information collection burdens associated with a domestic manifest requirement. The Department's analysis suggests that if passenger manifiest requirements substantially the same as those proposed for international flights, to be imposed on U.S. domestic flights, the paperwork burdens on the public could be substantial. If air carriers were not to find innovative ways to collect the information, the burden would be large. A perspective on the potential burden can be gained from the following comparison of these burdens from international and domestic manifest requirements with total Department of Transportation information collection burdens on the public as of December 1996:

Department of Transportation collection burdens	Million hours
Total DOT Information Collection Burden (1996)	65.7
Passenger Manifest Information (Int'l) Proposed Rule	1.1 to 1.4
Domestic Passenger Manifest Information:	
(Assuming a counterpart rule to the Passenger Manifest Information [Int'l] Proposed Rule were imposed):	
Case I	4.3 to 6.8
Case II	3.2 to 4.9

(Note: The burden estimate for a domestic manifest requirement have been extrapolated on the basis of annual costs from those calculated for the Passenger Manifest Information [Int'l] Proposed Rule. They do not take into account any possible advancement in collection systems, which could greatly reduce the paperwork burden.)

The estimates suggest that if both international and domestic passenger manifest paperwork burden estimates are added together, the burden increase relative to current levels imposed by all transportation requirements would be on the order of a low of about 7.6 percent and a high of about 11.0 percent.

(Note: An average of the two cases for a domestic passenger manifest requirement has been used to calculate the high and low figures for a domestic passenger manifest requirement.)

The Department is currently engaged in an effort to meet its share of a government-wide goal, required by the Paperwork Reduction Act of 1995, of achieving government-wide a 25 percent reduction in paperwork by the end of fiscal year 1998. From the standpoint of the Department's efforts to design an Information Simplification Plan consistent with the goals of the Paperwork Reduction Act and the President's program, it is essential that the Department do everything possible to reduce unnecessary duplication and achieve maximum cost effectiveness in information collection activities affecting the public. The implementation of passenger manifest requirements in a cost-effective way will be a top priority of the Department. It is also hoped that public input from this ANPRM will make a substantial contribution to this endeavor.

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small businesses are not disproportionately burdened by rules and regulations promulgated by the Government. If a domestic passenger manifest data collection system were proposed, it might affect air taxi operators, commuter carriers, charter operators, and travel agents. Some of these entities may be ''small entities'' within the meaning of the Regulatory Flexibility Act. We specifically request comments on whether there are additional small entities that might be impacted by such a proposal and whether the impact is likely to be significant within the meaning of the Act.

Federalism Implications

This rulemaking has no direct impact on the individual states, on the balance of power in their respective governments, or on the burden of responsibilities assigned them by the national government. In accordance with Executive Order 12612, preparation of a Federalism Assessment is, therefore, not required.

List of Subjects in 14 CFR Part 243

Air carriers, Aircraft, Air taxis, Air transportation, Charter flights, Foreign air carriers, Foreign relations, Reporting and recordkeeping requirements, Security.

Authority: 49 U.S.C. 40101, 40113, 40114, 41708, 41709, 41711, 41702, 46301, 46310, 46316.

Issued in Washington, D.C. on March 7, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–6394 Filed 3–12–97; 8:45 am]

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FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

Arbitration Policy; Roster of Arbitrators, and Procedures for Arbitration Services

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The proposed revision to 29 CFR Part 1404 is being published in order to revise the policies and procedures used by Federal Mediation and Conciliation Service in administering its arbitration program.

The goals of the proposed revision are to more accurately reflect current practice, clarify the role of the Arbitrator Review Board, revise the standards for arbitrator listing on the Roster, and announce certain changes. Among the changes made are:

First, requests for special experience or qualifications, or other special requirements, must be either jointly submitted by the parties, or, if unilaterally submitted, must certify that the other party agrees, or there is no conflict with the applicable contract. This will allow a single party, for example, to request a panel with special expertise, so long as the required assurances are made. Similarly, FMCS will make a direct appointment of an arbitrator based on the assurances of one party.

Second, the Federal Mediation and Conciliation Service, Office of Arbitration Services (OAS) will no longer receive or interpret contract language in regard to furnishing services.

Third, as an alternative to the submission of a panel of arbitrators, FMCS, upon request, will furnish the names and biographical sketches of all listed arbitrators in specified geographical locations. In this case, the

parties may directly appoint and deal with the arbitrator without any further involvement of FMCS.

Finally, the regulations call for an annual listing fee for all arbitrators as well as a fee for all arbitrator list and panel requests of FMCS.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Interested organizations and individuals are invited to submit written comments to these proposed regulatory changes. Comments should be submitted to Peter L. Regner, Director of Program Services, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. All written comments will be available for inspection during work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Peter L. Regner, Director, Program Services, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, (202) 606–8181.

