

§ 1404.4

composed entirely of full-time officers or employees of the Federal Government and shall establish procedures for carrying out its duties.

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

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

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

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

(iv) At the request of the Director of FMCS, or upon its own volition, 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; and

(v) Review the qualifications of all persons who request a review in anticipation of attending the FMCS-sponsored labor arbitrator training course, interpreting and applying the criteria set forth in Sec. 1404.5.

(2) [Reserved]

[62 FR 34171, June 25, 1997, as amended at 70 FR 76397, Dec. 27, 2005]

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

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Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association (Code).

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

(d) *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 fact-finding, or where arbitration or fact-finding may be provided for by statute, OAS will provide names or panels of names for a 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 fact-finding 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 Roster.* No person shall have any right to be listed or to remain listed on the Roster. FMCS retains its authority and responsibility to assure that the needs of the parties using its services are served. To accomplish this purpose, FMCS may establish procedures for the preparation of panels or the appointment of arbitrators or factfinders 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 removal from the Roster of those arbitrators who fail to adhere to provisions contained in this part.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76397, Dec. 27, 2005]

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

Persons seeking to be listed on the Roster must complete and submit an application form that 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 as to whether or not the applicant meets the criteria for listing on the Roster. The Director shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of the Director's decision and the reasons therefore.

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

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

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

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

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

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

(B) Governmental Employees other than Federal: These applicants must

provide the OAS with written permission from their employer to work as an arbitrator as well as a statement of the jurisdiction(s) in which the applicant is permitted to do this work.

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

(b) Proof of Qualification. The qualifications listed in paragraph (a) of this section are preferably demonstrated by the submission of five recent arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor relations disputes arising under collective bargaining agreements, or the successful completion of the FMCS labor arbitrator training course plus two awards as described above, and the submission of information demonstrating extensive and recent experience in collective bargaining, including at least the position or title held, duties or responsibilities, the name and location of the company or organization, and the dates of employment.

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

(1) Definition of Advocacy. An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor relations or employment relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration,