

mark and other positions in the pool are not sold.

The IRS and the Treasury Department are similarly concerned about the consolidation and de-consolidation of the business structure. Comments are requested on the impact of the consolidation and de-consolidation on determining whether the same securities and commodities will be reflected on both the financial statement and the tax return.

The IRS and the Treasury Department are considering rules that would require electing taxpayers to maintain and, if requested, provide to the Commissioner in a timely manner the following records: (1) Books and records clearly establishing that the values used in determining gain or loss under section 475(a) for eligible securities or commodities were the values used in the financial statement; (2) for taxpayers filing a Form 1120, a reconciliation of the amount of net income reported on the financial statement to the amount reported on line 1 of the Schedule M-1 on the Form 1120, Corporate Income Tax Return; and (3) for other taxpayers, a similar reconciliation schedule. The documents for reconciliation purposes include supporting schedules, exhibits, computer programs used in producing the values and schedules, and documentation of rules and procedures governing determination of the values. Books and records would include all those that are required to be maintained for financial or regulatory reporting purposes, even if those books and records are not specifically covered by section 6001. Comments are requested on whether less burdensome recordkeeping requirements could be developed that would still allow for effective verification of conformity.

The IRS and the Treasury Department are considering situations in which the Commissioner should enter into agreements with specific taxpayers establishing which records would have to be maintained, how the records would have to be maintained, and how long the records would have to be retained. Because an agreement would be tailored to a particular taxpayer's operations and environment, it is expected that an agreement would arise only after individual negotiations. Although no taxpayer would be entitled to an agreement, an agreement based on an early understanding of a taxpayer's operations would be in the best interests of tax administration and, therefore, would be encouraged.

#### E. Eligible Taxpayers

The safe harbor is being considered for dealers in securities under section

475(c)(1). Whether the safe harbor would also be extended to securities traders, dealers in commodities, and commodities traders would largely depend on whether the extension would comport with the principles described in the Overview.

#### F. Eligible Securities and Commodities

Section 475 applies to a wide variety of securities and commodities. It is relatively easy for both taxpayers and the IRS to determine the fair market value of positions for which pricing information is readily available, such as most actively traded personal property. The need for a safe harbor is most pressing for positions for which pricing information is not readily available, including more complex notional principal contracts and derivative instruments, and hedges described in sections 475(c)(2)(D), (E), and (F). Comments are requested on what securities should be included in the safe harbor.

Commodities raise problems similar to those for securities, so the need for a safe harbor is similarly pressing for commodities (including commodities derivatives) for which pricing information is not readily available. Comments are requested addressing application of a safe harbor for commodities.

#### G. Comments on Other Valuation Methodologies and Safe Harbors

Comments are requested on whether there are other methodologies for determining fair market values under section 475. Comments are also requested on whether other safe harbors could act as proxies for fair market value under section 475.

**Lon B. Smith,**

*Associate Chief Counsel (Financial Institutions and Products).*

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**BILLING CODE 4830-01-P**

### FEDERAL MEDIATION AND CONCILIATION SERVICE

#### 29 CFR Part 1480

**RIN 3076AA10**

#### Access To Neutrals Initiative

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Mediation and Conciliation Service is proposing a new regulation to establish an Access to Neutrals Initiative. The main function of

the Access to Neutrals Initiative is to provide a Registry of Neutrals—a list of individual dispute resolution providers who have documented their qualifications according to criteria outlined in the regulation in the categories of ADR experience, ADR education/training, substantive education in the content area and experience in the content area. The proposed Access to Neutrals Initiative also includes informational, ethical and continuing education requirements for individuals on the Registry of Neutrals as well as a consumer complaint process. The proposed regulation provides for clients to access the Registry by Web site or by request from FMCS.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before July 7, 2003.

**ADDRESSES:** Send comments to Peggy A. McNeive, Acting Director of the Access to Neutrals Initiative, FMCS, 801 Walnut, Suite 501, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Peggy A. McNeive, Telephone: (816) 374-6215; Fax (816) 374-6026.

**SUPPLEMENTARY INFORMATION:** The Federal Mediation and Conciliation Service ("FMCS" or "the Agency") is experiencing rapid growth in demand for its mediation and related alternative dispute resolution (ADR) services that may soon exceed the Agency's capacity to provide these services through its in-house staff of 200 professional mediators. Requests for ADR processes by other federal agencies, state governments, political subdivisions of states (agencies, cities, school districts, etc.) and other entities have added to FMCS' original mission to provide assistance in labor collective bargaining. Clients seek mediation and ADR services from FMCS for many types of disputes in addition to labor, including employment, public policy and multi-party regulatory negotiation disputes. Even greater numbers and different types of clients may seek assistance from FMCS in the future because of the leadership and credibility of FMCS in the area of dispute resolution. To meet the anticipated surge in demand, FMCS is proposing this regulation to provide its expanding base of clients with ready access to a pool of professional, private-sector neutrals equipped to handle workplace and organizational disputes arising outside of the labor/collective bargaining arena.

The Access to Neutrals Initiative (ANI) embodied in the proposed regulation would establish a registry of highly qualified private-sector neutrals,

screened and selected by the Agency according to established standards, designed to meet the anticipated rise in demand for services. The registry would be an open resource designed to assist clients by giving them the tools to make their own informed selection from a broad base of professionals. FMCS will also utilize this registry to refer or appoint neutrals or panels of neutrals at the request of the Agency's customers. To ensure that these neutrals meet the historically high standards set by FMCS, the regulation contains an evaluation and credentialing component as well as a provision to monitor indicators of the neutrals' performance on cases obtained through FMCS referral.

Neutrals who wish to participate on the registry would submit education and experience background information to FMCS for a determination of whether the applicant met the standards established by FMCS. For inclusion on the registry, neutrals would have to agree to abide by the informational, ethical and continuing education requirements established by FMCS, and to participate in a consumer complaint process. In addition, the registry would be subject to a procedure for checking the ongoing effectiveness of the overall program. In order to maintain the qualified pool of neutrals and increase the value of the registry, FMCS will work with universities and training providers to establish and/or expand alternative dispute resolution programs. Finally, in maintaining the registry, FMCS would leverage its existing computer network-based resources to maximize the advantages afforded by technology, streamline program administration, and provide excellent customer service.

The Agency developed the proposed regulation in keeping with its longstanding mandate to foster the use of effective conflict resolution processes. FMCS was established in accordance with the labor policy of the United States, which promotes and encourages the amicable resolution of employment disputes. Pursuant to Title II of the Labor Management Relations Act of 1947 (Pub. L. 80-101), as amended, (LMRA) the Agency has the obligation to "assist parties" to settle disputes "through conciliation and mediation." (29 U.S.C. 173(a)) Under the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) 5 U.S.C. 571 *et seq.* (ADR Act), Congress conveyed authority upon FMCS to "develop procedures that permit agencies to obtain the services of neutrals on an expedited basis." 5 U.S.C. 571(c)(2). FMCS's rule making ability in this area is subject only to

consultation with "other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution." 5 U.S.C. 571(c).

In accordance with the ADR Act, FMCS has consulted with the Federal Interagency ADR Working Group, a group created by the ADR Act with representatives from federal agencies having an interest in the implementation of ADR in the federal sector. In 2000, Gary Hattal, Director of the FMCS Institute, and Richard Giacalone, Director of ADR/ International Affairs at FMCS, consulted with the Federal Interagency Working Group about the establishment of a Roster of Neutrals by FMCS.

In addition, FMCS held three external focus group meetings to identify concerns and gather recommendations concerning how standards for referral of private-sector neutrals could be established and utilized. The focus group members included practitioners, members of academia, staff members of ADR centers and members of the FMCS staff. The first focus group met in October of 2000 and centered on qualifications standards for neutrals. The second focus group met in June of 2001 and centered on the processes to be used in vetting neutrals. The final focus group met in February of 2002 to review the initial report and recommendations compiled by the University of Arkansas. Following receipt of a draft report and recommendations from the University of Arkansas on the three external focus groups, an internal focus group consisting of the Deputy Director, a Regional Director, a Director of Mediation Services, the Director of Education and Training, the Director of ANI and two field mediators, was convened to review the draft report and make recommendations to the Agency Director. Based on the information developed through the University of Arkansas report and the recommendations of the internal focus group, FMCS developed the proposed regulation. FMCS will continue to convene focus groups in the future to review and refine the ANI.

The Registry of Neutrals will be administered through the supervision of the Agency Director, the ANI Director, and the Neutrals Committee. The Committee membership will be at the discretion of the Director. A continual evaluation program will be developed; it will utilize focus groups and other evaluation tools to make recommendations on revising the ANI.

The proposed ANI will be self-sustaining. FMCS will establish an

application and listing fee for individuals who wish to be placed on the Registry; there will also be a fee for those who request that FMCS appoint a neutral from the Registry or provide a list of neutrals from the Registry. The funds generated by these fees will be used for the purpose of covering the costs associated with the ANI.