SUPPLEMENTARY INFORMATION: An analysis of the changes in the proposed revisions follows.

Subpart A—Arbitration Policy; Administration of Roster, Sections 1404.1–1404.3

Section 1404.3 Administrative Responsibilities

(c) This section establishes the Arbitrator Review Board and outlines powers and duties. Paragraph (iv) is new. It provides that the Board may upon request of the Director, review FMCS Arbitration policies and procedures.

Subpart B—Roster of Arbitrators Admission and Retention, Sections 1404.4–1404.7

Section 1404.4

Paragraph (e). This part is unchanged except that the service of issuing lists or panels of arbitrator names will now be subject to a nominal fee. The collection of these fees is needed in order to assure a continuous non-appropriated source of funds to be solely used by FMCS for its internal education, training and professional development initiatives.

Paragraph (f). A provision has been added to reinforce FMCS authority to remove or suspend from its Roster those arbitrators who habitually fail to adhere to the regulations.

Section 1404.5

This section outlines the criteria the Arbitrator Review Board will use in recommending to the Director whether or not an individual will be listed on the Roster. This section provides that applicants for listing on the Roster must complete and submit an application. The Office of Arbitration Services will review the application, make the necessary inquiries, and forward the application to the Arbitrator Review Board. The Board will then review the application and make a recommendation to the Director about whether or not to list an applicant on the Roster based on the criteria established in paragraphs (a)(b)(c) of § 1404.5. The Director of FMCS has the authority to make all final decisions about listing on the Roster. This section is substantially unchanged from current regulations.

Paragraph (a) outlines the general criteria that the Arbitrator Review Board will use when considering an applicant. Individuals requesting listing on the Roster must be experienced, competent and acceptable in labor management decision-making roles. This paragraph is changed from the current regulations only to the extent that a statement in the current rules that the applicant have extensive experience in collective bargaining, and that he or she be capable of conducting an orderly hearing, analyze testimony and evidence and prepare a clear and concise award, is deleted. However, subsection (b) now contains similar requirements as outlined immediately below.

Paragraph (b). Proof of Qualifications, is different from the current regulations in that the proposed rule provides that the standards of acceptability, experience and competence in subsection (a) above, are demonstrated by the submission of at least 5 actual arbitration awards, issued by the applicant while serving as an arbitrator of record chosen by the parties to a labor dispute. The Board is also authorized to consider an applicant's bargaining and labor negotiations experience, or experience as a judge or hearing examiner in labor relations issues as a substitute for the awards. This provision is similar to the current regulations § 1404.5(a) (1) and (2). However, the specific requirement of 5 awards is new. It is designed to allow the Board to objectively apply a test of acceptability.

Paragraph (c), Advocacy is substantially the same as the current § 1404.5(c) (1) and (2). The paragraph prohibits advocates, except those who are ''grandfathered'' under the current rules, from being listed on the Roster. All persons who were listed on the Roster as advocates before the date of the ''grandfather'' clause, that is November 17, 1976, may remain listed on the Roster. However, no applicant for listing who is an advocate will be listed on the Roster. A person who was on the Roster before November 17, 1976, and did not divulge his or her advocacy status at the time his or her listing, (emphasis added) may not remain listed on the Roster. This policy is designed to insure that parties receive the names of arbitrators who are, and are seen as truly neutral, except in the case of those individuals listed on the Roster before the prohibition of advocacy as adopted.

The definition of an advocate in (1) is the same as current FMCS policy. It is designed to be as broad as necessary to insure that parties will not have any reason to question the neutrality of a potential arbitrator. The provision prohibits listing on the Roster people who earn money, or any form of compensations, by representing either side in a labor relations matter.

Paragraph (d) establishes the policies and procedures for listing retention and removal of and individual listed on the Roster. it is a clarification of the current policy in § 1404.5(d). It provides that the Director of FMCS shall make all final decisions about an applicant's listing on the Roster. Removal is by the recommendation of the Arbitrator Review Board after notice for violations of the regulations and/or the Code of Professional Responsibility for Arbitrators of Labor Management Disputes as cited in § 1404.4(b). Notice of cancellation will be given by the Board when a Roster member:

(1) No longer meets the criteria for admission. This is the same policy as in the current regulations.

(2) Has become an advocate as defined in 1404.5(c). This is a new provision and a clarification of current FMCS practice of removing from the Roster individuals who become advocates in order to protect the integrity and neutrality of the Roaster.

(3) Has been repeatedly or flagrantly delinquent in submitting awards. This is also the current FMCS rule, and allows the Board to recommend removal of individuals who fail to meet the timely needs of the parties.

(4) Has refused to make reasonable reports as required by FMCS in accordance with Subpart C infra. This is also current FMCS policy and regulation. It is designed to insure that the agency can obtain the necessary information to efficiently operate the program.

(5) Has been the subject of complaints by the parties, and the Board, after inquiry, concludes that reasonable grounds for cancellation has been shown. This is also substantially the same as current FMCS policy and is designed to establish a method for

parties to state their concerns and complaints. Removal under such grounds, however, must be conducted according to the procedures established in this paragraph.

(6) This provides that the Director may remove an individual who is not being selected by the parties in at least 2 percent of the cases per year in which his/her name is submitted to parties for selection. This is to insure that the Roster is composed of individuals who are aceeptable to the parties.

The procedures for removal is left up to the Arbitrator Review Board, so long as the individual proposed to be removed is given 60 days prior notice of the proposed removal and an opportunity to respond. The Board will consider the reasons for the removal and all responses before making a recommendation to the Director. All decisions to remove must be made by the Director. This is designed to insure that individuals will be given an opportunity to present evidence and argument on their behalf before a decision is made to remove.

There is also a new provision which states that the Director of the Office of Arbitration Services (OAS) may suspend—that is not send out an individual's name on any panel or appoint an individual to serve as arbitrator for up to 180 days—if the Director of OAS has determined that someone has violated the aforementioned criteria.

This was established to insure prompt action on the part of FMCS to deal with violations of the regulations and to protect the arbitration process, the Roster and the parties. A suspension is not a determination on the merits of any dispute or controversy, and the suspension may not exceed 180 days. Arbitrators will be notified promptly of a suspension and will be afforded an opportunity to appeal, if they wish to do so, to the Arbitrator Review Board. The Board will make a recommendation to the Director of FMCS, whose decision shall constitute final agency action.

Section 1404.6

This is also a new section which provides that an individual listed on the Roster may request that he or she may be put on an inactive status. This means that while they are on such status, their name will not be sent to the parties. This enables a Roster member to request that his or her name not be sent to parties while, for example, they are on an extended vacation. It is designed for the convenience of the person listed on the Roster and the parties.

Section 1404.7

This is a new section announcing that FMCS will be charging all arbitrators wishing to be listed on its Roster an annual listing fee. As with the charging for the provision of lists and panels to the parties, the fees collected will assure FMCS of a continuous non-appropriated source of funds for its internal education, training and professional development initiatives.

Subpart C—Procedures for Arbitration Services, Sections 1404.8–1404.16

Section 1404.8

This new provision applies only to Subpart C. The new text incorporates the provision which currently appears at § 1404.6, but points out that while the parties are free to choose arbitration procedures that are acceptable to them, such procedures are subordinate to the provisions of Subpart C. Thus, if either

(a) The parties designate in their agreement that FMCS furnish arbitration services, or

(b) One or more parties request FMCS arbitration services, then all parties are subject to the rules contained in Subpart C. This new language has been added to insure that FMCS has the authority to remedy any abuse of Subpart C rules and enforce compliance with them.

Section 1404.9

Paragraph (a) is essentially a repeat of the provision now found at § 1404.10.

Paragraph (b) is essentially a repeat of the provision found at § 1404.10(a). In stating that the issuance of a panel—or a direct appointment—is nothing more than a response to a request, the text adds new language setting that such actions also do not signify the adoption of any position in regard to arbitrability. This additional language aligns the text with the wording that appears at the bottom of FMCS Form R–43, Request for Arbitration Services.

Paragraph (c). This is a new service which will allow parties to receive the names and biographical sketches of arbitrators and deal directly with the arbitrator. This is a cost-savings measure for those parties with frequent need for arbitrators and whose relationship is such that they can select and deal with the arbitrators without FMCS appointment and tracking services.

Paragraph (d). This new provision allows FMCS to refuse to supply arbitration services if the request crates difficult operational problems. For example, if FMCS received a request for 100 panels, it might be refused because of the workload imposed. In such case the OAS might contact the requestor to see if some less burdensome arrangements could be made or if FMCS could design an alternative solution. It also allows FMCS to deny services to parties who abuse the process by habitually failing to pay arbitrator fees or other such actions.

Paragraph (e). This provision changes the text found in § 1404.10 (b) and (d) and replaces those two subsections. While the current language urges parties to use FMCS Form R–43 to make requests for arbitration services, it also allows the use of letters as a substitute. The revised text mandates that only Form R–43 be used and states that a failure to do so may result in the request being returned to the sender. This change to mandatory use of Form R–43 is required because OAS has converted its operations from a manual system to computer system, and the receipt of typed requests on Form R–43 is necessary in order to obtain prompt entry and storage of data. Although approximately 80% of all requests are now received on Form R–43, FMCS will (1) allow for a phase-in period for this new requirement, (2) conduct a campaign of notification and education to make requesters aware of the requirement, and (3) make Form R–43 available in quantity to all labor organizations and employers dealing with FMCS. This change is a product of a lengthy reinvention effort by the staff of OAS. It is their collective opinion that even if this presents a small burden to some of our customers, it will provide a greater benefit to all concerned by streamlining our processing of requests.

Paragraph (f). This is a new provision. It is based on the experience of the OAS, that a significant increase has taken place in incidents involving procedural quarrels between the parties. These clashes concern such matters as (1) whether or not one party or the other has refused to cooperate in striking names from a panel of arbitrators, (2) whether or not the grievance issues have been determined in a previous arbitration award, (3) whether arbitrators on a panel should or should not have special expertise, (4) whether arbitrators should or should not come from a particular geographic area, and (5) whether a local contract or a national contract governs the parties.

The OAS has found itself increasingly entangled in such procedural disputes and therefore has decided on the following changes:

(1) The OAS will no longer receive or review the terms contained in the parties collective bargaining agreements, and will make determinations as to the meaning or effect of such agreements. Accordingly, the second sentence of the text now appearing at § 1404.10(c)—

calling for submissions of contract language—has been deleted. Also, since there is no longer a requirement that a brief statement describing each issue in dispute accompany the request, the first sentence of the current § 1404.10(c) has similarly been deleted, thus negating the entire text of this section.

(2) For unilateral requests—except those asking for a list or standard panel of seven names—the requestor will certify that one of the following conditions applies:

(a) The other party has agreed to the request, or

(b) There is no conflict with the parties collective bargaining agreement.

FMCS Form R–43, Request for Arbitration Services, has been modified to allow requestors to so certify in a simple and convenient way. The OAS will consider all statements as made in good faith and will honor all requests as submitted. A failure to supply the information required in (a) or (b) above disqualifies the request.

While the OAS realizes that a unilateral request, under the conditions set out above, may be subject to abuse by one party or the other, the following policy considerations have let to the adoption of the proposed new language.

As to the issuance of panels.

If the OAS were to require that all requests—except for a standard 7 person panel—be submitted on the basis of mutual consent, the arbitration process would be frustrated by the quarrels of the parties. That is, there would be no agreement, no submission of a request, and recourse would have to be sought through the relatively lengthy procedures of the National Labor Relations Board, the Federal Labor Relations Authority or the courts.

By placing a burden of good faith on the party submitting the unilateral request, and by acting promptly to honor it, the OAS acts to further the arbitration process. Moreover, receiving the OAS panel establishes no obligation on any party to use it, or to arbitrate any issue. The panel simply permits the option of moving further on the path of arbitration.

As to direct direct appointments.

In the case of a unilateral request for appointment of an arbitrator, the result may cause a burden to be placed on a party. That is, a party may be either obliged to appear before an appointed arbitrator to argue that arbitration is not warranted, or risk the result of an ex parte award. While OAS is mindful of this possible result, it has proposed the new procedure for the following reasons.

(i) Reliance by the OAS on contract interpretation, as the basis for a direct appointment, means becoming entangled in the parties' quarrels. One side or the other may dispute the reading of the contract made by the OAS, and thus make OAS interpretation one more obstacle to arbitration.

(ii) Reliance by the OAS, on mutual assent by the parties, as the basis for a direct appointment, again means frustrating the arbitration process. Thus, the quarreling parties will refuse to agree, and a solution will have to be sought through the relatively time consuming procedures of the National Labor Relations Board, the Federal Labor Relations Authority, or the courts.

(iii) By instead placing a burden of good faith on the party making the unilateral request, and simply honoring it, the OAS will promptly place the matter of proper jurisdiction before a neutral decision maker—the arbitrator. If the arbitrator finds that one party or the other has acted improperly in pursuing arbitration, the arbitrator may provide redress in the terms of the remedy awarded, or the arbitrator's finding may be used as the basis for redress before another tribunal.

Section 1404.10

This provision follows the language which currently appears a § 1404.11. No significant change has been made.

Section 1404.11

This section—made up of four subsections—replaces the current § 1404.12.

Paragraph (a) describes the content of lists and standard panels. It deletes the reference to the parties' contract, as contracts will no longer be reviewed, (ii) deletes the reference to requests by parties for a number of arbitrators different than 7, as joint requests for services other than a standard panel are described in the last sentence of the new text, and (iii) adds the statement that requests for standard panels—made jointly or unilaterally—will be honored without the need for compliance with § 1404.9(f), and (iv) paragraph (a) adds language explaining the new ''list of arbitrators'' service offered by OAS.

Paragraph (b) describes non-standard panels, and states, in conformance with the new policy of FMCS, that unilateral requests for a non-standard panel must comply with the requirement of § 1404.9(f). This subsection serves as a replacement for the language now appearing at § 1404.12(c)(4).

Paragraph (c) This provision describes the assignment OAS case numbers and is essentially the same as that now found at § 1404.12(b).

Paragraph (d) describes the factors involved in selecting names for panels now found at § 1404.12(c). The current statement—that the agreed upon wishes of the parties are paramount—is deleted, as this concept is expressed in subsections (d)(2) and (d)(3) which follow immediately below.

Paragraph (d)(1) is a new provision which explain that unless the parties jointly request otherwise, the site of the dispute serves as the geographical basis for the selection of the arbitrators.

Paragraph (d)(2) is a repeat of the text of § 1404.12(c)(1), with one change. The phrase for valid reasons is omitted because the OAS will not pass judgment on the validity of the reasons given—if any—that persons be included or omitted from panels of arbitrators. This position corresponds to the FMCS policy that its arbitration services constitute a response to a request and nothing more.

Paragraph (d)(3). This language replaces the current text at § 1404.12(c)(3). While the current language prohibits a single party from including or omitting names from a panel, the revised text permits one party to do so, if the conditions as to numbers, and compliance with § 1404.9(f), are met.

Section (e) replaces the language now found at § 1404.12(c)(5). The new text eliminates reference to the terms of agreement in the parties' contract—as the OAS will no longer receive or review such terms—and places a fixed ceiling—of three—on the number of panels which will be successively issued. Under the current language no fixed ceiling is established, and instead the matter is left open ended with consideration to be made on a case by case basis. After the issuance of three panels, FMCS will make a direct appointment.

Section 1404.12

This section, consisting of three paragraphs, replaces the current § 1404.13.

Paragraph (a). The current language—in § 1404.13(a)—says that parties should not notify the OAS of their selection of an arbitrator. The new text makes this requirements mandatory and states that the parties must do so. The new text also adds a requirement—not present in the current § 1404.13(c)—that parties must notify the arbitrator as well as OAS if they decide not to proceed to arbitration. As to both of these mandatory provisions there is also new penalty language stating that a consistent failure to comply may led to denial of OAS services. These changes will assist FMCS in implementing these regulation.

The portion of the revised text directing the arbitrator to notify the OAS of his or her selection remains the same, except for (i) the added word stating that the arbitrator must do so promptly, and (ii) the added statement that the arbitrator is expected to communicate with the parties within 14 days of notification of appointment by OAS. This added statement replaces the current § 1404.13(d) which requires the arbitrator to communicate immediately.

This notification to OAS by the arbitrator is only necessary following the selection of a panel by FMCS. It is not necessary or wanted if the parties have elected to work off a list of all aribitrators in their area as described in section 1404.11(a).

Paragraph (c). The current text—found at § 1404.13(b)—is mostly unchanged.

Paragraph (d) describes direct appointments. The revised text removes the phrase referring to the applicable collective bargaining agreement, as such agreements will no longer be considered by the OAS. Once more, if a unilateral request for a direct appointment is made, the unilateral request must comply with § 1404.9(f). In other respects, the revised text is basically the same as the current provisions in § 1404.13(c).

Section 1404.13

The revised text is similar to that now found at § 1404.14, except as follows:

(i) The current text says that an arbitrator is expected to conduct all proceedings in conformity with § 1404.4(b). The revised text states that the arbitrator shall do so.

(ii) The current text says that the arbitrator's decision is to be based upon the evidence and testimony presented. The revised text states that the decision shall be so based.

Section 1404.14

The revised text is similar to that now found at 1404.15, except as follows:

Paragraph (a),

(i) The current text of § 1404.15(a) says that arbitrators are encouraged to render awards not later than 60 days from the date of the closing of the record. The revised text at § 1404.14(a), states that arbitrators shall make awards no later than 60 days from the same date.

(ii) In the current text, at § 1404.15(a), the date of the closing of the record is described as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by law. The revised text, at § 1404(a), adds to this description by inserting the phrase—or specified by the corrective bargaining agreement.

(iii) The current text as § 1404.15(a) says that the issuance of untimely awards by an arbitrator may lead to his removal from the FMCS roster. The revised text, at § 1404.14(a), removes the word his, thus deleting any reference to whether the arbitrator is male or female.

Paragraph (b). The current text states that an arbitrator should inform the OAS concerning a delay in issuing an award, and in describing the circumstances when the arbitrator should do so, say that this should happen when the aribtrator cannot schedule, hear and determine issues promptly. The revised text changes the phrase ''determine issues'' to ''render decisions,'' as the new phrase is more complete and encompasses within it the inability to determine issues.

Section 1404.15

The revised text is similar to that now found at § 1404.1b, except as follows:

Paragraph (a),

(i) The current text requires that fees charges by arbitrators be certified in advance to the Service. The revised text requires only that they be provided in advance.

(ii) The revised text adds two requirements, not contained in the current provisions at § 1404.16(a), as follows:

(A) Arbitrators with dual business addresses shall bill the parties for expenses from the nearest business address to the hearing site. This provision has been added in order to prevent excessive billing charges.

(B) Arbitrators shall submit their schedule of fees to both parties when accepting arbitration appointments. This provision has been added because biographical sketches state only the per diem fee charged by the arbitrator. Other fees involved in the arbitrator's service must therefore be made known to the parties when accepting an appointment.

(C) A reference is once again made to charging arbitrators an annual listing fee.

Paragaph (d). While the current text, at § 1404.16(d), states that the Service will not attempt to resolve any fee dispute, the revised text states that the Service does not resolve such disputes. The language also notifies the public that FMCS will file complaints about excessive charges and that repeated complaints will be forwarded to the Arbitrator Review Board.

Section 1404.16

There are no major changes in this section.

Executive Order 12291

This proposed rule is not a ''major rule'' under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant decline in productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act Certification

The FMCS finds that this proposed rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Labor management relations.

For the reasons stated in the preamble, the Federal Mediation and Conciliation Service proposes to revise 29 CFR Part 1404 to read as follows:

PART 1404—ARBITRATION SERVICES

Subpart A—Arbitration Policy; Administration of Roster

Subpart B—Roster of Arbitrators; Admission and Retention

Subpart C—Procedures for Arbitration Services

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 et seq.

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 (Public Law 80–101) as amended. It applies to all arbitrators listed on the FMCS Roster of Arbitrators, 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 which are to be submitted to arbitration or factfinding.

§ 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 factfinding are important features of constructive employment relations as alternatives to economic strife.

§ 1401.3 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 Services.* The Office of Arbitration Services (OAS) maintains a Roster of Arbitrators (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 provides names or panels of names of listed arbitrators to parties requesting them.

(c) *Arbitrator Review Board.* The Arbitrator Review Board shall consist of a chairman 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 § 1401.5;

(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 of FMCS, review arbitration policies and procedures, including all regulations and written guidance regarding the use of the FMCS 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 of 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 the OAS 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, Federal Mediation and Conciliation Service, and the American Arbitration Association.

(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) *Role of FMCS.* 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;

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

(e) *Nominations and panels.* On request of the parties to an agreement to arbitrate or engage in factfinding, or where arbitration or factfinding may be provided for by statue, OAS, will provide names or panels of names for a nominal fee. Procedures for obtaining these services are outlined in subpart C of this part. Neither the submission of a nomination or panel nor the appointment of an arbitrator constitutes a determination by FMCS that an agreement to arbitrate or enter factfinding proceedings exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.

(f) *Rights of persons listed on the Roaster.* 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 which include consideration of such factors as background and experience, availability, acceptability, geographical location, and the expressed preferences of the parties. FMCS may also establish procedures for the suspension and removal from the Roster of those arbitrators who fail to adhere to provisions contained in this part.

§ 1404.5 Listing on the Roster; criteria for listing and retention.

Persons seeking to be listed on the Roster must complete and submit an application form which may be obtained from OAS. Upon receipt of an executed application, OAS will review the application, assure 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 its recommendation 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 therefor.

(a) *General criteria.* Applicants for the Roster will be listed on the Roster upon a determination that they are experienced, competent, and acceptable in decision-making roles in the resolution of labor relations disputes.

(b) *Proof of qualification.* The qualifications for recommending listing on the Roster shall be demonstrated by submission of a least five (5) actual arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to disputes arising under collective bargaining agreements. The Board may

consider experience in relevant positions in collective bargaining or as a judge or hearing examiner in labor relations controversies as a substitute for such awards.

(c) *Advocacy.* No person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, may be 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 has become an advocate while listed on the Roster, shall be recommended for removal by the Board after the fact of advocacy is revealed.

(1) *Definition of advocacy.* An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor 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 relations. The definition includes representatives of employers or employees in individual cases or controversies involving workmen's compensation, occupational health or safety, minimum wage, or other labor standards matters. This definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

(2) [Reserved]

(d) *Duration of listing, retention.* Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Arbitrator Review Board. The Board may recommend, and the Director may remove, any person listed on the Roster, for violation of this part and/or the Code of Professional Responsibility. Notice of cancellation or suspension shall be given to a person listed on the Roster whenever a Roster member:

(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 delinquent in submitting awards;

(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 complaints by parties who use FMCS services, and the Board after appropriate inquiry, concludes that reasonable cause for cancellation has been shown.

(6) Is determined by the Director to be unacceptable to the parties who use FMCS arbitration services; the Director may base a determination of unacceptability on FMCS records which show the number of times the arbitrator's name has been proposed to the parties and the number of times it has been selected.

(e) The Board may, at its discretion, direct an inquiry into the facts of any proposed removal from the Roster. An arbitrator listed on the Roster may only be removed after 60-day notice and an opportunity to submit a response or information showing why the listing should not be canceled. The Board shall recommend to the Director whether to remove an arbitrator from the Roster. All determinations to remove an arbitrator from the Roster shall be made by the Director.

