

**PART 25—RULES FOR THE NOMINATION OF ARBITRATORS UNDER SECTION 11 OF EXECUTIVE ORDER 10988**

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AUTHORITY: Sec. 11, E.O. 10988, 3 CFR 1959-1963 Comp. p. 521.

SOURCE: 25 FR 9441, Sept. 13, 1966, unless otherwise noted.

**§ 25.1 Purpose and scope.**

These procedures govern the nomination of arbitrators by the Secretary to perform the advisory functions specified under section 11 of Executive Order 10988. Any arbitrators so nominated will be available for either or both of the following purposes:

(a) To investigate the facts and issue an advisory decision with respect to the appropriateness of a unit of Federal employees for the purpose of exclusive recognition and as to related issues submitted for consideration; or

(b) To determine and advise whether an employee organization represents a majority of employees in an appropriate unit by conducting or supervising an election (wherein a majority of those voting, provided there is a representative vote, cast their ballots for or against representation), or by other appropriate means. A request for a nomination will be considered as contemplating the performance of functions within the above categories if it specifies as a purpose obtaining an advisory decision on one or more questions involved in a unit determination or determination of majority status, such as an advisory decision on the eligibility of voters or the right to appear on the ballot, arising in connection with an election to be held, or on a question relating to matters affecting the results of an election which took place after the agreement to conduct

the election had been entered into, provided such conduct materially affected the results of the election. Subject to compliance with these procedures, the Secretary will nominate an arbitrator whenever he is so requested by an agency or by an employee organization which is seeking recognition as the exclusive representative of Federal employees in a prima facie appropriate unit and which meets all the prerequisites for seeking such recognition.

**§ 25.2 Definitions.**

When used in these procedures:

(a) *Order* means Executive Order No. 10988;

(b) *Agency, employee organization, and employee* have the same meaning as in the Order;

(c) *Recognition* means recognition which is or may be accorded to an employee organization pursuant to the provisions of the Order;

(d) *Secretary* means the Secretary of Labor.

**§ 25.3 Requests for nomination of arbitrators: Filing, disputes, parties, time.**

(a) Requests for nominations should be filed only where there exists a dispute or problem which cannot more appropriately be resolved through regular agency procedures. Parties, therefore, are expected to eliminate from their requests matters not necessary to the resolution of such dispute or problem and to use their best efforts to secure agreement on as many issues as possible before making the request.

(b) Requests for nominations may be filed either by an agency, or by an employee organization as described in § 25.1, or jointly by an agency and one or more employee organizations. Joint requests are encouraged.

(c) Subject to the provisions of paragraph (a) of this section, the Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator on a question of unit determination which is made within 30 days after receipt of an agency's final unit determination or 75 days after an appropriate request for exclusive recognition and no final unit determination has been received from the agency, provided the organization has

observed any reasonable time limits established by the agency for the processing of such requests within the agency. The Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator on a question of majority representation which is made within 15 days after an agency's decision with respect to a determination of majority representation. Any request by an employee organization for the nomination of an arbitrator will be considered untimely if:

(1) A written request for exclusive recognition was not made prior to the grant of such recognition to another organization provided such grant was preceded by posted notice to all employees in the unit and written notice to all organizations known to represent such employees that a request for exclusive recognition was under consideration.

(2) A written request for exclusive recognition was not made within 5 days after the agency posted appropriate notice of its intention to conduct an election to determine majority status, or more than 10 days before the date of the election.

(3) It was made less than 12 months after an agency's final unit determination with respect to such unit or subdivision thereof in a proceeding in which the organization sought exclusive recognition but failed to file a timely request for arbitration under these rules.

(4) It was made less than 12 months after a unit determination following a section 11 proceeding covering such unit or any subdivision thereof.

(5) The time limits set forth in this paragraph will be applied to all requests filed on or after October 15, 1963.

(d) No request contemplating an advisory determination as to whether an employee organization should become or continue to be recognized as the exclusive representative of employees in any unit will be entertained if the request is filed within 12 months after a prior determination of exclusive status has been made pursuant to the Order with respect to such unit unless the agency has withdrawn exclusive recognition from an employee organization by reason of its failure to main-

tain its compliance with sections 2 and 3(a) of the Order or with the Standards of Conduct for Employee Organizations and Code of Fair Labor Practices and the agency advises the Secretary that it has no objection to a new determination of exclusive representation being made within the 12-month period.

(e) No request contemplating an advisory determination as to whether an employee organization should become or continue to be recognized as the exclusive representative of employees in any unit will be entertained during the period within which a signed agreement between an agency and an employee organization is in force or awaiting approval at a higher management level, but not to exceed an agreement period of two years, unless (1) a request for redetermination is filed with the agency between the 90th and 60th day prior to the terminal date of such agreement or two years, whichever is earlier, or (2) unusual circumstances exist which will substantially affect the unit or the majority representation. When an agreement has been extended more than 60 days before its terminal date, such extension shall not serve as a basis for the denial of a request under this section submitted in accordance with the time limitations provided above.

[28 FR 9941, Sept. 13, 1963, as amended at 29 FR 11972, Aug. 21, 1964]

#### **§ 25.4 Contents of requests; service on other parties; answer; intervention.**

(a) Requests for nominations<sup>1</sup> shall be in triplicate and contain the following information:

(1) The name of the agency and the name and address of any office or branch of the agency below the national level that may be involved;

(2) A description of the unit appropriate for exclusive representation or claimed to be appropriate for such representation;

(3) The number of employees in the appropriate unit or any alleged appropriate unit;

(4) If the request is by an employee organization, the name, affiliation, if any, and address of the organization

<sup>1</sup>Requests should be on forms which will be supplied by the Secretary upon request.

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and the names, if known, of all other employee organizations claiming exclusive recognition, or having requested or attained formal or informal recognition with respect to any of the employees in the unit involved;

(5) If the request is by an agency, the names, affiliation, if any, and addresses of the employee organization or organizations claiming exclusive recognition and of any employee organization which has requested or attained formal or informal recognition with respect to any of the employees in the unit involved;

(6) A brief statement indicating specifically the matter or matters with respect to which an advisory decision or determination is sought;

(7) A brief statement of procedures followed by and before the agency prior to the request, two copies of any appropriate agency determination and two copies of all correspondence relating to the dispute or problem;

(8) If the request is made by an employee organization, an indication of the interest of such organization, including information or data such as membership lists, employee petitions or dues records showing prima facie that the organization has sufficient membership to qualify for formal recognition, and that it represents no less than 30 percent of the employees, in the appropriate unit or alleged appropriate unit; and

(9) Any other relevant facts.

(b) A party making a request shall furnish copies to all other parties or organizations listed in the request in compliance with paragraph (a) of this section; except that membership lists, employee petitions or dues records need not be furnished by the requesting employee organization to the other parties or organizations.

(c) Any employee organization claiming to have an interest in the matter or matters to be considered by an arbitrator as to the appropriateness of a unit or majority representation must have advised the agency of its position, in the manner prescribed by the agency's rules, and must have satisfied all of the requirements of section 5 of the Order and paragraph (a)(8) of this section; except that, in any employee organization which has satisfied all of

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the requirements of section 5 of the Order except for the 10 percent membership requirement shall be entitled to receive notice of the proceeding and to participate therein if it represents at least two members and/or is designated by at least two employees as their representative in the unit alleged to be appropriate by the employee organization seeking exclusive recognition or the unit alleged to be appropriate by the agency, provided, however, that such intervening employee organization may not request a unit different than that sought by the employee organization seeking exclusive recognition or the unit claimed to be appropriate by the agency.

(d) Within fifteen (15) days following the receipt of a copy of any request for a nomination filed with the Secretary, the agency or any employee organization may file a response thereto with the Secretary, raising any matter which is relevant to the request including the adequacy of the showing of interest and the appropriateness of the unit under terms of the Order or these procedures. A copy of any response shall be furnished to other parties and organizations listed in the request, in the manner provided in paragraph (b) of this section.

### § 25.5 Action to be taken by the Secretary; nomination and selection.

(a) Upon receipt of a request and the responses, if any, the Secretary shall make such further inquiries as may be necessary to determine his authority under the Order and these procedures; whether a timely request for nomination has been made; whether a valid question concerning representation exists in a prima facie appropriate unit; or for the purpose of obtaining a further specification of the issues or matters to be submitted for an advisory decision or determination, or assisting or advising the persons nominated or considered for nomination or otherwise facilitating submission of the matter to such person or persons in a manner that will permit an expeditious decision or determination.

(b) The Secretary will determine the adequacy of the showing of interest administratively, and such determination

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shall not be subject to collateral attack at a hearing before an arbitrator.

(c) The Secretary shall nominate not less than three arbitrators. Within 5 days the parties may indicate their order of preference from among those nominated. The Secretary will thereafter make a selection from among the nominees listed.

### § 25.6 Time; additional time after service by mail.

(a) In computing any period of time prescribed or allowed by the rules of this part, the date of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a Federal legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a Federal legal holiday. When the period of time prescribed, or allowed, is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded from the computations. Whenever a party has the right or is required to do some act or take some other proceedings within a prescribed period after service of a notice or other paper upon the Secretary or a party and the notice is served upon him by mail, 3 days shall be added to the prescribed period: *Provided, however*, That 3 days shall not be added if any extension of such time may have been granted.

(b) When these rules require the filing of any paper, such document must be received by the Secretary or a party before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

### § 25.7 Fees; cost; expenses; decisions.

(a) Arbitrator's fees, per diem and travel expenses, and election expenses for notices, ballots, postage, rentals, assistance, etc., shall be borne entirely by the agency.

(b) The standard fee for the services of an arbitrator should be \$100 per day. Travel and per diem should be paid at the maximum rate payable to Government employees under the Standardized Government Travel Regulations.

(c) The agency should provide the arbitrator with a copy of the transcript of testimony taken at the hearing, such transcript to be returned to the agency upon the issuance of the arbitrator's advisory decision.

(d) Costs involving assistance rendered by the Secretary's Office in connection with advisory decisions or determinations under section 11 of the order shall be limited to per diem, travel expenses and services on a time-worked basis.

(e) Upon request, the Secretary will make available copies of advisory decisions of arbitrators.

### § 25.8 Construction of rules.

The rules shall be liberally construed to effectuate the purposes and provisions of the order.

## PART 26—ADMINISTRATIVE REVIEW BOARD RULES OF PRACTICE AND PROCEDURE

Sec.

26.1 Purpose and scope.

26.2 General procedural matters.

26.3 Filing.

26.4 Service.

AUTHORITY: Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

SOURCE: 86 FR 1782, Jan. 11, 2021, unless otherwise noted.

### § 26.1 Purpose and scope.

(a) This part contains the rules of practice of the Administrative Review Board (ARB) when it is exercising its authority as described in paragraph (b) of this section. These rules shall govern all appeals and proceedings before the ARB except when inconsistent with a governing statute, regulation, or executive order, in which event the latter shall control.

(b) The ARB has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations as provided in Secretary's Order 01-2020 (or any successor to that order). The ARB shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01-2020 (or any successor to that order).