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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 316

Roster of Dispute Resolution Neutrals

AGENCY: Administrative Conference of the United States.

ACTION: Final rule.

SUMMARY: These regulations establish Administrative Conference policies and procedures for creating and operating a Roster containing information on mediators and other "neutrals" available to assist in resolving disputes under Federal administrative programs. The Roster will be operated by the Conference for the primary benefit of other Federal agencies and parties to disputes involving administrative programs. The Roster is intended to increase agencies' ability expeditiously to locate and retain mediators, trainers, and other apt neutrals across the country by creating a clearinghouse of basic data and increasing agency officials' awareness of the availability of alternative means of dispute resolution.

EFFECTIVE DATE: October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., 202-254-7020.

SUPPLEMENTARY INFORMATION:

A. General Background

The Roster will contain basic data on neutrals, so as to increase agencies' access to mediation services. The Roster has its origins in a series of Conference recommendations and studies on acquiring the services of persons to assist agencies in using alternative means of dispute resolution. The Roster will further the Conference's statutory mission to serve as a clearinghouse for interchange of information potentially useful in improving administrative procedure.

As described in the notice of proposed rulemaking ("NPR") dated May 22, 1989 (54 FR 21957), the Conference generally would not try to match neutrals to particular disputes. Rather, it would generally provide a list of likely candidates from the Roster, taking into account the specifications of parties to disputes. All neutrals who supply the basic data will be listed. The rules make it clear to parties that the Conference will not guarantee the accuracy of information in its files.

To avoid conflicts of interest for neutrals, the rules require neutrals on the Roster to abide by the Society of Professionals in Dispute Resolution code of conduct that details what a neutral should disclose and how to handle potential conflicts of interest, as well as any other code to which the neutral is subject. While the Conference reserves the right to remove neutrals who have falsified information or otherwise clearly violated accepted ethical standards, it would not ordinarily evaluate the quality of work by neutrals on the Roster.

B. Comments Received

Comments on the proposed rules were received from:

Donald P. Arnavas, Piper & Marbury, Washington, DC
Howard S. Bellman, Madison, WI
Paul D. Carrington, The Private Adjudication Center, Inc., Duke University School of Law, Durham, NC
Theodore M. Chaskelson, Federal Mediation and Conciliation Service, Washington, DC
Sophie Eilperin, Bureau of National Affairs, Washington, DC
Neil R. Eisner, Department of Transportation, Washington, DC
Michael S. Gillie, United States Arbitration and Mediation, Seattle, WA
Stephen B. Goldberg, Northwestern University School of Law, Chicago, IL
Philip J. Harter, Washington, DC
Christopher Honeyman, Madison, WI
William J. Jones, AT&T, Berkeley Heights, NJ
J. Michael Keating, Jr., Tillinghast Collins & Graham, Providence, RI
Peter B. Kelsey, Edison Electric Institute, Washington, DC
Chris Kirtz, Environmental Protection Agency, Washington, DC
Kit R. Krickenberger, The MITRE Corporation, McLean, VA
Nancy W. Newkirk and Daniel P. Dozier, Clean Sites Inc., Alexandria, VA
Richard H. Robinson, Environmental Protection Agency, Washington, DC
David A. Swankin, Regulatory Alternatives Development Corp., Washington, DC
Roger Strelow, General Electric Company, Fairfield, CT

1. General

All commenters except Carrington expressed support for a Conference Roster; Jones of AT&T, typically, thought it "would be of great assistance in promoting both agency and private party use of ADR." Newkirk and Dozier of Clean Sites wrote that the Conferences's proposal would encourage use of mediation and make the task of finding experienced and qualified neutrals easier for potential users. Carrington was dubious because of the Roster's lack of standards, discussed below.

2. Qualification for Neutrals

Under § 316.200, the Roster includes persons who provide all information required. Most of the commenters supported the proposed "disclosure" approach. Newkirk and Dozier, for example, said.

> We agree with the Conference's decision to allow the potential users of the service to determine the appropriate qualifications of a neutral, rather than have that decision made by the list keeper. At this point, at least, mediation and other ADR techniques are still evolving. To have too rigid a barrier to entry may not serve the needs of the potential users of the roster. The parties to a dispute should have the right to choose whomever they find acceptable. The roster function should merely be an efficient mechanism for the dissemination of information about potential neutrals.

These and other commenters also pointed out that the proposed rules seem to follow *The Report of the Society of Professionals in Dispute Resolution Commission on Qualifications.* That report, by a specially-appointed panel of dispute resolvers and other experts, addressed the issue of how best to qualify neutrals.

Like the SPIDR Commission, the Conference membership has spoken to the principles for agency use of neutrals. In Recommendation 86-8, it stated,

> While skill or experience in the process of resolving disputes, such as that possessed by mediators and arbitrators, is usually an important criterion in the selection of neutrals, and knowledge of the applicable statutory and regulatory schemes may at times be important, other specific qualifications should be required only when necessary for resolution of the dispute. For example:

(a) Agencies should not necessarily disqualify persons who have mediation, arbitration or judicial experience but no specific experience in the particular ADR process being pursued* * *.

(c) Agencies should insist upon technical expertise in the substantive issues underlying the dispute or negotiated rulemaking only when the technical issues are so complex that the neutral could not effectively understand and communicate the parties' positions without it.

The Office of the Chairman has considered the various possible approaches to qualifications for listing, and their legal, practical, and other consequences; in developing the proposed rules it worked with EPA to obtain a report from ICF Incorporated on the pros and cons of each. It has also read with interest the thoughtful and persuasive report of SPIDR's Commission on Qualifications, and is mindful in particular of its advice that "[n]o standards or qualifications should be required that would prevent any person from providing dispute resolution services, when parties have free choice of the process, program, *and* individual neutral," provided that the parties are given access to certain specified information about the neutral.

Theoretically, major sources of ADR neutrals include ex-judges, BCA members, ALJs, other active judges, academics, current government employees, retired government employees, private practitioners, and mediators or other ADR experts. Dipping into any of these potential pools has ramifications, many obvious and others fairly subtle. A variety of approaches to selecting and evaluating these persons have been put forward. Many experts in ADR processes maintain that neutrals need no legal or other special training; rather, they say, the critical determinant is the neutral's acceptibility. They point out that many cases turn on engineering, accounting, or other technical or scientific questions. Some suggest that mediation training, is useful, or even necessary, allowing the neutral to respond perceptively to the principals' wishes and help further negotiations if asked. A few go so far as to suggest that *only* mediators (or similar experts) can serve effectively as neutrals or make credentials decisions. Others maintain legal expertise to be a *sine qua non.* They note that the principals and their staffs will likely have the background to weigh technical issues, but would frequently benefit from independent legal advice, on often-arcane matters, that will let them better assess risks, reach a decision, and "sell" or defend a settlement within their organizations. Some agencies, like the Corps of Engineers and the Navy, have required government contracting and litigation experience for neutrals in contract cases.

While mindful of concerns over the Roster's credibility, the Conference's—indeed, anyone's—present ability to fix and fairly enforce meaningful, consistent qualifications criteria which would be relevant to every situation is doubtful. Many questions would need to be answered. What standards of education, or experience, or performance, or third-party recommendations, should be used? Is hands-on evaluation of individual neutrals practicable, or desirable? If so, by whom? What criteria and scoring system should apply? Should the Roster be limited to a small, elite group, on the theory that this will enhance the credibility of the nascent process and tend to cause those on the list to view their role as a public service? If so, what should the review and appeals processes be? Should any particular groups, such as government personnel or private attorneys, be wholly excluded on grounds that one side or the other likely will strike them for possible bias or conflict of interest?

A disclosure approach avoids having the Conference set itself up, or sponsor private (and possibly partial) groups, to exclude possibly less qualified neutrals. Consistent with the SPIDR report and Recommendation 86–8, the Conference's approach should broaden the base of qualified neutrals, avoid needless exclusivity, and encourage thoughtful selection by parties.

Two comments cautioned that this approach could cause an adverse effect among potential users due to a lack of listing standards. Goldberg thought it could lower the Roster's credibility among users, and advocated a central body "that potential users could communicate with that would describe and recommend particular neutrals."

Carrington also advocated selectivity. He stated, "There is little doubt that it matters who the neutral is." He would be surprised, he said,

* * * to learn that the government has the manpower and contacts to do an effective job of identifying appropriate neutrals for the whole spectrum of government agencies. There is, moreover, a significant political problem in keeping underqualified persons off your certified list.

My suggestion would be that in lieu of a central roster of neutrals, the government put its good housekeeping seal on private institutions that exhibit the appropriate level of care in the selection of neutrals for particular kinds of cases.

Private institutions, said Carrington, could exercise judgment to screen applicants for temperament and competence in specific areas (e.g., construction disputes). He concluded,

If the United States is not comfortable with certifying providers of neutrals, but wants its own list, then I would urge that you consider contracting out the development of that list. This Center could perhaps develop such a list, and there may be other institutions that could do it. At least we could think about the burdens and consider what we might learn from undertaking to do it.

There is certainly a place for private groups or other government agencies to develop selective, specialized lists of arbitrators, mediators, or others. Presumably, if such groups were interested in broader government use of their services they would register with the Conference (and, if they wished, register individually the persons on their lists). There is also a place for a nonjudgmental information clearinghouse that makes available to potential users extensive data on prospective neutrals. Agencies desiring greater selectivity (such as the Farmers Home Administration) remain free to develop their own qualifications and listings, or contract to have it done.

Some persons with marginal professional credentials now call themselves mediators, and will register. Some of these registrants will prove talented and effective; a few will not. Agencies can examine potential neutrals' various qualifications and select according to their needs. Given that under present GAO doctrine agencies will almost always employ Roster neutrals as mediators in aid of parties' settlement negotiations—and *not* as arbitrators with authority to render binding decisions—we see little reason to exclude arbitrarily any potential registrants. Of course, the Conference plans to review its policy and Roster operations periodically to determine if changes in this, or other, areas would improve performance.

For these reasons, the Conference intends to pursue a policy of disclosure by, rather than pre-qualification of, neutrals.

3. Operating the Roster

(a) *Listing data* (§ 316.200). The Conference's May NPR indicated that neutrals wishing to be listed must provide fee data. Krickenberger cautioned that neutral's fee data could be misleading, that requiring it could disadvantage certain "federal funded research and development centers," and that such data might be viewed as sensitive, proprietary information, not "FOIAable." She advocated deleting any prerequisite for disclosing fee schedules. Keating cautioned against suggesting that users might,

* * * expect some of the listed mediators and other neutrals to provide their services *gratis*. Competent, experienced professional mediators do not give away their services; conversely, inexperienced and unprofessional mediators are frequently willing to donate their services in order to gain experience. Were this a listing for medical, legal, therapeutic or virtually any other type of professional service, it would never contain the suggestions of the availability of *pro bono* work. The Roster is a positive step in the direction of professionalizing the provision of neutral services; it should not undermine that positive impact with a counterproductive suggestion of the ready availability of free neutral services.

These concerns are real. However, several experienced neutrals and organizations have expressed interest in making *pro bono* contributions to encourage agency interest and establish mediation in new areas. Many lawyers already contribute *pro bono* time to public interest causes. The Conference does not wish to force general disclosure of sensitive data, or to encourage users to seek free, or second-rate, services. Conversely, it does not wish artificially to restrict available data. The final rule makes voluntary, rather than mandatory, the provision of the fee schedules and related information (e.g., willingness to provide *pro bono* services). Moreover, request forms will not encourage users to focus heavily on these issues. Any user wishing to receive these data, however, will be provided with them, and can use them in requesting and evaluating panels of neutrals.

(b) *Registration decisions* (§ 316.203). Kelsey suggested revising part of subsection 203(b) as follows: "A prospective registrant shall be notified in writing of a decision that an application is *accepted*, incomplete or inaccurate *within 30 days of receipt by the Chairman*." He explained, "These additions, rather than leaving a registrant in a state of limbo, inform the registrant within a time certain of the definite status of the application."

The Conference will promptly dealing with neutrals' registration, and all other Roster processes. A specific deadline does not seem necessary. This is especially so given that in the Roster's early operation the Conference may be dealing with a large volume of registrations during any period. Conference recommendations encourage agencies to use flexible time guidelines, as opposed to rigid deadlines. The final rule requires that neutrals be *promptly* advised of the adequacy of their registration data.

(c) *Roster fees policy* (§ 316.203(e)). Subsection (e) reserves the right to charge fees for obtaining or renewing listing or for using the Roster. Kelsey cautioned,

If the Conference decides to establish fees for listing and renewals, potential registrants need to be advised of that in advance of registering. At a minimum, the fees need to be set out in the registration and renewal forms, if not set forth in the regulations themselves. Because all but the most modest registration or renewal fees may discourage potential neutrals from applying for listing on the roster, I would encourage the Conference to consider absorbing all the administrative costs of the Roster in the use fee charged to the federal agencies.

At present, the Conference does not intend to assess fees for a neutral's listing on the Roster, or for use of the Roster in disputes regarding federal administrative programs. The Conference certainly would give prior notice were it to charge for using the Roster, renewal of listings, or for initial listing in the future. As stated below, the Conference retains the right to charge fees for parties' use of the Roster services in disputes *other* than those related to Federal programs. The Conference would so notify parties at the time the request is received.

(d) *Provision of panels* (§ 316.301(a)). This section states, "The Chairman may establish for the purpose the parties with a list of names of neutrals." Kelsey asked, "How will the Chairman select names from the roster to refer to parties requesting a list of neutrals? In evaluating the qualification of neutrals on the roster to fulfill a particular request, how will "process experience" be weighted compared to "case experience?" Will those on the roster with the most hours of experience or training or the most cases under their belts always be referred ahead of those with less experience? * * * Whatever selection process is used, to be successful it must treat all neutrals equitably. If the selection process is perceived by any neutrals to discriminate unfairly against their experience and training, the whole program will suffer."

The Office of the Chairman agrees, and wishes to ensure that the process is, and is seen to be, fair. However, flexibility needs suggest that the Conference should not, for now, bind itself by an inflexible regulation to follow a formulaic, unvarying process. In the main, the expressed wishes of requesting parties will govern panel selection, and we have developed detailed forms to further their process of specifying desired characteristics. If more neutrals "match" the characteristics than the parties seek, a random process would generally be used to select approximately the number specified by the parties. The Conference may occasionally expand its search to include additional categories besides those specifically requested by users, or to add to the list a few names that the Conference, or knowledgeable dispute resolvers, believes might be effective. The great bulk of referrals, however, will be made by a basically random selection according to users' requests.

4. Other Users Listees

(a) *Listees*. Several commenters pointed out that the Roster should make provision for mediation trainers, mediation systems design experts, and special masters. Keating in particular advocated making the Roster facilities available to federal judges throughout the country, for selection of special masters. These suggestions are adopted in the rules and in day-to-day use.

Swankin of RADC, and several others, suggested that the Roster rules be amended to deal with organizations, as well as individual neutrals. He stated.

For example, suppose an agency wanted a roster that indicated prior experience in dealing with state governments *and* in dealing with labor unions. In the case of our firm, one associate has extensive experience as a labor arbitrator, and another has spent most of her time on issues at the state and local level, but never in situtations or on issues involving organized labor. As a firm, we meet both criteria; individually, both associates would come up short.

I'm not certain of the solution. One that comes to mind, and which we offer for your consideration, is to develop a second roster of firms, and cross-reference individuals to firms with which they are associated. While in most cases an agency will be contracting with an individual to act as negotiator, the fact that an individual is connected to a firm might be a factor the requesting agency would want to take into account in deciding whom to interview. Since the ACUS rosters are clearly not endorsements, I don't think a separate, cross-referenced roster of firms would raise any credibility issues not already raised in the proposed rule.

The final rule provides for listing of neutrals organizations. We shall develop a complementary registration form for these groups.

(b) *Users*. Aside from the helpful suggestion regarding judges, a number of commenters thought that a variety of additional groups might find the Roster useful. Newkirk & Dozier said,

Since the proposed rules do not limit the right to request names and otherwise use the roster to Federal entities, it is likely that the roster will serve other potential users as well. In Clean Sites' experience, other users, such as states, may find the roster a convenient source of mediators and other ADR professionals.

The final rule gives the Conference discretion to make Roster services available in cases besides those involving federal administrative programs. The Conference retains the right to assess a fee for making the Roster available in cases not involving federal programs.

5. Other Comments

Jones and Keating suggested that the Conference work to develop standard contracts to expedite acquisition of neutrals' services. Jones also thought that the Conference should encourage agencies to adopt pledges to explore ADR usage prior to instituting litigation. These are valuable ideas, and the Conference may well follow up on them. For now, they are not necessary to begin operation of the Roster, nor would these rules be an apt place for dealing with these matters.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act.

List of Subjects in 5 CFR Part 316

Administrative practice and procedure, Claims, Intergovernmental relations.

Dated: September 6, 1989.

William J. Olmstead,

Executive Director.

Part 316 is added to title 1, chapter III, to read as follows:

PART 316—ROSTER OF DISPUTE RESOLUTION NEUTRALS

Authority: Pub. L. 88–499, 78 Stat. 615, 5 U.S.C. 571 through 575; 31 U.S.C. 9701.

Subpart A—Conference Roster; Responsibilities

§ 316.100 Scope and purpose.

These rules are issued pursuant to the Administrative Conference Act, 5 U.S.C. 571–575, providing authority to arrange for interchange among Federal administrative agencies of information potentially useful in improving administrative procedure, and to assist agencies to carry out regulatory activities and other Federal responsibilities expeditiously in the public interest. This part applies to all neutrals listed or seeking to be listed on the Roster, and to all persons or parties seeking to obtain from the Conference the names of neutrals listed on the Roster in connection with disputes involving Federal administrative programs and, within the Conference's discretion, other disputes.

§ 316.101 Definitions.

(a) "*Administrative program*" means any program administered by a Federal agency and includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing, or investigation, as such terms are used in section 551 of title 5, U.S. Code.

(b) "*Chairman*" means the Chairman of the Administrative Conference of the United States or his designee.

(c) "*Dispute*" means any question material to a decision concerning an administrative program, or, within the Conference's discretion, any other decision, about which persons who would be substantially affected by the decision or the agency disagree.

(d) "*Neutral*" means an individual who or organization which serves as a conciliator, facilitator, mediator, fact-finder, trainer, special master, or arbitrator, or otherwise functions specifically to aid the parties in resolving a dispute or portions thereof.

(e) "*Party*" means

(1) For proceedings with designated parties, the same as in section 551(3) of title 5, U.S. Code;

(2) For proceedings without designated parties, a person who will be significantly affected by the decision and who participates in the proceeding; and

(3) The authorized representative of any agency charged with decisionmaking authority.

(f) "*Roster*" means a list maintained by the Chairman of persons qualified to provide services as neutrals in disputes.

§ 316.102 Administrative responsibilities.

The Chairman may establish and maintain a Roster of persons to serve as neutrals in assisting parties in resolving disputes involving administrative programs and, within his discretion, other disputes. The Chairman shall have final responsibility for creation and maintenance of the Roster. The Chairman may review the status of all persons whose continued eligibility for listing on the Roster has been questioned and make determinations about such eligibility according to the criteria set forth in § 316.205(a).

Subpart B—Roster; Registration and Removal

§ 316.200 The roster.

(a) The Roster shall consist of a listing of persons who provide all information required by the neutral registration form, and whose names have not been removed from the Roster in accordance with § 316.205(b).

(b) Neither the Chairman nor the Conference will warrant the accuracy of the information furnished by persons listed on the Roster.

§ 316.201 Adherence to standards.

Persons listed on the Roster shall have committed in writing to comply with all provisions of part 316 and subsequent amendments hereto as from time to time may be issued by the Conference.

§ 316.202 Status of neutrals.

Persons listed on the Roster are not employees of the Conference or Federal Government by virtue of their listing.

§ 316.203 Registration.

(a) Persons wishing to be listed on the Roster will obtain and complete a current neutral registration form and have it notarized or otherwise attested.

(b) Upon receipt of a completed registration form, the Chairman will review the form to assure that all required information has been provided. The Chairman reserves the right to review and to verify data submitted, but any such attempts to verify submitted data will not constitute a warranty of accuracy. A prospective registrant shall be notified promptly in writing of a decision that an application is accepted, incomplete or inaccurate. The Conference may require persons wishing to be listed to provide additional information from time to time. All decisions by the Chairman about whether a registration form is sufficiently complete and accurate are final.

(c) At least once every two years, a person listed on the Roster will either (1) submit a new registration form, or (2) send the Chairman a short letter verifying the continuing accuracy of the person's current listing.

(d) Persons wishing to be listed on the Roster must agree that the Chairman may provide the names, addresses and telephone numbers of parties in cases handled, including all cases to which the neutral was referred as a result of listing on the Roster. They shall also certify that all data supplied are accurate and agree to abide by ethical standards that may be promulgated by the Society of Professionals in Dispute Resolution and such other standards as may be applicable to them.

(e) The Chairman reserves the right to charge fees for obtaining or renewing listing or for using the Roster.

§ 316.204 Rights of persons listed on the Roster.

(a) No person shall have any right to be listed, to remain listed, nor to be referred or selected for any dispute.

(b) A person listed on the Roster may request placement on inactive status, return to active status, or removal from the Roster.

(c) Neutrals may request revision of data supplied on the neutral evaluation form, or any summaries thereof.

§ 316.205 Removal.

(a) Any person may be removed from the Roster by the Chairman whenever the neutral:

(1) Is found to have submitted materially false data in connection with registration on the Roster;

(2) Fails or refuses to provide information required to obtain or maintain registration or to make reasonable and prompt reports, as required by Conference procedures;

(3) Fails to disclose any information required by section 302(a);

(4) Has been the subject of complaints of significant unethical or illegal behavior by parties who use the neutral's services as a result of referral from the Roster and the Chairman after appropriate inquiry finds just cause for removal; or

(5) Is found by the Chairman to have improperly disclosed any record or communication arising from a proceeding without the parties' consent unless such record or communication is properly ordered to be disclosed under the agency's applicable procedural rule or by a Court of competent jurisdiction.

(b) Prior to removal under subsection (a), the Chairman shall offer the neutral 45 days in which to submit arguments and evidence relevant to the decision. Any decision to remove a neutral's name from the Roster shall be accompanied by a brief statement of reasons.

Subpart C—Procedure for Obtaining Names of Neutrals

§ 316.300 Request.

Any party or parties to a dispute may file with the Chairman a written request for a list of neutrals. Telephone requests may be accepted at the Chairman's discretion. A request for the names of neutrals shall contain a brief statement of the nature of the dispute and the names, addresses and telephone numbers of all parties to the dispute. A request form has been prepared for parties' use. Requests should be addressed to: Manager of Roster Services, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. The initiating party shall also file a copy of the request with every other party to the dispute. Neither the request for, nor the furnishing of, a list of names constitutes a determination that an agreement to mediate or enter into any other dispute resolution procedure exists, nor does such action constitute any finding about the obligations of the parties.

§ 316.301 Submission of names of neutrals.

(a) Upon receipt of a request for names involving a Federal administrative program, the Chairman shall ordinarily send the requester approximately the requested number of names of listed neutrals who appear to be qualified and a biographical statement for each name so provided. The Chairman may in his discretion respond to requests regarding other disputes, and may establish procedures or guidance for the purpose of providing the parties with a list of names of neutrals. If the parties cannot agree on a neutral after the receipt of these names, the Chairman may, on the request of the parties and in his discretion, select an individual either named or not named in the list sent to the parties.

(b) The Chairman reserves the right to decline to submit names if the request is unduly burdensome or otherwise impracticable.

(c) If jointly requested by all parties, the Chairman may furnish a second, or third, list of names to the parties. Requests for further lists in that dispute will not be honored.

(d) The parties shall notify the Chairman of their selection of a neutral and of the identity of the neutral selected, or of the decision not to use the services of a neutral whose name was furnished by the Conference.

§ 316.302 Conflict of interest; complaints.

(a) Any person listed on the Roster, who is contacted by a party to a dispute as a result of that listing, must disclose to all parties to that dispute, prior to beginning dispute resolution efforts, the following interests or relationships:

(1) Any existing or past financial, business, professional, family, social or other relationships with any of the parties to the dispute, their employees, or their attorneys;

(2) Previous or current involvement in the dispute at hand;

(3) Past or prospective employment, including employment as a neutral in previous disputes, by any of the parties;

(4) Past or present receipt of a significant portion of the neutral's general operating funds or grants to the neutral or the organization by which the neutral is employed from one or more of the parties to the dispute; or

(5) Any other circumstances likely to create a presumption of bias or the appearance of bias.

All scheduling conflicts which may prevent prompt meetings shall also be disclosed. Upon receipt of such information which results in the disqualification of a neutral either by the Chairman or upon the request of any party, the Chairman may supply to the requesting party one or more additional names from the Roster.

(b) The Chairman may inquire into complaints alleging violations of legal or ethical standards by a neutral in a case handled pursuant to Roster listing. If such allegations are confirmed, the Chairman may remove the neutral's name from the Roster and retain the complaint in the neutral's file. The Chairman retains the right to notify legal or other authorities if there is reason to believe illegal or unethical activity has occurred.

[FR Doc. 89-22913 Filed 9-27-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1823, 1902, 1941, 1942, 1943, 1944, and 1945

Implementation of Wholesale Lockbox System

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to reflect changes in the internal processing of collections. This action is necessary because of the implementation of the Wholesale Lockbox System. FmHA offices not using the Concentration Banking System (approximately 2 percent of all field offices) must use this system for collections. The intended effect of these amendments is to implement the Wholesale Lockbox System, thereby enabling the Government to realize savings through a more expeditious processing of collections.

EFFECTIVE DATE: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Financial Specialist, Cash Management Staff, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, MO 63103, telephone (314) 539-6664.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it has no impact on FmHA borrowers or other members of the public and it involves only internal Agency management. While these amendments do change the techniques used by FmHA for processing collections, these changes concern only processing after the collections are recieved by FmHA. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal Agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

This action requires no increase in cost to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be no increase in the reporting requirements of the public. The Agency has determined that this regulation maximizes net benefit to society at the lowest net cost. For the reasons set forth in the final Rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 1983), and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernmental consultations with State and local officials:

10.405—Farm Labor Housing Loan and Grants
10.411—Rural Housing Site Loans (sections 523 and 524 Site Loans)
10.414—Resource Conservation and Development Loans
10.415—Rural Rental Housing Loans
10.416—Soil and Water Loans
10.418—Water and Waste Disposal System for Rural Communities
10.419—Watershed Protection and Flood Prevention Loans
10.420—Rural Self-Help Housing Technical Assistance (section 523 Technical Assistance)
10.422—Business and Industrial Loans
10.423—Community Facilities Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

In turn, the following programs to which this activity is also related, are not subject to Executive Order 12372:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (section 502 Rural Housing Loans)
10.417—Very Low-Income Housing Repair Loans and Grants (section 504 Rural Housing Loans and Grants)
10.421—Indian Tribes and Tribal Corporation Loans
10.428—Economic Emergency Loans

List of Subjects

7 CFR Part 1823

Credit.

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Aged, Administrative practice and procedure, Handicapped, Farm labor housing, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

7 CFR Part 1945

Agriculture, Disaster assistance, Livestock, Loan programs—Agriculture.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

1. The authority citation for part 1823 is revised to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23; 7 CFR 2.70.

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

2. Section 1825.275(b)(1)(ii) is revised to read as follows:

§ 1823.275 Applications not receiving favorable consideration and loan cancellation.

* * * * *

(b) * * *

(1) * * *

(ii) In a direct loan or a loan made from the ACIF, if the check has been received or is received subsequently in the County Office, the County Supervisor will return it as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

3. The authority citation for part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

4. Section 1902.3(a) is revised to read as follows:

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to be processed through the ADPS system.

* * * * *

PART 1941—OPERATING LOANS

5. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

6. Section 1941.35(b) is revised to read as follows:

§ 1941.35 Actions after loan approval.

* * * * *

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be canceled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

* * * * *

PART 1942—ASSOCIATIONS

7. The authority citation for part 1942 is revised to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301; 7 CFR 2.23, 7 CFR 2.70, unless otherwise noted.

Subpart A—Community Facility Loans

8. Section 1942.12(a) is revised to read as follows:

§ 1942.12 Loan cancellation.

* * * * *

(a) Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The District Director or State Director may prepare and execute Form FmHA 1940–10 in accordance with the Forms Manual Insert (FMI). If the check has been received or is subsequently received in the District Office, the District Director will return it as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

9. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23; 7 CFR 2.70, unless otherwise noted.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

10. In § 1943.35, paragraph (a) is amended by changing in the first and second sentences, the words "State Office" to read "field office," and paragraph (a)(2) is amended by changing in the first sentence, the words "State Office" to read "field office."

11. Section 1943.35 is amended by revising paragraph (c)(1) to read as follows:

§ 1943.35 Action after loan approval.

* * * * *

(c) * * *

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

12. In § 1943.85, paragraph (a) is amended by changing in the first and second sentences, the words "State Office" to read "field office," and paragraph (a)(2) is amended by changing in the first sentence, the words "State Office" to read "field office."

13. Section 1943.85 is amended by revising paragraph (c)(1) to read as follows:

§ 1943.85 Action after loan approval.

* * * * *

(c) * * *

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

* * * * *

PART 1944—HOUSING

14. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

15. Section 1944.32 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 1944.32 Actions subsequent to loan approval.

(a) * * *

(1) A loan check may be requested when all approval conditions can be met and necessary curative actions have been taken to provide a satisfactory title to real estate security. All check requests will be requested through the field office terminal system.

* * * * *

(c) *Cancellation of loan.* Loans may be cancelled before loan closing by the use of Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," prepared in accordance with the FMI for the form. Checks received in the County Office will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office). Interested parties will be notified of the cancellation as provided in part 1807 of this chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6(b) of subpart A of part 1910 of this chapter.

* * * * *

16. Section 1944.33(f) is revised to read as follows:

§ 1944.33 Loan closing.

* * * * *

(f) *Direct payments.* Direct payment coupons for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least six monthly payments on time. The coupons may then be delivered to the borrower and payments mailed to the retail lockbox. The County Supervisor may retain the payment coupons for a longer period if such action is considered to be necessary to determine that the borrower is able to make timely payments as agreed. Payments made to the County Office will be processed as prescribed in FmHA Instruction 102.1 (available in any FmHA office). Cash payments, refunds, and extra payments made by borrowers will be handled in accordance with subpart B of part 1951 of this chapter.

* * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

17. Section 1944.175(e)(2) is revised to read as follows:

§ 1944.175 Actions subsequent to loan and/or grant approval.

* * * * *

(e) * * *

(2) If the loan or grant check is received in the District Office, the District Director will return the check as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorities

18. Section 1944.235(f)(1) is revised to read as follows:

§ 1944.235 Actions subsequent to loan approval.

* * * * *

(f) * * *

(1) If the loan check is received in the District Office, the District Director will return the check as prescribed in FmHA Instuction 102.1 (available in any FmHA office), except if the check was issued by the National Finance Center (NFC). If the check was issued by NFC, cancel under FmHA Instruction 2024–P (available in any FmHA office).

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

19. Section 1944.469(g)(1) is revised to read as follows:

§ 1944.469 Loan closing or grant settlement.

* * * * *

(g) * * *

(1) When all planned development has been completed, remaining funds may be used for any additional authorized purposes, as agreed upon by the recipient and FmHA. If no such agreement can be reached, the funds will be returned to FmHA as prescribed in FmHA Instruction 1951–B.

* * * * *

PART 1945—EMERGENCY

20. The authority citation for part 1945 continues to read as follows:

Authority: U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

21. Section 1945.126(b)(3) is revised to read as follows:

§ 1945.126 Cancellation of loan checks and advances.

* * * * *

(b) * * *

(3) Transmit to the Finance Office an original of Form FmHA 1940–10 and Form FmHA 440–57 reflecting the revised repayment schedule. The advance will be cancelled as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

22. Section 1945.128(b) is amended by changing in the second, fourth, and fifth sentences, the words "State Office terminals" to read "the field office terminal system."

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

23. Section 1945.185(a) is revised to read as follows:

§ 1945.185 Actions after loan approval.

* * * * *

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and obligation will be cancelled, the County Supervisory will notify the State Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned as prescribed in FmHA Instruction 102.1 (a copy of which is available in any FmHA office).

* * * * *

Dated August 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–22925 Filed 9–27–89; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AC22, 3150–AA–05

Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on August 11, 1989 (54 FR 33168), that amends the Commission's Rules of Practice to improve the hearing process with due regard for the rights of the parties. The action is necessary to correct an error in an amendatory instruction.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 1989, in the center column of page 33180, make the following correction:

§ 2.714 [Corrected]

1. The first sentence of amendatory instruction number 2 should read as follows:

"2. In § 2.714, paragraphs (e) through (i) are designated as paragraphs (f) through (j)."

* * * * *

Dated at Bethesda, Maryland, this 22nd day of September 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–22928 Filed 9–27–89; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 955

[No. FHFB 89–9]

Resolution Funding Corporation; Federal Home Loan Banks; Bank Assistance Authority

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.