(f) The director of OAS may suspend for a period not to exceed 180 days any person listed on the Roster who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall be promptly notified of a suspension. They may appeal a suspension to the Arbitrator Review 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 member of 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 because of ill health, vacation, schedule, etc.

§ 1404.7 Listing fee.

All arbitrators will be required to pay an annual fee for listing on the Roster. The schedule of fees will be published separately.

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 OAS, all parties are subject to the procedures contained in this part.

§ 1404.9 Procedures for requesting arbitration panels.

(a) The Office of Arbitration Service (OAS) has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Federal Mediation and Conciliation Service, Office of Arbitration Services, Washington, DC 20427.

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. In the event, however, that the request is made by only one party, the OAS will submit a panel of arbitrators. However, the issuance of a panel—pursuant to either a joint or unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by FMCS regarding the arbitrability of any dispute or the terms of the parties' contract.

(c) As an alternative to a request for a panel of names, OAS will, upon request, submit a list of all arbitrators and their biographical sketches from a specific geographical area. The parties may then select and deal directly with an arbitrator of their choice, with no further involvement by FMCS with the parties or the arbitrator.

(d) The OAS reserves the right to decline to submit a panel or make appointments of arbitrators if the request submitted is overly burdensome or otherwise impracticable. The OAS, in such circumstances, may refer the parties to an FMCS mediator to help in the design of an alternative solution. The OAS may also decline to service any requests from parties with a history of non-payment of arbitrator fees or other behavior which constrains the spirit or operation of the arbitration process.

(e) The parties are required to use the Request for Arbitration Panel Form (R–43), which has been prepared by the OAS and is available in quantity upon request to the Federal Mediation and Conciliation Service, Office of Arbitration Services, Washington, DC 20427, or by calling (202) 606–5111. Requests that do not contain all required information requested on the R–43 in typewritten form may be rejected.

(f)(1) When a request is made by only one party for a service other than the furnishing of a standard list or panel of seven (7) arbitrators, the requestor must certify that one of the following conditions applies:

(i) Both parties agree to the request, or

(ii) There is no conflict with the parties' collective bargaining agreement.

(2) The party making such a request must copy the certification to the other party. The OAS will consider all statements as having been made in good faith and will honor requests as submitted. Absent statements conforming to the requirements of this paragraph, the unilateral request will not be honored.

(g) The OAS will charge a nominal fee for all requests for lists, panels, and other major services. Payments for these services must be received before the service is delivered. A schedule of fees will be published separately.

§ 1404.10 Arbitrability.

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

§ 1404.11 Nominations of arbitrators: Standard and non-standard panels.

(a) The parties may request a list and biographic sketches of some or all arbitrators in one or more specific geographical areas. If the parties can agree on the selection of an arbitrator, they may appoint their own arbitrator directly without any further case tracking by FMCS. The parties may also request a randomly selected panel containing the names of seven (7) arbitrators accompanied by a biographical sketch for each member of the panel. This sketch states the background, qualification, experience, and per diem fee, as furnished to the OAS by the arbitrator. It also states that other fees may exist, such as cancellation, postponement, rescheduling, or administrative fees, as furnished by the arbitrator, but does not state the amounts of such other fees. Requests for a panel of seven (7) arbitrators, whether joint or unilateral, will be honored without the need for compliance with § 1404.9(f). Joint requests for a panel of other than seven (7) names, a direct appointment of an arbitrator, or other service will also be honored without compliance with § 1404.9(f) so long as the request does not otherwise conflict with the regulations in subpart C of this part.

(b) Unilateral requests for a panel of arbitrators with special qualifications or other than a list of seven (7) arbitrators, must conform to the requirements of § 1404.9(f).

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

(d) The OAS will provide a randomly selected panel of arbitrators located in state(s) in proximity to the hearing site. The parties may request arbitrators with specific qualifications or experienced in certain issues or industries. The OAS has no obligation to put an individual on any given panel, or on a minimum number of panels in any fixed period. In general:

(1) The geographical location of arbitrators placed on panels is governed by the site of the dispute as stated on the request received by the OAS.

(2) 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.

(3) If a unilateral request is made to omit or include names on a panel, the request shall be honored if it is in compliance with § 1404.9(f), unless the number of names is excessive.

(e) If the parties do not agree on an arbitrator from the first panel, the OAS will furnish a second and third panel to the parties upon joint request. If a second or third panel is requested by only one party, the request will be honored if it conforms with the procedures stated in § 1404.9(f). Requests for a second or third panel should be accompanied by a brief explanation as to why the previous panel(s) was inadequate. If parties are unable to agree on a selection after having received three panels, the OAS will make a direct appointment upon request.

§ 1404.12 Selection by Parties and appointment of arbitrators.

(a) After receiving a panel of names, the parties must notify the OAS of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, the OAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, is expected to 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 the OAS of the selection and his or her willingness to serve. If the parties settle a case prior to the hearing, parties must inform the arbitrator as well as the OAS. Consistent failure to follow these procedures may lead to a denial of future OAS services.

(b) If the parties request a list of names and biographical sketches rather than a panel, they may choose to appoint and contact an arbitrator directly. In this situation, neither the parties nor the arbitrator is required to furnish any additional information to FMCS.

(c) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined method or one of the following methods for selection of an arbitrator from a panel:

(1) Each party alternately strikes a name from the submitted panel until one remains, or

(2) Each party advises the OAS of its order of preference by numbering each name on the panel and submitting the numbered list in writing to the OAS. The name that has the lowest combined number will be appointed.

(d) The OAS will make a direct appointment of an arbitrator either on joint or unilateral request. If the request is unilateral,it must be accompanied by a statement as provided for in 1404.9(f), certifying that either:

(1) The request is agreed to by both parties, or

(2) The request does not conflict with the applicable contract.

(e) The issuance of a panel of names or a direct appointment in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of the collective bargaining agreement. The resolution of such disputes rests solely with the parties.

§ 1404.13 Conduct of hearings.

All proceedings conducted by the arbitrators shall be in conformity with the contractual obligations of the parties. 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 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 awards.

(a) Arbitrators shall make awards no later than 60 days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. 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 the OAS whenever a decision is unduly delayed. The arbitrator shall notify the OAS if and when the arbitrator:

(1) Cannot schedule, hear, and render decisions promptly, or

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

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and Fee Statement (Form R–19) to OAS showing a breakdown of the fee and expense charges so that the OAS may review conformance with stated charges under § 1404.12(a). The Form R–19 is not to be used to invoice the parties.

(d) While the FMCS encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.

§ 1404.15 Fees and charges of arbitrators.

(a) FMCS will charge all arbitrators a fee to be listed on the Roster. All arbitrators listed on the Roster may charge a per diem fee and other predetermined fees for services, if the amount of such fees have been provided in advance to the FMCS. Each arbitrator's maximum per diem fee and the existence of other predetermined fees, if any, are set forth on a biographical sketch which is sent to the parties when panels are submitted. The arbitrator shall not change any fee or add charges without giving at least 30 days' advance written notice to the FMCS. Arbitrators with dual business addresses must bill the parties for expenses from the nearest business address to the hearing site.

(b) In cases involving unusual amounts of time and expenses relative to pre-hearing and post-hearing administration of a particular case, an administrative charge may be made by the arbitrator.

(c) Arbitrators shall submit their schedule of fees to both parties when accepting arbitration appointments. All charges other than those specified in paragraph (a) of this section shall be divulged to and agreement obtained by the arbitrator with the parties immediately after appointment.

(d) The OAS requests that it be notified of any arbitrator's deviation from the policies expressed in this part. While FMCS will not resolve fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Arbitration Review Board for further consideration.

§ 1404.16 Reports and biographical sketches.

(a) arbitrators listed on the Roster shall executive and return all documents, forms and reports required by FMCS. They shall also keep the OAS informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in § 1404.5(c)(1).

(b) The OAS will provide biographical sketches on each person admitted to the Roster from information supplied by applicants. Arbitrators may request revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. The OAS reserves the right to decide and approve the format and content of biographical sketches.

Appendix to 29 CFR Part 1404—Arbitration Policy; Schedule of Fees

Annual listing fee for all arbitrators	$100 for the first address; $50 for second address.
Request for panel of arbitrators	$30 for each panel request (includes subsequent appointment).
Diect appointment of an arbitrator when a panel is not used	$20 per appointment.
List and biographic sketches of arbitrators in a specific area	$10 per request plus $10 per page.

John Calhoun Wells,

Director.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–034–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of, in addition to several nonsubstantive editorial revisions, revisions to Colorado's rules pertaining to (1) the applicability of Colorado's rules and language identifying where referenced material may be viewed; (2) definitions; (3) the requirement to repeal any State rule required by a Federal law or rule which is repealed; (4) the operations plan permit application requirements; (5) experimental practices; (6) the right of successive permit renewal; (7) transfer, assignment or sale of permit rights; (8) terms and conditions of an irrevocable letter of credit; (9) performance standards for sedimentation ponds; (10) embankment design for sedimentation ponds; (11) sign and markers for temporary and permanent cessation of operations; (12) availability of records; and (13) a permittee's failure to abate a violation. The amendment is intended to revise the Colorado program to clarify ambiguities and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., M.D.T., April 14, 1997. If requested, a public hearing on the proposed amendment will be held on April 7, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., M.D.T., on March 28, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733

Michael B. Long, Director, Division of Minerals and Geology, Department of Natural Resources, 1313 Sherman St., Room 215, Denver, Colorado 80203, Telephone: (303) 866–3567

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844–1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved