

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