

Federal Mediation and Conciliation Service

§ 1440.1

(2) Notice in the FEDERAL REGISTER shall state all pertinent information related to a meeting and shall be published at least 7 days prior to a meeting.

(d) *Presence of agency officer or employee at meetings.* No committee shall meet without the presence of the officer referred to in paragraph (a)(1) of this section, or his delegate. At his option the officer or employee may elect to chair the meeting.

(e) *Minutes.* Detailed minutes shall be kept of all committee meetings and shall be certified by the chairman of the advisory committee as being accurate.

(f) *Adjournment.* The officer or employee referred to in paragraph (a)(1) of this section may adjourn a meeting at any time he determines it in the public interest to do so.

(g) *Public access to committee meetings.* All advisory committee meetings shall be open to the public, except when the Office of the General Counsel determines, in writing, and states his reasons therefor prior to FEDERAL REGISTER notice, that a meeting or any part thereof, is concerned with matters related to the exemptions provided in the Freedom of Information Act, 5 U.S.C. 552(b). In such instances, those portions of a committee meeting which come within the section 552(b) exemptions may be closed to the public.

(h) *Public participation in committee procedures.* Interested persons shall be permitted to file statements with advisory committees. Subject to reasonable committee procedures, interested persons may also be permitted to make oral statements on matters germane to the subjects under consideration at the committee meeting.

§ 1430.9 Agency management of advisory committees.

Consistent with the other provisions of this part, the Service's advisory committee management officer shall:

(a) Exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by the Service;

(b) Assemble and maintain the reports, records, and other papers of advisory committees, during their existence;

(c) Carry out, with the concurrence of the Office of the General Counsel, the provisions of the Freedom of Information Act, as those provisions apply to advisory committees;

(d) Have available for public inspection and copying all pertinent documents of advisory committees which are within the purview of the Freedom of Information Act; and

(e) When transcripts have been made of advisory committee meetings, provide for such transcripts to be made available to the public at actual cost of duplication, except where prohibited by contractual agreements entered into prior to January 5, 1973, the effective date of the Federal Advisory Committee Act.

PART 1440—ARBITRATION OF PESTICIDE DATA DISPUTES

Sec.

1440.1 Arbitration of pesticide data disputes.

APPENDIX TO PART 1440—FIFRA ARBITRATION RULES

AUTHORITY: Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), as amended, Pub. L. 95-396, 92 Stat. 819.

SOURCE: 45 FR 55395, Aug. 19, 1980, unless otherwise noted.]

§ 1440.1 Arbitration of pesticide data disputes.

(a) Persons requesting the appointment of an arbitrator under section 3(c)(1)(D)(ii) and section 3(c)(2)(B)(iii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, as amended), shall send such requests in writing to the appropriate American Arbitration Association Regional Office. Such requests must include the names, addresses, and telephone numbers of the parties to the dispute; issue(s) in dispute, the amount in dollars or any other remedy sought; sufficient facts to show that the statutory waiting period has passed, and the appropriate fee provided in the Fee Schedule.

(b) For the purpose of compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter "the Act"), the roster of arbitrators maintained by the Federal Mediation and Conciliation Service shall be

the roster of commercial arbitrators maintained by the American Arbitration Association. Under this Act, arbitrators will be appointed from that roster. The fees of the American Arbitration Association shall apply, and the procedure and rules of the Federal Mediation and Conciliation Service, applicable to arbitration proceedings under the Act, shall be the FIFRA arbitration rules of the American Arbitration Association, which are hereby made a part of this regulation.

APPENDIX TO PART 1440—FIFRA
ARBITRATION RULES

Section 1

These rules shall apply as published in the FEDERAL REGISTER unless modified by FMCS.

Sec. 2. Definitions

For the purpose of these Rules of Procedure the terms are defined as follows:

(1) AAA means the American Arbitration Association.

(2) *Act* or *FIFRA* means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*

(3) *EPA* means the United States Environmental Protection Agency.

(4) *Arbitrator(s)* means the person or persons appointed to the tribunal constituted by the parties for the settlement of their dispute under these Rules.

(5) *Claimant* means a person asserting a claim for compensation under these Rules or filing a claim concerning joint development of data.

(6) *Compulsory arbitration* means arbitration invoked under the mandatory provisions of section 3(c)(1)(d) or 3(c)(2)(B)(iii) of the Act.

(7) *Voluntary arbitration* means arbitration voluntarily agreed to by the parties to settle a dispute under section 3(c)(1)(d) or 3(c)(2)(B)(iii) of the Act.

(8) *Director* means Director, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, or any officer or employee of the EPA to whom authority has been or may hereafter be lawfully delegated to act in his stead.

(9) *Administrator* means the AAA, its Tribunal Administrators or such officers or committees as the AAA may direct.

(10) *Roster* means the Commercial Arbitration Roster of AAA.

(11) *FMCS* or *Service* means the Federal Mediation and Conciliation Service.

(12) *Party* means claimant or respondent.

(13) *Person* means any individual, partnership, association, corporation, or any orga-

nized group of persons, whether incorporated or not.

(14) *Respondent* means the person against whom a claim is made under section 3(c)(1)(D) or 3(c)(2)(B)(iii) of the Act.

Terms defined in the Act and not explicitly defined herein are used herein with the meanings given in the Act.

Sec. 3. Initiation of Arbitration

(a) *Under compulsory procedures of FIFRA.* Upon the request of a party qualified under FIFRA section 3(c)(1)(D) or 3(c)(2)(B)(iii) for the appointment of an arbitrator, the Service will appoint an arbitrator in accordance with 29 CFR 1440.1 (a) and these rules. Requests shall be submitted in writing to the appropriate AAA Regional Office and must include the names, addresses and telephone numbers of the parties to the dispute; issues in dispute; the amount in dollars or any other remedy sought; sufficient facts to show that the statutory waiting period has passed; and the appropriate fee as provided in the Fee Schedule.

AAA shall give notice of filing of a request for arbitration to the other party. If he so desires, the party upon whom the demand for arbitration is made may file an answering statement in duplicate with AAA within seven days after notice, in which event he shall simultaneously send a copy of his answer to the other party. If a monetary claim is made in the answer the appropriate fee provided in the Fee Schedule shall be forwarded with the answer. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

(b) *Under a Voluntary Submission.* Parties to any existing dispute may commence an arbitration under these Rules by filing at any AAA Regional Office two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate administrative fee as provided in the Fee Schedule.

Sec. 4. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If the locale is not designated within seven days from the date of filing the Demand or Submission the AAA shall have power to determine the locale. Its decision shall be final and binding. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven days after notice of the requests, the locale shall be the one requested.

Sec. 5. Qualification of Arbitrator

Any Arbitrator appointed pursuant to these rules shall be neutral, subject to disqualification for the reasons specified in section 11. If the agreement of the parties names an Arbitrator or specifies any other method of appointing an Arbitrator, or if the parties specifically agree in writing, such Arbitrator shall not be subject to disqualification for said reasons.

Sec. 6. Appointment From Panel

If the parties have not appointed an Arbitrator and have not provided any other method of appointment, the Arbitrator shall be appointed in the following manner. Immediately after the filing of the Request or Submission, the AAA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve, and the Service shall appoint the Arbitrator. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the FMCS shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

Sec. 7. Direct Appointment by Parties

If the agreement of the parties to a Submission names an Arbitrator or specifies a method of appointment of an Arbitrator, that designation or method shall be followed. The notice of appointment, with name and address of such Arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any such appointing party, the AAA shall submit a list of members from the Panel from which the party may, if he so desires, make the appointment.

If the agreement specifies a period of time within which an Arbitrator shall be appointed, and any party fails to make such appointment within that period, the AAA shall make the appointment.

Sec. 8. Appointment of Neutral Arbitrator by Party Appointed Arbitrators

If the parties have appointed their Arbitrators or if either or both of them have been appointed as provided in section 7, and have

authorized such Arbitrators to appoint a neutral Arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the FMCS shall appoint a neutral Arbitrator who shall act as Chairman.

If no period of time is specified for appointment of the neutral Arbitrator and the parties do not make the appointment within seven days from the date of the appointment of the last party-appointed Arbitrator, the FMCS shall appoint such neutral Arbitrator, who shall act as Chairman.

If the parties have agreed that their Arbitrators shall appoint the neutral Arbitrator from the Panel, the AAA shall furnish to the party-appointed Arbitrators, in the manner prescribed in section 6, a list selected from the Panel, and the appointment of the neutral Arbitrator shall be made as prescribed in such section.

Sec. 9. Number of Arbitrators

If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the AAA in its discretion, directs that a greater number of Arbitrators be appointed.

Sec. 10. Notice to Arbitrator of His or Her Appointment

Notice of the appointment of the neutral Arbitrator, whether appointed by the parties, by the AAA or FMCS shall be mailed to the Arbitrator, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed with AAA prior to the opening of the first hearing.

Sec. 11. Disclosure and Challenge Procedure

A person appointed as neutral Arbitrator shall disclose to the AAA any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from such Arbitrator or other source, the AAA shall communicate such information to the parties, and, if it deems it appropriate to do so, to the Arbitrator. Thereafter, the AAA shall make a determination whether the Arbitrator should be disqualified. The determination, however, may be appealed to FMCS. The decision of FMCS shall be conclusive.

Sec. 12. Vacancies

If any Arbitrator should resign, die, withdraw, refuse, be disqualified, or be unable to perform the duties of his office, AAA may, on proof satisfactory to it, declare the office vacant. Either party to a compulsory arbitration may request the FMCS to review a declaration of disqualification. Vacancies

shall be filled in accordance with the applicable provision of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

Sec. 13. Commencement of Proceeding

(a) Within 60 days from receipt by the parties of notice of the appointment of an arbitrator, the claimant shall file with AAA:

(1) If appropriate, a detailed statement as to the amount of compensation claimed, the method of computing said amount, and terms of payment, and a list of the test data deemed to be compensable, together with a detailed justification therefore.

(2) A certification as to: (i) Whether any court or tribunal has made determinations for payment by any other persons to claimant for use of the same test data and, if so, identification of the persons against whom the 3(c)(2)(B) determinations were issued and the application for registration for which the test data was used; and (ii) whether any other claims against any persons are pending in arbitration or in any court for use of the same test data and, if so, an identification of the persons against whom the claims are pending and the applications for registration on which the claims are being made.

(3) A detailed statement of the matter in dispute under 3(c)(2)(B).

(b) Within 60 days of service of the documents referred to in subsection (a) the respondent shall file a detailed statement of its position as to the amount of compensation due, method of computation, terms of payment, and list of data deemed to be compensable together with a detailed justification therefore or a detailed statement of the dispute under 3(c)(2)(5). To the extent any portion of the claimant's statement of its claim is not denied or challenged by respondent, it shall be deemed admitted.

(c) After respondent's statement is filed, the arbitrator may, upon request by a party, request the Director to supplement the file with additional information, including copies of relevant test data, information contained in a relevant registration file, a statement as to data requirements for registration, or any other information which the arbitrator deems to be relevant. Upon request by a party or other interested person, the arbitrator shall order protective measures to safeguard and restrict access to confidential business information.

Sec. 14. Filing and Service

(a) All documents or papers required or authorized to be filed, shall be filed with the AAA for transmittal to the arbitrator, except as otherwise herein provided, and shall bear the caption of the case and the docket number. At the same time that a party files documents or papers with the AAA, the party shall serve upon all other parties cop-

ies thereof, with a certificate of service on or attached to each document or paper, including those filed with the arbitrator. If a party is represented by counsel or other representative, service shall be made on such representative. Service may be made personally or by regular mail, and if made by mail shall be deemed complete on mailing. If filing is accomplished by mail addressed to the AAA, filing shall be deemed timely if the papers are postmarked on the due date.

(b) All orders, decisions, or other documents made or signed by the arbitrator shall be served immediately upon all parties.

Sec. 15. Time

(a) In computing any period of time prescribed or allowed by these rules, except as otherwise provided, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays and legal holidays shall be included in computing the time allowed for the filing of any document or paper, except that when such time expires on a Saturday, Sunday, or legal holiday, such period shall be extended to include the next following business day.

(b) When by these rules or by order of the arbitrators, an act is required or allowed to be done at or within a specified time, the arbitrator or AAA for cause shown may at any time in their discretion (1) with or without motion or notice, order the period enlarged if request therefore, which may be made *ex parte*, is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) on motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect or other good cause.

Sec. 16. Communication with Arbitrator and Serving of Notices

(a) There shall be no communication between the parties and a neutral arbitrator other than at oral hearings. Any other oral or written communications from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service, within or without the State wherein the arbitration is to be held (whether such party be within or without the United States

of America): *Provided*, That reasonable opportunity to be heard with regard thereto has been granted such party.

Sec. 17. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

Sec. 18. Appearances

(a) Parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(b) Any party to the proceeding who, after being duly notified and without good cause being shown fails to appear at a prehearing conference or fails to respond to correspondence, shall be deemed to have waived his rights with respect thereto and shall be subject to such orders or determinations with respect thereto as the arbitrator shall make. The failure of a party to appear at a hearing shall constitute a waiver of the right to present evidence at such hearing. Where either party fails to appear at a hearing, the arbitrator shall require the presentation by the present party of such evidence as he deems necessary to prepare a decision in conformity with the requirements of the act.

(c) Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

Sec. 19. Consolidation and Severance

(a) The AAA may with agreement of all parties consolidate any matters at issue in two or more proceedings docketed under these Rules of Procedure where there exist common parties, common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation may also be effected where separate claims for use of the same test data are made against different respondents. The arbitrator who presides over the consolidated proceeding shall be chosen in accordance with section 3, *supra*.

(b) The arbitrator may, by motion or *sua sponte*, for good cause shown order any proceeding severed with respect to some or all parties or issues.

Sec. 20. Protection of Confidential Information

(a) The arbitrator shall make such orders as required to protect the secrecy of confidential information or documents such as review *in camera*.

(b) The arbitrator shall impose a sanction against any party who violates an order issued under this section. Such sanction may include an award against the offending party.

Sec. 21. Scheduling of Hearing

(a) After consideration of the convenience of the parties, the AAA shall serve upon the parties a notice of hearing setting a time and place for such hearing.

(b) Except for good cause shown, no request for postponement of a hearing will be granted. Such request must be received in writing at least a day in advance of the time set for the hearing. In case of postponement, the hearing shall be rescheduled for a date as early as circumstances will permit.

Sec. 22. Optional Accelerated Procedure

(a) In claims involving \$25,000 or less, the parties may elect, prior to commencement of hearing, to have the claim processed under an expedited procedure. If no specific amount of claim is stated, a case will be considered to fall within this rule if the amount which the claimant represents in writing that it could recover as a result of any arbitrator's decision favorable to it does not exceed \$25,000. Upon such election, a case shall then be processed under this rule unless the respondent objects and shows good cause why the substantive nature of the dispute requires processing under the regular procedures. In cases proceeding under this rule, the parties have waived discovery and briefs.

(b) The arbitrator shall schedule the dispute for hearing within thirty (30) days of service of notice to the parties that the dispute will be governed by this accelerated procedure, unless either party requests that the case be submitted without hearing under section 19.

(c) Written decision by the arbitrators in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The arbitrator shall render such decisions promptly, but in no event later than thirty days after the dispute is ready for decision.

Sec. 23. Discovery

(a) Either party may move for permission to serve written interrogatories and requests for production of documents upon the opposing party. The arbitrator shall grant such motion to the extent that such interrogatories and requests are designed to produce relevant evidence and only upon such terms as the arbitrator in his or her discretion considers to be consistent with the objective of

securing a just and inexpensive determination of the dispute without unnecessary delay.

(b) Upon motion by either party, the arbitrator may order a deposition upon a showing of good cause and a finding that the deposition is designed to secure relevant and probative evidence which (1) cannot be obtained by alternative means, or (2) may otherwise not be preserved for presentation at hearing.

(c) If a party fails to comply with an order issued under this section, the arbitrator shall draw inferences adverse to that party in connection with the facts sought to be discovered.

(d) At least thirty days prior to the hearing, each party shall make available to each other party the names of the expert and other witnesses it intends to call, together with a detailed summary of their expected testimony, and copies of all documents and exhibits which the party intends to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and narrative summaries of expected testimony amended only upon motion by a party for good cause shown.

Sec. 24. Prehearing Conference

(a) When it appears that such procedure will expedite the proceeding, the arbitrator at any time prior to the commencement of the hearing may request the parties and their counsel or other representative to appear at a conference before him or her to consider:

(i) The possibility of settlement of the case;

(ii) The simplification of issues and stipulation of facts not in dispute;

(iii) The necessity or desirability of amending or supplementing documents in the record;

(iv) The possibility of obtaining admissions or stipulations of fact and of documents which will avoid unnecessary proof;

(v) The limitation of the number of expert or other witnesses;

(vi) The setting of a time and place for the hearing, giving consideration to the convenience of all parties and to the public interest; and

(vii) Any other matters as may expedite the disposition of the proceeding.

(b) No transcript of any prehearing conference shall be made unless ordered upon motion of a party or *sua sponte* by the arbitrator. In the absence of a transcript, the arbitrator shall prepare and file a report of the action taken at such conference. Such report shall incorporate any written stipulations or agreements made by the parties, all rulings upon matters considered at such conference, and appropriate orders containing directions to the parties. Such report shall, as appropriate, direct the subsequent course of the

proceeding, unless modified by the arbitrators on motion or *sua sponte*.

Sec. 25. Evidence

(a) The arbitrator shall admit all evidence which is relevant, competent, material, not privileged, and not unduly repetitious. The weight to be given evidence shall be determined by its reliability and probative value.

(b) Except as otherwise provided in these Rules of Procedure or by the arbitrator, witnesses shall be examined orally, under oath or affirmation. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) Except where the arbitrator finds it impracticable, an original and two copies of each exhibit shall be filed at the time the exhibit is offered into evidence and a copy shall be furnished to each party. A true copy of an exhibit may be substituted for the original.

(d) Official notice may be taken of any matter judicially noticed in the Federal courts. The parties shall be given adequate opportunity to show that such facts are erroneously noticed.

Sec. 26. Order of Proceedings

(a) Hearing shall be opened by the filing of the oath of the arbitrator, and by the recording of the place, time and date of the hearing, the presence of the arbitrator, parties, and counsel.

(b) The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. The claimant shall then present his claim and proofs and his witnesses. The respondent shall then present his response and proofs and his witnesses. The arbitrator may in his discretion vary this procedure but he or she shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Sec. 28. Burden of Presentation; Burden of Persuasion

The claimant shall have the burden of going forward to establish his entitlement to an amount of compensation that respondent should pay for use of the test data relied upon. Each matter of controversy shall be decided by the arbitrator upon a preponderance of the evidence.

Sec. 29. Stenographic Record

Any party may request a stenographic record by making arrangements for same through the AAA. If such transcript is agreed by the parties to be, or in appropriate cases determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator, and to the other party for inspection, at a time and place determined by the arbitrator. The

total cost of such a record shall be shared equally by those parties that order copies.

Sec. 30. Filing of Briefs, Proposed Findings of Fact and Conclusions of Law, and Proposed Order

Unless otherwise ordered by the arbitrator, each party may within thirty days after delivery of the transcript of a hearing to the arbitrator as provided in section 29, file with AAA and serve upon all other parties a brief together with references to relevant exhibits and the record. Within Fifteen days thereafter each party may file a reply brief concerning matters contained in the opposing brief. Oral argument may be had at the discretion of the arbitrator.

Sec. 31. Closing of Hearings

The Arbitrator shall inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearings closed and the time and date shall be recorded. If briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for filing with the AAA. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

Sec. 32. Arbitrators' Decision

(a) The arbitrator shall as soon as practicable after the filing of briefs evaluate the record and prepare and file a decision. The decision shall contain findings of fact and conclusions regarding all issues in dispute as well as reasons therefore.

(b) The decision shall contain a determination as to the compensation, if any respondent must pay to claimant, or other remedy as appropriate, the method of payment, and may fix such other terms and conditions as may be reasonable under the circumstances, including the furnishing of a bond or other guarantee of payment by the respondent to the claimant.

Sec. 33. Reopening of Hearings

(a) The hearings may be reopened by the arbitrator on his or her own motion, or upon application of a party at any time before the award is made. If the reopening of the hearings would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed, the arbitrator may reopen the hearings, and the arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

(b) A motion to reopen a hearing to take further evidence, to rehear or reargue any matter related to such proceeding, or to reconsider the arbitrator's decision, must be made by motion in writing to the arbitrator in accordance with these Rules of Procedure. Every such motion must state the specific grounds upon which relief is sought.

(c) A motion to reopen a hearing for the purpose of taking further evidence may be filed at any time prior to the issuance of the arbitrator's decision. Such motion shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not cumulative, and shall set forth a good reason why such evidence was not adduced at a hearing.

(d) Motions to modify the arbitrator's decision shall be filed within 30 days after the date of service of the decision. Such motion must state specifically one of the following grounds for modification:

1. There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or
2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

Sec. 34. Award Upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

Sec. 35. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

Sec. 36. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party, at his or her expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

Sec. 37. Application to Court

(a) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor FMCS is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any Federal or State Court having jurisdiction thereof.

Sec. 38. Administrative Fees

As a nonprofit organization, the AAA shall prescribe an administrative fee schedule and a refund schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

The administrative fees shall be advanced by the initiating party or parties, subject to final appointment by the arbitrator in his award.

When a matter is withdrawn or settled, the refund shall be made in accordance with the refund schedule.

The AAA, in the event of extreme hardship on the part of any party, may defer or reduce the administrative fee.

Sec. 39. Fee When Oral Hearings Are Waived

Where all oral hearings are waived the Administrative Fee Schedule shall apply.

Sec. 40. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required traveling and other expenses of the arbitrator and of AAA representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the arbitrator, shall be borne equally by the parties.

Sec. 41. Arbitrator's Fee

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly by him or her with the parties. Where parties cannot agree, AAA shall fix reasonable compensation.

Sec. 42. Deposits

The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee if any, and shall render an accounting to the parties and return any unexpended balance.

Sec. 43. Interpretation and Application of Rules

The arbitrator shall interpret and apply these Rules insofar as they relate to his or her powers and duties. When there is more

than one arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for decision. All other Rules shall be interpreted and applied by the AAA. Either party may request that FMCS review any decision of AAA on interpretation or application of these rules.

ADMINISTRATIVE FEE SCHEDULE

The administrative fee of the AAA is based upon the amount of each claim and counterclaim as disclosed when the claim and counterclaim are filed, and is due and payable at the time of filing.

Amount of claim	Fee
Up to \$25,000	\$500.
\$25,000 to \$100,000	\$600, plus 1% of excess over \$25,000.
\$100,000 to \$200,000	\$1350, plus ½% of excess over \$100,000.
\$200,000 to \$5,000,000	\$1850, plus ¼% of excess over \$200,000.

Where the claim or counter claim exceeds \$5 million, an appropriate fee will be determined by the AAA.

When no amount can be stated at the time of filing, the administrative fee is \$500, subject to adjustment in accordance with the above schedule as soon as an amount can be disclosed.

If there are more than two parties represented in the arbitration, an additional 10% of the initiating fee will be due for each additional represented party.

Other Service Charges—\$50.00 payable by a party causing an adjournment of any scheduled hearing;

\$100 payable by a party causing a second or additional adjournment of any scheduled hearing.

\$25.00 payable by each party for each hearing after the first hearing which is either clerked by the AAA or held in a hearing room provided by the AAA.

Refund Schedule—If the AAA is notified that a case has been settled or withdrawn before a list of Arbitrators has been sent out, all the fees in excess of \$500 will be refunded.

If the AAA is notified that a case has been settled or withdrawn thereafter but before the due date for the return of the first list, two-thirds of the fee in excess of \$500.00 will be refunded.

If the AAA is notified that a case is settled or withdrawn thereafter but at least 48 hours before the date and time set for the first hearing, one-half of the fee in excess of \$500 will be refunded.

Federal Mediation and Conciliation Service

§ 1450.1

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PART 1450—COLLECTIONS OF CLAIMS OWED THE UNITED STATES

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AUTHORITY: 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 4 CFR parts 101-105; 5 CFR part 550.

SOURCE: 51 FR 24817, July 9, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 1450.1 Definitions.

(a) The term *agency* means the Federal Mediation and Conciliation Service (FMCS) or any other agency of the U.S. Government as stated at § 1450.20.

(b) The term *agency head* means the Director of the Federal Mediation and Conciliation Service.

(c) The terms *appropriate agency official* or *designee* mean the Director of the Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS.