9, U.S. Code. (*See* 5 U.S.C. 581(a)). A court may vacate an award where the award was procured by corruption, fraud, or undue means; where there was arbitrator partiality, corruption, misconduct or misbehavior; or where an arbitrator has exceeded or imperfectly executed the arbitrator's powers.

2. A decision by an agency to use or not to use arbitration shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall only be subject to judicial review under section 10(c) of title 9, U.S. Code. (*See* 5 U.S.C. 581(b)).

Questions and Answers on FMCSA's Use of Binding Arbitration

Issue 1: For what types of cases will FMCSA be willing to use binding arbitration?

Response: FMCSA is generally willing to use binding arbitration for the resolution of cases in which the only questions are the amount of, and the length of time permitted to pay, the civil penalty. FMCSA will not agree to arbitrate maximum penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999), 49 U.S.C. 521 note, or any cases that deal with an interpretation of the regulations or with important policy issues.

Issue 2: How and by whom will the decision to arbitrate be made?

Response: The decision to arbitrate is strictly that of the parties. As with any other form of ADR, arbitration must be a completely voluntary process. Either party may petition the Chief Safety Officer for a determination that the case be set for binding arbitration and that the Chief Safety Officer issue a Notification of Arbitration.

Issue 3: Who will have authority to authorize arbitration?

Response: The Chief Safety Officer will decide which cases are appropriate for ADR. Again, this class of cases will include only those that involve solely a monetary dispute and that do not concern FMCSA policy or procedure. The Chief Safety Officer has the discretion to delegate this authority to the FMCSA Adjudications Counsel.

Issue 4: Who has the authority to enter into settlement for FMCSA? May this authority be delegated?

Response: A Field Administrator has the authority to settle a case for FMCSA. This authority may be delegated to the Enforcement Program Manager.

Issue 5: How will the cap on the award be established?

Response: The maximum arbitration award will be set at the civil penalty amount assessed in the NOC, or amended NOC, if one is issued.

Issue 6: Is there a limitation on the length of time for a payment plan, if the Arbitrator orders a payment plan?

Response: The maximum period that the Arbitrator may permit for a payment plan is 60 months from the date of the issuance of the Award.

Issue 7: Who will negotiate the rules and selection of the arbitrator?

Response: The parties must mutually agree upon the arbitrator and will have several options from which to choose, including: (1) Department of Transportation Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration; (2) Uncompensated Neutrals from local communities; and (3) Compensated Neutrals from outside the government, whose costs are to be shared by agreement of the parties. For FMCSA, the decision regarding selection of the arbitrator will be that of the Field Administrator. The parties will establish the procedural rules that will govern any binding arbitration, with input from the selected arbitrator, and include the rules in the Arbitration Agreement.

Issue 8: Who will draft the Arbitration Agreement?

Response: The parties will draft the Arbitration Agreement, with substantive input from the selected arbitrator. A sample Arbitration Agreement is included in Appendix A.

Issue 9: What will the process be for entering into arbitration?

Response: Once the Chief Safety Officer has determined that a case is appropriate for arbitration, he/she will notify the parties to the dispute by issuing a Notification of Arbitration, in writing, indicating that that the case may be referred to arbitration. The Notification will require the parties to indicate agreement or their objection to submitting the case to arbitration. The Notification will require that each party return (serve) the Notification form—with their choice so noted—within 15 days of the date on the Chief Safety Officer's Notification. If the carrier opts for arbitration, the matter will be so assigned unless the Field Administrator or his/her designee submits on the Notification form argument against arbitration. The burden will be upon the Field Administrator to demonstrate that the case involves a question of regulatory interpretation and/or an important policy issue unsuitable for arbitration. After the Chief Safety Officer considers the Field Administrator's argument and renders a decision, that decision is final.

Issue 10: How can FMCSA encourage the efficiency of the arbitration process?

Response: Only single arbitrators (rather than panels of arbitrators) will handle these cases. To assure maximum efficiency of the arbitration process, subject to the consent and cooperation of the carrier, FMCSA will encourage:

A. The resolution of the controversy by means of document review or by arbitration via telephone conference in appropriate cases, with the consent of the carrier.

B. The arbitrator to establish reasonable deadlines for any hearing and rendering of an award. These timeframes shall be incorporated into the Arbitration Agreement.

Issue 11: What is the arbitrator's role?

Response: Consistent with the ADRA, the arbitrator will have the authority to:

- Regulate the course and conduct of arbitration hearings;
- Administer oaths;
- Compel attendance of witnesses and production of evidence, to the extent that the agency is authorized to do so by law;
- Issue awards.

The parties, as part of their Arbitration Agreement, may include any specific additional powers they wish the arbitrator to have and provide the arbitrator broad discretion in terms of efficient case management.

Issue 12: Will FMCSA permit the use of a panel of arbitrators in some circumstances?

Response: Because of the costs of a panel of arbitrators and the lack of complexity in these cases, FMCSA will not agree to a panel of arbitrators.

Issue 13: What selection criteria will be considered in choosing an arbitrator?

Response: The primary criteria for selecting an arbitrator will be: (1) Overall reputation of the arbitrator in terms of competence, integrity, and impartiality; (2) availability of the arbitrator during the periods most convenient for the parties; (3) relative cost; (4) the absence of any actual or potential conflict of interest; and (5) geographic proximity of the proposed arbitrator to the parties and to witnesses if the Arbitration Agreement calls for a hearing.

Issue 14: Will FMCSA agree to allow non-attorneys to represent a party, or for a party to appear *pro se* at the arbitration?

Response: Yes. The Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceeding, 49 CFR part 386, are designed to be readily accessible to small business enterprises and other entities. Carriers often respond to notices of claim without assistance of counsel. Before approving any Arbitration Agreement entered into by an unrepresented carrier, the Arbitrator shall require such carrier to execute a statement acknowledging the risks and limitations inherent in any arbitration.

Issue 15: What should an Arbitration Agreement include?

Response: The Agreement should include the following:

1. The names of the parties.

2. The issues being submitted to binding arbitration.

3. The maximum award that the arbitrator may direct.

4. Any other conditions limiting the range of possible outcomes, including

but not limited to, the statutory minimum for violations of the Hazardous Materials Regulations as set forth at 49 U.S.C. 5123(a).

5. The scope of the arbitration. This will limit time and cost and give the arbitrator power to be a ''case manager.'' A sample case management provision might read:

''The Arbitrator is expected to assume control of the process and to schedule all events as expeditiously as possible, to insure that an award is issued no later than __ days from the date of this Agreement. The penalty will be due to FMCSA thirty days after service of the Arbitration Award by the Arbitrator unless a payment plan is ordered by the Arbitrator.''

6. References to all provisions of the 49 CFR part 386 rules regarding discovery and the conduct of hearings that the parties may wish to apply to the arbitration process.

7. The name of the arbitrator, the amount of compensation (if any) and how it will be paid. (**Note:** No Agreement shall provide for deposits in an escrow account to pay for expenses of the proceeding in advance of expenses being incurred.)

8. The date when the arbitration will commence.

9. The types of remedies available.

10. A confidentiality provision referring to the 1996 Act and stating that neither the Arbitration Agreement nor the arbitration award will be considered confidential.

11. The bases for appeal.

12. The arbitration hearing is open only to the parties, their representatives and the arbitrator. The hearing is not a public forum.

13. The Arbitrator's decision will be issued in writing, and will state the factual and legal bases and amount of the penalty awarded by the Arbitrator.

14. The carrier will have thirty (30) days from the date of service of the award to pay the amount awarded unless the Arbitrator orders a payment plan.

15. The arbitration award is final and has the same force and effect as any final agency order. Thus, failure to pay the determined award triggers the same Agency remedies, as would the failure to pay a civil penalty award entered by the Chief Safety Officer.

A Sample Arbitration Agreement is included in Appendix A.

Issue 16: How will FMCSA pay the arbitrator(s)?

Response: The 1996 Act allows an agency to use, with or without reimbursement, the services and facilities of other Federal agencies, State, local and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals, and without regard to the provisions of 31 U.S.C. 1342 (regarding the acceptance of voluntary services). In addition, the 1996 Act permits selection of all ADR neutrals, including arbitrators, to be done non-competitively. FMCSA and the carrier must agree on the selection of the arbitrator.

FMCSA is considering three categories of potential arbitrators: (1) Department of Transportation Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration; (2) Uncompensated Neutrals from local communities; and (3) Compensated Neutrals from outside the government, whose costs are to be shared by agreement of the parties. To limit costs, FMCSA is considering using Board of Contract Appeals Judges and Uncompensated Neutrals from local communities to serve as arbitrators. If the parties cannot agree on this no-cost option, the parties will agree in advance to share any arbitrator fees and costs, the costs of any transcripts, or other costs, all of which will be paid after the award is issued.

FMCSA will not escrow funds or pay in advance for any such costs.

Issue 17: Is FMCSA willing to use ''administered arbitration''?

Response: No. Because of the cost implications, FMCSA will not agree to administered arbitration, arbitration administered by an outside ADR organization.

Issue 18: What must the arbitration award include?

Response: The arbitration award need not be in the form of formal findings of fact and conclusions of law, but must be in writing and at least provide in summary form the monetary amount of the award, if any, and the factual and legal basis for the arbitrator's decision. The award will be subject to the ''cap'' and any other limitations agreed upon by the parties.

Arbitration awards are not confidential documents. Awards shall be entered into the FMCSA docket for the case. Additionally, awards may be posted on the FMCSA Web site and/or published in the **Federal Register**.

Issue 19: Will FMCSA allow arbitration on the documents only, without a hearing, or a telephonic hearing? If so, in what circumstances?

Response: While the parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at a hearing, due to the nature of these cases, FMCSA encourages arbitration on the documents only without a hearing, or a telephonic hearing. This has the advantage of saving time, money, and avoiding scheduling conflicts. The Arbitration Agreement should allow the parties to request a hearing. The Arbitration Agreement should also allow the arbitrator discretion to call for an in-person hearing should the arbitrator determine that credibility may be a factor in the outcome of the award.

The arbitrator may also conduct, with the consent of the parties, all or part of a hearing by telephone, video conferencing, or computer as long as each party has an equal opportunity to participate.

Issue 20: May an arbitration award be used as precedent in any other proceeding?

Response: No, the arbitration award may not be used as precedent consistent with 5 U.S.C. 580(d). Nonetheless, by entering into Arbitration, the carrier has admitted, or the Chief Safety Officer has found, that FMCSA has an appropriate and defined factual basis for the violations, and that the violations may be considered in future enforcement action(s) by FMCSA.

Appendix A

Agreement to Submit to Binding Arbitration

Section One—Parties and Controversy

The Federal Motor Carrier Safety Administration and _____(''Carrier'') (collectively the ''Parties'') voluntarily agree to submit the following controversy arising from violations of the Federal Motor Carrier Safety Regulations to binding arbitration: (briefly describe the controversy).

Section Two—Assignment of Arbitrator

We agree upon_____as the Arbitrator.

Section Three—Issues of Arbitration

We agree that the Arbitrator shall be limited to the following issues of fact and law: (set forth each issue with specificity, including the question of whether a payment plan is appropriate).

Section Four—Costs of Arbitration

We agree to pay the Arbitrator a fee of $_____(''the fee'') for the services as an arbitrator. The Fee is based on the issues specified in Section Three above.

We agree to reimburse the Arbitrator for all reasonable out-of-pocket expenses that the Arbitrator may incur for the arbitration. These expenses include but are not limited to: travel, lodging, and meals (consistent with Federal *per diem* standards), long distance charges, printing and copying, postage and courier fees.

Section Five—Minimum and Maximum Award

We agree that the maximum award shall be (the amount demanded in the Notice of Claim). This amount is a total of the penalties

for each of the individual violations as follows:

We also agree that the minimum award for violation of Hazardous Materials Regulations shall be no less than $250 per violation as set forth at 49 U.S.C. 5123(a).

Section Six—Management of the Proceeding

We further agree that the arbitration proceeding will be conducted in accordance with procedures established in 49 CFR part 386 for discovery and hearings. Additional rules and procedures for the arbitration may be negotiated and agreed upon by the Arbitrator and the Parties at any time during the arbitration process.

We further agree that we shall faithfully observe this agreement and the applicable procedural rules and that we will abide by and perform any award rendered by the arbitrator.

We agree that the Arbitrator will assume control of the process and will schedule all events as expeditiously as possible, to ensure that an award is issued no later than____ days from the date of this Agreement. The penalty will be due to FMCSA 30 days after service of the Arbitration Award by the Arbitrator unless the Arbitrator orders a payment plan.

Consistent with the Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings, 49 CFR part 386, Carriers may be represented by a representative of their choice including non-lawyers. Representatives and FMCSA counsel shall be responsive to the direction provided by the Arbitrator.

We understand that neither party shall initiate or participate in an *ex parte* communication with the arbitrator relevant to the merits of the proceeding, unless the parties agree. If a party or its representative engages in an unauthorized *ex parte* communication, the arbitrator may resolve the case against the offending party. Before taking that action, however, the arbitrator must allow the offending party to show cause why the issue in controversy should not be resolved against it for improper conduct.

Section Seven—Arbitrator's Award

We agree that the Arbitrator's decision will be issued in writing and will state the factual and legal bases and amount of the penalty awarded by the Arbitrator. We further agree that the arbitration award is final and has the same force and effect as any final agency order. Thus, failure to pay the determined award triggers the same Agency remedies, as would the failure to pay a civil penalty award entered by the Chief Safety Officer.

Section Eight—Confidentiality of the Proceeding

We agree that the arbitration proceeding is not a public forum and will be restricted to the Parties, their representatives, and the Arbitrator. We acknowledge and agree that 5 U.S.C. 574 controls the confidentiality of the proceeding, and that neither the Arbitration Agreement nor the arbitration award may be considered confidential.

Section Nine—Judicial Review

The award shall only be reviewable under the provisions of 5 U.S.C. 581 and 9 U.S.C. 9–13.

Section Ten—Governing Law

This agreement is entered into consistent with 5 U.S.C. 571 *et seq.*, and we agree that Federal law shall govern this Arbitration. The arbitrator shall apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

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BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On November 13, 2003, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the Federal Register (68 FR 64422) requesting public comment on the extension, without revision, of the currently approved information collection: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks (FFIEC 004). The comment period for this notice expired on January 12, 2004. No comments were received. The agencies are now submitting requests to OMB for approval of the extension, without revision, of the FFIEC 004 report.

DATES: Comments must be submitted on or before April 15, 2004.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Comments should be sent to the Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0070, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to 202–874–4448, or by e–mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202–874–5043.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: 1550–0075, Fax number 202–906–6518, or e–mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW, by appointment. To make an appointment, call 202–906–5922, send an e–mail to publicinfo@ots.treas.gov, or send a facsimile transmission to 202–906–7755.

Board: Comments should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Please consider submitting your comments through the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*; by e–mail to *regs.comments@federalreserve.gov*; or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *www.regulations.gov*. All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any