

when a substantial question of representation is raised during the negotiations.

(e) To proffer its services in any labor-management dispute directly involving Government procurement contracts necessary to the national defense, or in disputes which imperil or threaten to imperil the national health or safety.

(f) To proffer its services to the parties in grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement only as a last resort and in exceptional cases.

§ 1403.3 Obtaining data on labor-management disputes.

When the existence of a labor-management dispute comes to the attention of the Federal Service upon a request for mediation service from one or more parties to the dispute, through notification under the provisions of section 8(d)(3), title I of the Labor-Management Relations Act, 1947, or otherwise, the Federal Service will examine the information to determine if the Service should proffer its services under its policies. If sufficient data on which to base a determination is not at hand, the Federal Service will inquire into the circumstances surrounding the case. Such inquiry will be conducted for fact-finding purposes only and is not to be interpreted as the Federal Service proffering its services.

§ 1403.4 Assignment of mediators.

The Federal Service will assign one or more mediators to each labor-management dispute in which it has been determined that its services should be proffered.

§ 1403.5 Relations with State and local mediation agencies.

(a) If under State or local law a State or local mediation agency must offer its facilities in a labor-management dispute in which the Federal Service is proffering its services, the interests of such agencies will be recognized and their co-operation will be encouraged in order that all efforts may be made to prevent or to effectively minimize industrial strife.

(b) If, in a labor-management dispute there is reasonable doubt that the dispute threatens to cause a substantial interruption to commerce or that there is more than a minor effect upon interstate commerce, and State or other conciliation services are available to the parties, the regional director of the Federal Service will endeavor to work out suitable arrangements with the State or other conciliation or mediation agency for mediation of the dispute. Decisions in such cases will take into consideration the desires of the parties, the effectiveness and availability of the respective facilities, and the public welfare, health, and safety.

(c) If requested by a State or local mediation agency or the chief executive of a State or local government, the Federal Service may make its services available in a labor-management dispute which would have only a minor effect upon interstate commerce when, in the judgment of the Federal Service, the effect of the dispute upon commerce or the public welfare, health, or safety justifies making available its mediation facilities.

PART 1404—ARBITRATION SERVICES

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AUTHORITY: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

SOURCE: 84 FR 16206, Apr. 18, 2019, unless otherwise noted.

Subpart A—Arbitration Policy; Administration of Roster

§ 1404.1 Scope and authority.

This chapter is issued by the Federal Mediation and Conciliation Service (FMCS) under Title II of the Labor Management Relations Act of 1947 (Pub. L. 80-101) as amended. It applies to all arbitrators listed on the FMCS Roster of Arbitrators (the Roster), to all applicants for listing on the Roster, and to all persons or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes that are to be submitted to arbitration or fact-finding.

§ 1404.2 Policy.

The labor policy of the United States promotes and encourages the use of voluntary arbitration to resolve disputes over the interpretation or application of collective bargaining agreements. Voluntary arbitration and fact-finding are important features of constructive employment relations as alternatives to economic strife.

§ 1404.3 Administrative responsibilities.

(a) *Director.* The Director of FMCS has responsibility for all aspects of FMCS arbitration activities and is the final agency authority on all questions concerning the Roster and FMCS arbitration procedures.

(b) *Office of Arbitration.* The Office of Arbitration (OA) maintains the Roster; administers subpart C of this part (Procedures for Arbitration Services); assists, promotes, and cooperates in the establishment of programs for training and developing new arbitrators; and

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provides names or panels of names of listed arbitrators to parties requesting them.

(c) *Arbitrator Review Board.* The Arbitrator Review Board (Board) shall consist of a chair and members appointed by the Director who shall serve at the Director's pleasure. The Board shall be composed entirely of full-time officers or employees of the Federal Government and shall establish procedures for carrying out its duties.

(1) *Duties of the Board.* The Board shall:

(i) Review the qualifications of all applicants for listing on the Roster, interpreting and applying the criteria set forth in § 1404.5;

(ii) Review the status of all persons whose continued eligibility for listing on the Roster has been questioned under § 1404.5;

(iii) Recommend to the Director the acceptance or rejection of applicants for listing on the Roster, or the withdrawal of listing on the Roster for any of the reasons set forth in this part;

(iv) At the request of the Director, or upon its own volition, review arbitration policies and procedures, including all regulations and written guidance regarding the use of Roster arbitrators, and make recommendations regarding such policies and procedures to the Director.

(2) [Reserved]

Subpart B—Roster of Arbitrators; Admission and Retention

§ 1404.4 Roster and status of members.

(a) *The Roster.* FMCS shall maintain a Roster of labor arbitrators consisting of persons who meet the criteria for listing contained in § 1404.5 and who remain in good standing.

(b) *Adherence to standards and requirements.* Persons listed on the Roster shall comply with FMCS rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by OA pursuant to subpart C of this part. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators

of Labor Management Disputes, as approved by the National Academy of Arbitrators, FMCS, and the American Arbitration Association (“the Code”).

(c) *Status of arbitrators.* Persons who are listed on the Roster and are selected or appointed to hear arbitration matters or to serve as factfinders do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the arbitrator’s relationship is solely with the parties to the dispute, except that arbitrators are subject to certain reporting requirements and to standards of conduct as set forth in this part.

(d) *Rights of persons listed on the Roster.* No person shall have any right to be listed or to remain listed on the Roster. FMCS retains its authority and responsibility to assure that the needs of the parties using its services are served. To accomplish this purpose, FMCS may establish procedures for the preparation of panels or the appointment of arbitrators or factfinders that include consideration of such factors as background and experience, availability, acceptability, geographical location, and the expressed preferences of the parties.

§ 1404.5 Listing on the Roster, criteria for listing and removal, procedure for removal.

Persons seeking to be listed on the Roster must complete and submit an application available online at <https://www.fmcs.gov/services/arbitration/information-joining-arbitrator-roster/>. Upon receipt of an executed application, OA will review the application, ensure that it is complete, make such inquiries as are necessary, and submit the application to the Board. The Board will review the completed application under the criteria in paragraphs (a), (b) and (c) of this section, and will forward to the FMCS Director, or Director’s designee, its recommendation as to whether or not the applicant meets the criteria for listing on the Roster. The Director shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of the Director’s decision and the reasons therefore.

(a) *General criteria.* (1) Applicants will be listed on the Roster upon a determination that he or she:

(i) Is experienced, competent, and acceptable in decision-making roles in the resolution of labor relations disputes; or

(ii) Has extensive and recent experience in relevant positions in collective bargaining; and

(iii) Is capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits.

(iv) For applicants who are governmental employees, the following criteria shall also apply:

(A) *Federal employees.* These applicants must provide OA with written permission from their employer to work as an arbitrator. Federal employees will not be assigned to panels involving the Federal Government.

(B) *Governmental employees other than Federal.* These applicants must provide OA with written permission from their employer to work as an arbitrator as well as a statement of the jurisdiction(s) in which the applicant is permitted to do this work.

(2) FMCS may identify certain positions relating to collective bargaining that will substitute for the General Criteria. FMCS may also identify periodic educational requirements for remaining on the Roster.

(b) *Proof of qualification.* Unless waived under exceptional circumstances wholly in the discretion of the Director, applicants must:

(1) Submit five recent labor arbitration awards that are final and binding, and prepared by the applicant while serving as an impartial arbitrator of record selected by mutual agreement of the parties to labor relations disputes arising under collective bargaining agreements, or by direct designation by an administrative agency, or

(2) Successfully complete the FMCS labor arbitrator training course and either submit one award as described above or complete an apprenticeship that meets specifications that FMCS may, in its discretion, provide. Applicants must also submit information

demonstrating extensive and recent experience in collective bargaining, including at least the position or title held, duties or responsibilities, the name and location of the company or organization, and the dates of employment.

(c) *Advocacy.* Any person who at the time of application is an advocate, as defined in paragraph (c)(1) of this section, must agree to cease such activity before being recommended for listing on the Roster by the Board. Except in the case of persons listed on the Roster as advocates before November 17, 1976, any person who did not divulge his or her advocacy at the time of listing or who becomes an advocate while listed on the Roster and who did not request to be placed on inactive status pursuant to §1404.6 prior to becoming an advocate, shall be recommended for removal by the Board after the fact of advocacy is revealed.

(1) *Definition of advocacy.* (i) An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor relations or employment relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters.

(ii) This definition of advocate also includes a person who is directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Individuals engaged only in joint education or training or other non-adversarial activities will not be deemed to be advocates.

(2) [Reserved]

(d) *Removal from the Roster.* Removal from the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal,

and the Director may remove, any arbitrator listed on the Roster for violation of this part or of the Code. FMCS will provide to the affected arbitrator written notice of removal from the Roster. Complaints about arbitrators should be in writing and sent to the Director of OA. The complaint should cite any specific section(s) of the Code or the FMCS rule the arbitrator has allegedly violated. The following criteria shall be a basis for the Board to recommend and/or the Director to initiate an arbitrator's removal from the Roster:

(1) No longer meets the criteria for admission;

(2) Has become an advocate as defined in paragraph (c) of this section;

(3) Has been repeatedly or flagrantly in violation of one or more provisions of this part;

(4) Has refused to make reasonable and periodic reports in a timely manner to FMCS, as required in subpart C of this part, concerning activities pertaining to arbitration;

(5) Has been the subject of a complaint by a party who uses FMCS services, or engages in conduct inappropriate for an arbitrator which otherwise comes to the attention of FMCS, and the Board, after appropriate inquiry, concludes that cause for removal has been shown; or

(6) Has been in an inactive status pursuant to §1404.6 for longer than two years and has not paid the annual listing fee.

(e) *Procedure for removal.* Prior to any recommendation by the Board to remove an arbitrator from the Roster, the Board shall conduct an inquiry into the facts of any such recommended removal. When the Board recommends removal of an arbitrator, it shall send the arbitrator a written notice. This notice shall inform the arbitrator of the Board's recommendation and the basis for it, and that he or she has 60 days from the date of such notice to submit a written response or information showing why the arbitrator should not be removed. When the Director removes an arbitrator from the Roster, he or she shall inform the arbitrator of this in writing, stating the effective date of the removal and the length of

time of the removal if it is not indefinite. An arbitrator so removed may seek reinstatement to the Roster by making written application to the Director no earlier than two years after the effective date of his or her removal.

(f) *Suspension.* The Director of OA may suspend, for a period not to exceed 180 days, any arbitrator listed on the Roster based on any of the criteria in paragraph (d) of this section. Arbitrators shall be promptly notified of a suspension. The arbitrator may appeal a suspension to the Board, which shall make a recommendation to the Director of FMCS. The decision of the Director of FMCS shall constitute the final action of the agency.

§ 1404.6 Inactive status.

(a) An arbitrator on the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a temporary basis.

(b) Arbitrators whose schedules do not permit cases to be heard within six months of assignment must make themselves inactive temporarily until their caseload permits the earlier scheduling of cases.

(c) An arbitrator can remain on inactive status without paying any annual listing fee for a period of two years. If an arbitrator is on inactive status for longer than two (2) years, the arbitrator will be removed from the Roster unless the arbitrator pays the annual listing fee.

§ 1404.7 Listing fee.

All arbitrators will be required to pay an annual fee for listing on the Roster, as set forth in the appendix to this part.

Subpart C—Procedures for Arbitration Services

§ 1404.8 Freedom of choice.

Nothing contained in this part should be construed to limit the rights of parties who use FMCS arbitration services to jointly select any arbitrator or arbitration procedure acceptable to them. Once a request is made to OA, all parties are subject to the procedures contained in this part.

§ 1404.9 Procedures for requesting arbitration lists and panels.

(a) The OA has been delegated the responsibility for administering all requests for labor arbitration services. Requests must be made online at fmcs.gov/services/arbitration/requesting-a-panel/, or via email attaching a completed Form R-43 addressed to arbitration@fmcs.gov.

(b) Upon request, OA will refer a randomly selected panel of seven arbitrators to parties to an agreement to arbitrate or engage in fact-finding, or where labor arbitration or fact-finding may be provided by statute. A biographical sketch will be provided for each member of the panel. This sketch states the background, qualifications, experience, and all fees as furnished to OA by the arbitrator. The parties are encouraged to make joint requests. However, a panel request, whether joint or unilateral, will be honored. Requests for a panel of other than seven (7) names, for a direct appointment of an arbitrator, and/or for special qualifications or other service will not be honored unless jointly submitted or authorized by both parties pursuant to mutual agreement. The issuance of a panel—in response to either joint or unilateral request—is nothing more than a response to a request. Neither issuance of a panel nor appointment of an arbitrator signifies the adoption of any position by FMCS regarding the status of an arbitration agreement, arbitrability of any dispute, or the terms of the parties' contract.

(c) FMCS has no power to:

(1) Compel parties to appear before an arbitrator;

(2) Enforce an agreement to arbitrate;

(3) Compel parties to arbitrate any issue;

(4) Influence, alter, or set aside decisions of arbitrators on the Roster; or

(5) Compel, deny, or modify payment of compensation to an arbitrator.

(d) OA may decline to submit a panel or to make an appointment of an arbitrator if the request submitted is overly burdensome or otherwise impracticable. OA, in such circumstances, may refer the parties to an FMCS mediator to help in the design of an alternative

solution. OA may also decline to service any request from a party based on the party's prior non-payment of arbitrator fees or other behavior that constrains the spirit or operation of the arbitration process.

(e) Panel requests that contain certain special requirements not found among the selections online, cannot be processed via the agency's internet system; instead, parties must submit the pdf version of the R-43 form via email to OA and specify the additional requirements agreed to by both parties.

(f) As an alternative to a panel of arbitrators, OA will, upon written request, submit a list of arbitrators and their biographical sketches from a designated geographical area; the parties may then select and deal directly with an arbitrator of their choice, with no further involvement of FMCS with the parties or the arbitrator, and no assigned case number. The parties may also request FMCS to make a direct appointment of their selection. In such a situation, a case number will be assigned.

(g) OA will charge a fee for all requests for lists, panels, and other major services. Payments for these services must be received with the request for services before the service is delivered and may be paid by either labor or management or both. A schedule of fees is listed in the appendix to this part.

§ 1404.10 Arbitrability.

OA will not decide the merits of a claim by either party that a dispute is not subject to arbitration.

§ 1404.11 Nominations of arbitrators.

(a) All panels submitted to the parties by OA, and all letters issued by OA making a direct appointment, will have an assigned FMCS case number. All future communications with OA should refer to this case number.

(b) OA will provide a randomly selected panel of arbitrators located in geographical areas in proximity of the hearing site, as specified in the request. The parties may jointly request special qualification of arbitrators experienced in certain issues or industries or that possess certain backgrounds, or a panel with no geographic

restrictions within the U.S. OA has no obligation to put an individual on any given panel or on a minimum number of panels in any fixed period. If at any time both parties request that a name or names be included, or omitted, from a panel, such name or names will be included, or omitted, unless the number of names is excessive. These inclusions/exclusions may not discriminate against anyone because of age, race, color, gender, national origin, disability, genetic information, or religion.

(c) If the parties do not agree on an arbitrator from the first panel, OA will furnish up to five additional panels to the parties upon joint request, or upon a unilateral request if authorized by the applicable collective bargaining agreement, and payment of additional fees.

§ 1404.12 Selection by parties and appointment of arbitrators.

(a) After receiving a panel of names, the parties must notify OA of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, OA will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must promptly notify OA of the selection. The arbitrator must provide OA with the FMCS case number and other pertinent information for OA to make an appointment. A pattern of failure by an arbitrator to notify FMCS of a selection in an FMCS case may result in suspension or removal from the Roster. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as OA. Consistent failure to follow these procedures may lead to a denial of future OA services.

(b) Where the parties' collective bargaining agreement permits each party to separately notify OA of its ranked order of preference, or is silent on the manner of selecting arbitrators, FMCS will ask each party to advise OA of its

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order of preference by numbering each name on the panel and submitting the numbered list in writing to OA. Upon receiving the rank order from one party, OA will notify the other party that it has fourteen (14) days in which to submit its selections. Where both parties respond, the name that has the lowest combined number will be appointed. If the other party fails to respond, the first party's choice will be honored.

(c) OA will make a direct appointment of an arbitrator only upon joint request or as otherwise provided by this part.

§ 1404.13 Conduct of hearings.

All proceedings conducted by the arbitrators shall conform to the contractual obligations of the parties, and to the Code. The arbitrator shall comply with § 1404.4(b). The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding. The arbitrator may, unless prohibited by law, proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement. An award rendered in an ex parte proceeding of this nature must be based upon evidence presented to the arbitrator.

§ 1404.14 Decision and award.

(a) Arbitrators shall make awards no later than 60 days from the date of the closing of the record, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. However, failure to meet the 60-day deadline will not invalidate the process or award. A failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the FMCS Roster.

(b) The parties should inform OA whenever a decision is delayed. The arbitrator shall promptly notify OA if and when the arbitrator:

(1) Cannot schedule or hear a case, and/or render a decision promptly and in accordance with time limits established in this part, or

(2) Learns a dispute has been settled by the parties prior to the decision.

(c) Within 15 days after an award and/or final invoice has been submitted to the parties, the arbitrator shall submit an online Arbitrator's Report and Fee Statement (Form R-19) to OA showing a breakdown of the fee and expense charges.

(d) While FMCS encourages the publication of arbitration awards, arbitrators must not publicize awards without the express consent of the parties in conformance with the Code.

§ 1404.15 Fees and charges of arbitrators.

(a) *Fees to parties.* Prior to appointment, the parties should be aware of all significant aspects of the bases for an arbitrator's fees and expenses. Each arbitrator's biographical sketch shall include a statement of the bases for the arbitrator's fees and expenses, which shall conform to this part and the Code. The parties and the arbitrator shall be bound by the arbitrator's statement of the bases for fees and expenses in the biographical sketch for two years from the date of appointment unless they mutually agree otherwise in writing. Arbitrators listed on the Roster may change the bases for their fees and expenses for future appointments if they provide them in writing to OA at least 30 days in advance.

(b) *Two or more addresses.* Arbitrators with more than one business address must bill the parties for expenses from the least expensive business address to the hearing site.

(c) *Additional administrative fee.* In cases involving unusual amounts of time and expense relative to the pre-hearing and post-hearing administration of a particular case, the arbitrator may charge an administrative fee. This fee shall be disclosed to the parties as soon as it is foreseeable by the arbitrator.

(d) *Fee disputes.* When a party believes the arbitrator has not followed the requirements of this Part, it should promptly notify OA, which may bring any complaint concerning the fees charged by an arbitrator to the attention of the Board for consideration. Complaints by arbitrators concerning

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non-payment of fees by a party may lead to the denial of services or other actions by OA.

§ 1404.16 Reports and biographical sketches.

(a) Arbitrators listed on the Roster shall execute and return all documents, forms and reports required by OA and be responsible for updating their account and bio information online, including changes of address, telephone number, and availability. They must also furnish to OA the contact information for a person they know well whom OA may contact if unable to reach the arbitrator, and who has agreed to contact OA if the arbitrator has become incapacitated or deceased. Arbitrators must contact OA directly when they engage, or are accused of engaging, in any business or other connection or relationship involving labor or employment relations and/or which creates or gives the appearance of advocacy as defined in §1404.5(c)(1).

(b) OA reserves the right to decide and approve the format and content of biographical sketches.

Subpart D—Expedited Arbitration

§ 1404.17 Policy.

In an effort to reduce the time and expense of some grievance arbitrations, FMCS offers expedited procedures where the parties agree on a streamlined process with short deadlines. Parties may also agree on their own procedures if it is practicable for FMCS.

§ 1404.18 Procedures for requesting expedited panels.

(a) With the exception of the specific changes noted in this Subpart, all FMCS rules and regulations governing its arbitration services shall apply to Expedited Arbitration.

(b) Upon receipt of a joint Request for Arbitration Panel (Form R-43) indicating that both parties desire expedited services, OA will refer a panel of arbitrators which shall be valid for up to 30 days. Only one panel will be submitted per case. If the parties are unable to mutually agree upon an arbitrator or if prioritized selections are not received from both parties within 30 days, OA will make a direct appoint-

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ment of an arbitrator not on the original panel.

(c) If the parties mutually select an arbitrator, but the arbitrator is not available, the parties may select a second name from the same panel or OA will make a direct appointment of another arbitrator not listed on the original panel.

§ 1404.19 Arbitration process.

(a) Once notified of the expedited case appointment by OA, the arbitrator must contact the parties within seven (7) calendar days.

(b) The parties and the arbitrator must attempt to schedule a hearing within 30 days of the appointment date.

(c) Absent mutual agreement, all hearings will be concluded within one day. No transcripts of the proceedings will be made and the filing of post-hearing briefs will not be allowed.

(d) All awards must be completed within seven (7) working days from the hearing. These awards are expected to be brief and concise, and to not require extensive written opinion or research time.

PART 1405—PART-TIME EMPLOYMENT

Subpart A—General

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AUTHORITY: Pub. L. 95-437, Federal Employees Part-time Career Employment Act of 1978.

SOURCE: 47 FR 15779, Apr. 13, 1982, unless otherwise noted.

Subpart A—General

§ 1405.1 Purpose.

These regulations implement Public Law 95-437, the Federal Employees