The ANI regulation contains ten (10) subparts and two (2) Appendices. They are as follows:

Subpart A addresses the policy pertaining to administration of the ANI, the authority for implementing this regulation and sets forth the definitions of terms to be utilized in the regulation. Consistent with FMCS policy on neutrals, individuals who are included on the Registry of Neutrals cannot be engaging in work as an advocate in the area of labor relations.

Subpart B outlines the standards and requirements for individuals listed on the Registry of Neutrals, as well as the responsibilities of FMCS. The subpart also sets forth that the neutral is not acting in a capacity as an employee of the federal government, that he/she has a direct relationship with the parties who are employing him/her to conduct the case and that the neutral does not retain a right to be listed on the Registry. The subpart also addresses the criteria an individual must satisfy to be included on the Registry. The application process requires an executed application and a review of the individual's fulfillment of requirements in the form of awarded points for education/training and experience. Applicants who meet the requirements will then be recommended to Director of the Agency for possible inclusion of the Registry.

Subpart C addresses the process by which the clients of FMCS will select neutrals from the Registry of Neutrals. A computerized system will be established from which information on neutrals will be listed; customers will be able to sort the neutrals by several different categories, including but not limited to geographical area, experience and fees charged. Selections from the Registry of Neutrals may be made by either obtaining information from the computerized system or through contacting FMCS. A fee will not be charged for obtaining a neutral from the computerized system; a fee equivalent to the fee for obtaining a panel of arbitrators from FMCS will be charged for obtaining a panel of neutrals or for appointing a neutral from the Registry of Neutrals.

Subpart D addresses fees charged by the FMCS to listed neutrals and the method by which neutrals may bill

clients. FMCS will charge an application fee and a listing fee for neutrals on the Registry of Neutrals. Repeated complaints concerning a neutral's fees will be reviewed by FMCS and may be considered in determining if the neutral shall remain on the Registry.

Subpart E requires all listed individuals to advise FMCS of changes in his/her information and/or fee structure and comply with requests for documentation by the ANI. FMCS will supply pertinent information to prospective clients for selection purposes.

Subpart F establishes a complaint procedure for the ANI.

Subpart G outlines the collaborative process with educational programs to establish standards for pre-accreditation. FMCS will work with educational institutions and training facilities to review the programs' number of contact hours, experience of classroom instructors, and method of instruction to determine if the program will be preaccredited by FMCS. Educational institutions and training facilities will participate in this program on a voluntary basis; the institutions will pay a fee to cover the pre-accreditation expenses.

Appendix A sets forth the application fee, the listing fee and the fee for pre-accreditation of ADR programs to be charged by FMCS.

Appendix B sets forth the point system for determining whether a neutral meets the standards for the FMCS Registry of Neutrals.

Submit copies of electronic comment to [pmcneive@fmcs.gov](mailto:pmcneive@fmcs.gov). See **SUPPLEMENTARY INFORMATION** for other information concerning electronic filing.

#### FOR FURTHER INFORMATION CONTACT:

Peggy A. McNeive, Acting Director of the Access to Neutrals Initiative, FMCS, 801 Walnut Street, Suite 501, Kansas City, MO 64106-1823. Telephone (816) 374-6215; Fax (816) 374-6026.

#### Access to Information in Comments

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI." Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential without prior notice. All written comments will be available for inspection at the address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

#### Electronic Access and Filing

All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

#### Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not cause any significant economic effect on small entities which may request arbitration panels.

#### Executive Order 12866

This regulation has been deemed significant under section 3(f)(4) of Executive Order 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small Governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with Foreign-based companies in domestic and export markets.

#### List of Subjects in 29 CFR Part 1480

Access to neutrals; registry of neutrals, alternative dispute resolution.

For the reasons set forth in the preamble, FMCS proposes to add 29 CFR part 1480 as follows:

#### PART 1480—REGISTRY OF NEUTRALS

##### Subpart A—Policy on Roster of Neutrals; Administration of Roster

Sec.

- 1480.1 Scope and authority.
- 1480.2 Policy.
- 1480.3 Administrative responsibilities.
- 1480.4 Definitions.

##### Subpart B—Registry of Neutrals; Selection and Retention

- 1480.5 Registry and status of members.
- 1480.6 Listing on the Registry of Neutrals; criteria for inclusion and retention.

##### Subpart C—Selection of Neutrals by Users of the Registry of Neutrals

- 1480.7 Freedom of choice.
- 1480.8 Procedures for selecting a neutral.
- 1480.9 Computerized selection system.
- 1480.10 Request for neutral from FMCS.
- 1480.11 Reservation of rights.
- 1480.12 Fee schedule.

##### Subpart D—Fees for Application to the Registry and Charges for the Services of Neutrals

- 1480.13 Application fee.
- 1480.14 Per diem; fees for services.
- 1480.15 Disclosure.
- 1480.16 OANI notification.

##### Subpart E—Reports and Biographical Sketches.

- 1480.17 Reports to OANI.
- 1480.18 Biographical sketches.

##### Subpart F—Complaint Procedure

- 1480.19 Role of Director of FMCS.
- 1480.20 Agreement to adhere to the Code of Professional Responsibility.
- 1480.21 Addressing complaints.

##### Subpart G—Accreditation of Education Programs in ADR

- 1480.22 Collaboration with universities.
  - 1480.23 Pre-accreditation examination.
  - 1480.24 Review of programs.
  - 1480.25 Training programs.
- Appendix A—Schedule of Fees  
Appendix B—Point System for Determining Qualifications for the FMCS Registry of Neutrals

**Authority:** 29 U.S.C. 171–180, 182–183; 5 U.S.C. 571–584.

##### Subpart A—Policy on Roster of Neutrals—Administration of Roster

###### § 1480.1 Scope and authority.

This part is issued by the Federal Mediation and Conciliation Services (FMCS) under Title II of the Labor Management Relations act of 1947 (Pub. L. 80–101), as amended; authority is also based on the Administrative Dispute Resolution Act of 1996 (Public Law 104–320) 5 U.S.C., 571 *et seq.* (ADR Act), and the funding authority for FMCS. It applies to all neutrals listed on the FMCS Registry of Neutrals, to all applicants for listing on the Registry of Neutrals, and to all persons or parties

seeking to obtain from FMCS either names or panels of names of neutrals listed on the Registry of Neutrals in connection with disputes which are submitted to an alternate dispute resolution procedure (ADR).

#### **§ 1480.2 Policy.**

FMCS was established in accordance with the labor policy of the United States, which promotes and encourages the amicable resolution of employment disputes between the parties, rather than submitting such disputes through the adversarial processes. Submission of employment disputes through alternate dispute resolution procedures is an important feature of constructive employment relations as alternatives to adversarial processes. FMCS is establishing the Access to Neutrals Initiative (ANI) in accordance with its mandate concerning the labor policy of the United States.

#### **§ 1480.3 Administrative responsibilities.**

The Director of the FMCS has responsibility for all aspects of FMCS's ANI and is the final agency authority on all questions concerning the ANI and the procedures associated with it.

#### **§ 1480.4 Definitions.**

For purposes of this part:

*Advocacy:* An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant in matters of employment, including but not limited to, equal employment opportunity claims, workplace disputes, subjects of union representation, collective bargaining, unfair labor practices, and other areas generally recognized as constituting labor relations. This 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. This definition also includes individuals who are "of counsel" with a law firm which engages in the type of activities set forth in this definition, or individuals who are affiliated with consulting firms who engage in those activities. Consultants who engage only in joint education or training or other non-adversarial activities are excluded from the definition of an advocate under this part.

*Alternative Dispute Resolution:* Any dispute procedure that is used in lieu of adjudication to resolve issues in controversy including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding,

mini-trials or any combination thereof. For the purpose of this part arbitration is specifically excluded from the definition of alternative dispute resolution.

*Neutrals Committee:* The Director of the Agency shall establish a Neutrals Committee to be selected by the Director and shall include, but is not limited to, the Director of the ANI, FMCS Commissioners and private ADR specialists. The Director and/or his designee shall convene the Neutrals Committee meetings, as often as he/she deems necessary. A process for selecting applicants to be placed on the Registry of Neutrals shall be developed by the Office of the Access to Neutrals Initiative (OANI). The Neutrals Committee may review the qualifications of the applicants who have been awarded the minimum number of points under the system set forth in subpart D of this part to determine the applicants who should be recommended to the Director of FMCS for inclusion on the Registry of Neutrals.

*Office of the Access to Neutrals Initiative:* The Director of FMCS shall appoint the Director of the ANI who is in charge of the OANI. The OANI maintains a Registry of Neutrals; administers the Procedures for Selection of Neutrals; assists, promotes, and cooperates in the establishment of programs for training and developing neutrals; oversees the computerized selection system utilized by customers; assists customers in utilizing the computerized selection system and provides names or panels of names of neutrals from the Registry of Neutrals to parties requesting them. The OANI shall be responsible for accepting complaints from users of the Registry of Neutrals and for the investigation of such complaints when appropriate.

#### **Subpart B—Registry of Neutrals; Selection and Retention**

##### **§ 1480.5 Registry and status of members.**

(a) *Registry of Neutrals:* FMCS shall establish and maintain a Registry of Neutrals consisting of persons who meet the criteria for listing contained in subpart B of this part.

(b) *Adherence to standards and requirements:* Persons listed on the Registry of Neutrals shall be required to comply with the rules and regulations, established by FMCS, pertaining to ADR processes and such guidelines and procedures as may be issued by OANI pursuant to subpart B of this part. Neutrals shall conform to the ethical standards and procedures established by FMCS.

(c) *Status of Neutrals:* Persons who are listed on the Registry of Neutrals and are selected or appointed to conduct an ADR process do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the neutral's relationship is solely with the parties to the dispute except that neutrals 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 a neutral;
- (2) Enforce an agreement to submit a dispute to an ADR process;
- (3) Compel parties to submit any issue to an ADR process;
- (4) Influence, alter, or set aside agreements made by the parties during an ADR process;
- (5) Compel, deny, or modify payment of compensation to a neutral.

(e) *Nominations and panels:* On request of the parties to an agreement to utilize ADR processes to settle their disputes, or where ADR processes may be provided for by statute, the parties may select a neutral utilizing the computerized selection process without a fee being assessed or, upon request from the parties, FMCS may provide the name or a list of names of neutrals for a nominal fee. Procedures for obtaining these services are outlined in subpart C of this part. The parties selection of a neutral from the computerized system, the submission of a list of neutrals to the parties by FMCS, or the selection of a neutral by FMCS for the parties shall not constitute a determination by FMCS that an agreement exists between the parties to resolve their disputes through the utilization of an ADR process; nor does such action constitute a ruling that the matter in controversy should be submitted for resolution under an ADR process. The OANI will not decide the merits of a claim by either party that a dispute is not subject of any agreement to utilize alternative dispute resolution processes.

(f) *Rights of persons listed on the Registry of Neutrals:* No person shall have any right to be listed or to remain listed on the Registry of Neutrals. FMCS retains its authority and responsibility to assure that the needs of the parties using its services are met. To accomplish this purpose, FMCS may establish procedures for the selection of neutrals, either through a computerized selection system to be utilized by the parties or the selection of a neutral or panel of neutrals by FMCS; factors to be considered in such selection may

include, but are not limited to, background and experience, availability, acceptability, geographic location, and the expressed preferences of the parties. FMCS may also establish procedures for the removal from the Registry of Neutrals of those neutrals who fail to adhere to provisions contained in this part.

(g) *Qualifications for the FMCS Registry of Neutrals:* The following qualifications must be met by an applicant for the neutral to be placed on the FMCS Registry of Neutrals:

(1) *General Criteria:* To be considered for selection on the Registry of Neutrals, applicants must have dispute resolution training and experience in employment mediation.

(2) *Advocacy:* Any person who at the time of application is an advocate as defined in § 1480.4, must agree to cease such activity before being recommended for inclusion on the Registry of Neutrals.

(3) *Criteria for Neutrals:* Neutrals will be evaluated according to the criteria set forth in Appendix B of this part.

#### **§ 1480.6 Listing on the Registry of Neutrals; criteria for inclusion and retention.**

(a) *Selection of applicants to be placed on the Registry of neutrals:* FMCS shall determine the time intervals during which it will accept applications to be included on the Registry of Neutrals and the number of individuals it will place on the Registry. Persons seeking to be listed on the Registry of Neutrals must complete and submit an application form, which may be obtained from OANI or from the FMCS ANI Web page. Upon receipt of an executed application, OANI will review the application, assure that it is complete, make such inquiries as are necessary and submit it to the selection process established by FMCS for neutrals. The Director of the ANI or the Neutrals Committee will review the completed applications of the individuals who have been awarded the minimum number of points necessary for consideration, as set forth in § 1480.5(g). The Director of ANI or his/her designee shall make all final decisions as to whether an applicant will be listed on the Registry of Neutrals. Each applicant shall be notified in writing of the Director's decision and the general reasons for the decision.

(b) *Duration of listing; Retention on Registry of Neutrals:* Neutrals will be listed on the Registry for a one (1) year term. The Director may remove an individual from the Registry of Neutrals or refused to extend the neutral's term for violation of this part and/or the Code

of Professional Responsibility, as established by FMCS. Notice of cancellation shall be given to a person listed on the Registry of Neutrals whenever a member:

(1) No longer meets the criteria for inclusion;

(2) Does not provide a certification to FMCS that the neutral does not engage in advocacy, as defined in this part;

(3) The individual has not conducted at least three (3) cases in the previous two (2) years in which an ADR process was utilized. It is not a requirement that these cases are ones in which the parties selected the neutral from the Registry of Neutrals maintained by FMCS.

(4) The neutral has not provided the names and contact information for all the parties in three (3) of the cases the neutral participated in during the last 2 years. It is imperative the neutral inform the parties that FMCS may be contacting them to obtain general information concerning the ADR process.

(5) The neutral has not submitted a certification that he/she has met the training requirements and a statement of the manner in which those requirements were met. Individuals on the Registry of Neutrals will be required to attend one (1) hour of ethics/professional conduct training and nine (9) hours of continuing education or training in conflict resolution.

(6) The neutral has been the subject of complaints by parties who use FMCS services and the Director, after conducting an appropriate investigation, concludes there is cause for refusing to renew the neutral's term.

(7) The neutral has failed to submit his/her fee for being listed on the FMCS Registry of Neutrals.

(c) *Inactive status:* An individual on the Registry of Neutrals who continues to meet the criteria for listing on the Registry of Neutrals may request that he/she be put on "inactive status" on a temporary basis for any reason, except that the neutral wishes to return to work as an advocate; in that case, the neutral must remove his/her name from the Registry of Neutrals and apply for reinstatement when he/she is able to certify the he/she does not act as an advocate for any party.

(d) *Registry fee:* All neutrals will be required to pay an annual fee for listing on the Registry of Neutrals, as set forth in § 1480.13.

#### **Subpart C—Selection of Neutrals by Users of the Registry of Neutrals**

##### **§ 1480.7 Freedom of choice.**

Nothing contained in this part should be construed to require any party who utilizes the services of FMCS to obtain

a neutral from the computerized system established by FMCS or to contact FMCS to obtain a list of neutrals or the name of a neutral from FMCS to conduct ADR processes.

##### **§ 1480.8 Procedures for selecting a neutral.**

The OANI has been delegated the responsibility for administering the Registry of Neutrals. The OANI shall oversee the establishment and maintenance of the computerized selection process and administer the process for individual requests for FMCS to provide parties with a list of neutrals and/or the name of a neutral to handle a case.

##### **§ 1480.9 Computerized selection system.**

FMCS shall establish and maintain a computerized selection system (selection system) listing the individuals on the Registry of Neutrals. Customers of FMCS shall be able to access the computerized selection system through the FMCS homepage or through a direct worldwide web address to the selection system site. Prior to obtaining access to the selection system, a user will be required to answer a short series of questions to establish the identity of the users of the system. The system will be set up to enable the users to select a neutral on the basis of several factors, for example, geographic region, experience in a particular field and fee charged. The parties will work with the selected neutral directly; the OANI does not need to be notified of the selection. The provision of a neutral from the selection system to either one or both of the parties does not signify the adoption of any position by the FMCS regarding the party's agreement to utilize ADR procedures or the matter in dispute.

##### **§ 1480.10 Request for neutral from FMCS.**

As an alternative to the computerized selection system, parties may either request that FMCS provide them with a panel of neutrals or that FMCS appoint a neutral to work on the case. In order to request a panel of neutrals, the parties must file an individual or joint request in writing. In contrast, to request appointment of a neutral by FMCS, the parties must submit a joint request in writing. FMCS will utilize the Registry of Neutrals to provide the parties with a panel of neutrals and/or to select a neutral for the parties. The parties will work with the selected neutral directly; however, they should notify the OANI of the selection. The provision of a neutral from the selection system to either one or both of the parties does not signify the adoption of any position by the FMCS regarding the party's

agreement to utilize ADR procedures or the matter in dispute.

(a) FMCS will provide the parties with a randomly selected list of neutrals from the geographic area in which the site of the dispute is located, unless otherwise requested from the parties;

(b) The parties may request neutrals based on other factors, such as experience in a particular area, however, any request for a list of neutrals, other than by geographic area, must be a joint request by the parties;

(c) If the parties do not agree on a neutral from the first panel, OANI will furnish a second and, if necessary, a third panel to the parties upon joint request accompanied by payment of an additional fee and a short explanation of why the parties could not agree on a neutral from the other panel(s). If parties are unable to agree on a selection after having received three (3) panels, the ORNI will make a direct appointment upon joint request.

#### **§ 1480.11 Reservation of rights.**

FMCS reserves the right to decline to submit a panel or make appointment of a neutral, if the request submitted is overly burdensome or otherwise impracticable. FMCS, in such circumstances, may refer the parties to an FMCS mediator to assist in the design of an alternative solution. FMCS may also decline to service any requests from parties with a demonstrated history of non-payment of a neutrals fee or other behavior that interferes with the spirit or operation of the Registry of Neutrals process.

#### **§ 1480.12 Fee schedule**

FMCS will not charge parties for the use of the electronic selection system. FMCS will charge the parties a nominal fee for all requests for lists, panels, appointment of neutrals and other major services, if the parties request such services from FMCS. A schedule of fees is included in Appendix A of this part.

#### **Subpart D—Fees for Application to the Registry and Charges for the Services of Neutrals**

##### **§ 1480.13 Application fee.**

FMCS will charge all neutrals an application fee at the time he/she submits his/her application for inclusion on the Registry of Neutrals. In addition, FMCS will charge all neutrals an annual fee at the time he/she renews his/her listing on the Registry of Neutrals. Appendix A of this part contains the schedule of application and annual listing fees.

##### **§ 1480.14 Per diem; fees for services.**

All neutrals on the Registry of Neutrals may charge a per diem and other pre-determined fees for services, if the amount of the fee has been provided in advance to FMCS. Each neutral's maximum per diem and other fees are set forth on a biographical sketch which will be available on the selection system website and which will be submitted to the parties who request a panel of neutrals or the appointment of a neutral. The neutral shall not change any fee or add charges without giving at least thirty (30) days advance written notice to FMCS. Neutrals with dual addresses must bill the parties for travel expenses from the least expensive business address to the hearing site.

##### **§ 1480.15 Disclosure.**

Neutrals will divulge all charges to the parties and obtain agreement thereto immediately after selection or appointment for the case.

##### **§ 1480.16 OANI notification.**

The OANI should be notified of any neutral's deviation from the policies expressed in this part. While the OANI does not resolve individual fee disputes, repeated complaints concerning the fees charged by a neutral will be brought to the attention of the Director for consideration. Similarly, repeated complaints by neutrals concerning non-payment of fees by the parties may lead to the denial of services or other actions by the OANI.

#### **Subpart E—Reports and Biographical Sketches**

##### **§ 1480.17 Reports to OANI.**

Individuals listed on the Registry of Neutrals shall execute and return all documents, forms and reports required by the OANI. They shall also keep the OANI informed of changes of address, telephone numbers, availability and of any business or other connection or relationship which involves employment relations or which creates or gives the appearance of advocacy as defined in § 1480.4.

##### **§ 1480.18 Biographical sketches.**

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

#### **Subpart F—Complaint Procedure**

##### **§ 1480.19 Role of the Director of FMCS.**

FMCS will establish a complaint procedure for the user of the Registry of Neutrals. The complaint procedure will be administered by the Director of FMCS or his/her designee.

##### **§ 1480.20 Agreement to adhere to the Code of Professional Responsibility.**

Applicants for the Registry of Neutrals will be required to execute a statement agreeing to adhere to the Code of Professional Responsibility developed by FMCS and to cooperate with any and all FMCS investigations, in the event a complaint is filed against the neutral.

##### **§ 1480.21 Addressing Complaints.**

FMCS will address and/or investigate all complaints and take appropriate actions, up to and including the permanent exclusion of a neutral from the Registry, based on the nature and severity of the complaint and the results of the investigation. FMCS reserves the right to determine, on a case by case basis, whether it is appropriate to conduct an independent investigation of a complaint, if a similar complaint has been filed against the neutral in a different forum.

#### **Subpart G—Accreditation of Educational Programs in ADR**

##### **§ 1480.22 Collaboration with universities.**

The OANI will collaborate with universities and training programs to institute educational programs designed to assist the applicants in obtaining the maximum points possible under the Point System for Determining Qualifications for the FMCS Registry of Neutrals. FMCS will make available to every institute the opportunity to apply for pre-accreditation. Programs of educational institutions and/or training providers will be pre-accredited for a specific number of points under the Point System. During the application process, if an applicant provides documentation that he/she successfully completed the program, he/she will be awarded the number of points assigned to the educational institution or training provider during the pre-accreditation process.

##### **§ 1480.23 Pre-accreditation examination.**

A pre-accreditation examination will include a review of the minimum amount of curriculum time, practicum, and the qualifications of the instructors. Criteria for accreditation will include:

(a) The number of credit hours or contact hours, hours of class instruction, provided under the program. Classroom

hours may include hours conducted through on-line training.

(b) A course of instruction that provides a coordinated and comprehensive overview of ADR theory and practice.

(c) Practicum that includes a method of objective evaluation individualized feedback for the student.

(d) Staff qualifications, which include but are not limited to, the overall staff being trained in the theory and practice of ADR techniques and workplace issues.

#### **§ 1480.24 Review of programs.**

A review of the programs for educational institutions for the purpose of pre-accreditation will occur every three (3) years; a review of the programs for training providers for the purpose of pre-accreditation will occur every two (2) years.

#### **§ 1480.25 Training programs.**

FMCS will offer a comprehensive training program for the purpose of providing the applicants the opportunity to obtain the maximum number of points under the Point System for Determining Qualifications for the FMCS Registry of Neutrals. Applicants will not be required to attend the FMCS program, nor will applicants who attend the program be given preferential treatment over pre-accredited providers.

#### **Appendix A—Schedule of Fees**

1. *Application fee:* \$250.00 for each application (In the event the applicant does not obtain the minimum of 10 points necessary to obtain consideration of his/her application, but submits additional information within one year of the original application, he/she will not be required to pay an additional fee for consideration of the application).

2. *Annual listing fees for neutrals:* This will be established based on the number of neutrals listed on the Registry of Neutrals.

3. *Request for panel of neutrals:* \$50.00 for each panel request (includes subsequent appointments).

4. *Requests for appointment of neutral:* \$50.00 for appointment when a panel is not requested.

5. *Requests for pre-accreditation:* To be determined based on expenses and number of hours required to review the process.

#### **Appendix B—Point System for Determining Qualifications for the FMCS Registry of Neutrals**

A list of the categories in which a candidate is able to obtain points towards selection for the FMCS Registry of Neutrals is set forth in this Appendix. A minimum of 10 points will be required for inclusion on the FMCS Registry of Neutrals.

1. *ADR experience* (0–9 points, at least 1 point is required in this area) \*

9 points: Substantial ADR experience with large and complex cases of significance (large money cases, large number of complex issues or complex relationships between the parties, cases of national significance)

7 points: Conduct or co-conduct 120 ADR procedures in employment dispute cases

5 points: Conduct or co-conduct 80 employment cases or 120 other cases, of which 40 must be employment cases

3 points: Conduct or co-conduct 40 employment cases or 80 other cases, of which 20 must be employment cases

1 point: Conduct or co-conduct 20 employment cases or 50 other cases, of which 10 must be employment cases

\* ADR experience may include acting as a third party neutral in any dispute procedure that is used in lieu of adjudication to resolve issues in controversy including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials or any combination thereof. For the purpose of this application, arbitration is specifically excluded from the definition of alternative dispute resolution procedure. To count as a case, the neutral must have been present for at least one face-to-face, or electronic meeting, between/among participants.

2. *ADR education/training* (0–5 points, at least 1 point is required in this area \*\*)

5 points: Documentation of successful completion of an established academic course of study in conflict resolution conducted by FMCS, its academic partners or other academic institutions, with a letter of recommendation from a faculty member who has observed the applicant in an ADR session, or documentation that the alternative dispute resolution program met equivalent standards as those accredited by FMCS. A course must include at least 200 classroom hours of instruction and role-play to be considered as an established course of study in conflict resolution.

3 points: 160 hours of documented training in conflict resolution with proof of individualized feedback in ADR procedures practice or role-play

1 point: 120 hours of documented training in conflict resolution with proof of individualized feedback in ADR procedures practice or role-play

3. *Substantive experience in roster content area* (0–2 points, at least one point must be received in either this area or the area of substantive education in the roster area)

2 points: 10 years of experience in workplace conflict resolution. Examples: employment law attorney, human resource director, labor organization representative, equal employment opportunity specialist

1 point: 5 years of experience in workplace conflict resolution

4. *Substantive education in roster content area* (0–2 points, at least one point must be received in either this area or the area of substantive experience in the workplace area.) \*\*

2 points: Possesses a significant educational background in the employment or dispute resolution area (degree or in roster area, such as labor-management relations, human resource management, employment law, etc.)

1 point: Attendance in a documented introductory training program of at least 40 hours of classroom hours in the workplace area.

\*\* Educators can be awarded points in these areas for teaching; however, they can not be awarded points for teaching the same class more than once; they can be awarded points for teaching more than one class in the area, as long as it does not cover substantially the same material.

**John J. Toner,**

*Chief of Staff, Federal Mediation and Conciliation Service.*

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## **DEPARTMENT OF THE TREASURY**

### **31 CFR Part 103**

#### **RIN 1506–AA28**

#### **Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Commodity Trading Advisors**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is issuing this proposed rule to prescribe minimum standards applicable to certain commodity trading advisors pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs and to delegate its authority to examine such commodity trading advisors to the Commodity Futures Trading Commission.

**DATES:** Written comments may be submitted to FinCEN on or before July 7, 2003.

**ADDRESSES:** Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington area may be delayed. Comments submitted by electronic mail may be sent to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, “Attention: Section 352 CTA Regulations.” Comments may also be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 CTA Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of Chief Counsel (FinCEN), (703)