

From: [Wyatt Gibler](#)
To: [Register](#)
Subject: [EXTERNAL] Requests for Arbitration Panel, RIN 3076-AA31
Date: Wednesday, September 23, 2026 1:56:13 PM
Attachments: [Arbitration Panels Public Comment.pdf](#)

Dear FMCS Office of General Counsel:

Please accept my attached public comment on the interim final rule, "Requests for Arbitration Panels," RIN 3076-AA31. I submit it in my capacity as Vice President of AFGE Local 2280.

Please confirm receipt.

Respectfully,

Wyatt Gibler
Vice President, AFGE Local 2280



CAUTION: **This email originated EXTERNALLY - Please think before clicking on any links, opening attachments or replying.**

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 C.F.R. Part 1404 | RIN 3076-AA31

COMMENT ON REQUESTS FOR ARBITRATION PANELS

Wyatt Gibler, Vice President, AFGE Local 2280

September 23, 2026

I Requested Action

I submit this comment on the Federal Mediation and Conciliation Service (FMCS) interim final rule, “Requests for Arbitration Panels,” 91 Fed. Reg. 55,473 (Aug. 28, 2026), RIN 3076-AA31. I serve as Vice President of the American Federation of Government Employees (AFGE) Local 2280. Our members work at the Oscar G. Johnson VA Medical Center and associated facilities in Michigan and Wisconsin. I ask FMCS to revise the rule after considering these comments and to administer it so that an ordinary, properly authorized unilateral request for a standard arbitration panel is processed promptly. A party’s disagreement with the grievance or its unwillingness to participate must not, by itself, keep the other party from selecting a neutral.

The revised 29 C.F.R. § 1404.9(b)(2) still expressly permits a unilateral request for a standard panel unless the regulation, applicable law, or the parties’ agreement requires joint authorization. That is important. The danger lies in the interaction between that promise and § 1404.9(b)(3), which permits a threshold inquiry followed by refusal, abeyance, or other administrative action. Sections 1404.10 through 1404.12 extend the threshold framework into arbitrability, panel nominations, additional panels, and appointments. If a general objection by the responding agency routinely triggers an indefinite hold, the preserved unilateral-request language will have little practical effect. The rule should identify a narrow, demonstrable legal impediment to providing FMCS’s administrative service and provide a fast, written decision on that question.

The federal-sector statute calls for negotiated grievance procedures that are fair and simple, provide expeditious processing, and make unresolved grievances subject to binding arbitration that either the union or the agency may invoke. 5 U.S.C. § 7121(b)(1). FMCS need not decide whether our grievances succeed, compel the Department of Veterans Affairs (VA) to appear, or override an applicable court order. Supplying a panel, when lawful, allows the tribunal chosen

by the parties to address disputed facts, defenses, contractual questions, and arbitrability. Without a neutral, the grievance steps can end with the responding party's own denial as the only operative result.

I ask FMCS to preserve ordinary unilateral panel service; require the objecting party to identify the specific law, binding order, or limitation on FMCS authority that actually governs the requested service; promptly hear both parties; give a reasoned written decision; place enforceable limits on any hold; and publish data showing how the rule is applied. Those protections would respect genuine legal restrictions while giving practical meaning to the arbitration process Congress and the parties established.

II Who Is Affected and What This Comment Establishes

I represent bargaining-unit employees who serve Veterans in a rural healthcare system. Their work includes direct patient care, environmental services, food service, administration, and other essential support. Our bargaining unit includes more than 600 employees. That figure describes the size of the unit; it does not mean that every member was personally affected by every grievance discussed below. I personally track approximately eleven matters that have been invoked to arbitration. I do not claim that FMCS has declined to issue a panel in all eleven, or that the August 2026 rule caused delays that began before it took effect. The number shows the volume of unresolved issues for which access to a workable neutral-selection process matters locally.

Some examples come from Local 2280's Step 3 grievances. A grievance states the Union's allegations and requested remedies; it is not an adjudicated finding. This public comment identifies no individual grievant and does not attach employees' records. It describes the subjects and practical stakes to help FMCS assess the effect of its processing policy. The examples are not requests that FMCS award pay, restore leave, overturn discipline, or decide whether a particular grievance is arbitrable. Those decisions belong in the appropriate adjudicative process.

Our geographic setting adds a concrete cost to a blocked or delayed case. Employees and witnesses work across facilities, shifts, and a wide service area. Changes in assignments, retirement, turnover, and the passage of another severe winter can make a grievance harder to prove or resolve. A panel request is often the point at which an employee learns whether a

dispute that survived every contractual step will receive a hearing. Uncertainty at that point is itself consequential: the employee must keep working under the disputed decision while the Union, agency, and potential witnesses preserve a record with no firm end date.

III The Governing Statutes and FMCS's Actual Role

Section 7121(a) of title 5 requires a negotiated grievance procedure in covered federal collective bargaining agreements and generally makes that procedure the exclusive administrative avenue for grievances within its scope, subject to statutory exceptions and elections of remedy. Section 7121(b)(1)(C)(iii) requires binding arbitration of an unresolved grievance that either the exclusive representative or the agency may invoke. The provision does not require the respondent to agree that the grievance has merit before invocation. Under 5 U.S.C. § 7122, a party may seek review of an arbitral award through statutory exceptions on specified grounds, including inconsistency with law, rule, or regulation. Those provisions place the neutral hearing and award in a defined system of review.

FMCS also cites 5 U.S.C. § 572(a) and (c), which address the voluntary use of alternative dispute resolution and consent, and its service authority under 29 U.S.C. § 173(f). Those authorities deserve careful treatment alongside the specific federal-sector arbitration directive. Congress expressly allowed either party to invoke binding arbitration after a grievance is not satisfactorily settled. When the parties have negotiated an arbitration procedure under that statute, FMCS should explain why a renewed, case-specific expression of consent by the responding party would be necessary for the limited act of issuing a standard panel. A reading that gives the respondent an automatic veto would make the statute's unilateral invocation language ineffective in precisely the contested cases for which arbitration exists.

FMCS is right that it cannot ignore an applicable legal bar or a court order. The revised regulation also states that a panel-processing decision does not decide the validity of a collective bargaining agreement, the merits of a grievance, arbitrability, or the parties' underlying rights. 29 C.F.R. § 1404.9(b)(4). Section 1404.10 likewise says the Office of Arbitration does not decide the merits of a claim that a dispute is not subject to arbitration. FMCS should make that restraint operational: an objection that turns on whether a grievance is timely, whether a contract covers it, whether an exception applies, or whose account of the facts is correct normally belongs to a neutral or another tribunal with jurisdiction. It is not, without more, a finding that FMCS itself may not send a list of names.

Issuing a panel does not compel a party to attend a hearing, pay an award, surrender a jurisdictional defense, or accept a position about the continuing force of an agreement. The arbitrator and any reviewing authority address those questions through their own procedures. Conversely, withholding a panel may have an immediate practical effect even if FMCS formally says it has not decided rights: the parties cannot use the normal ranking or selection process to obtain that arbitrator. The final rule should account for the effect of its administrative choice as well as its formal label.

IV The Threshold Screen Must Remain Narrow and Reviewable

The text of § 1404.9(b)(3) permits FMCS to request the agreement, a statutory provision, a regulation, an order, or other information before deciding whether providing service would be inconsistent with law, an order, or FMCS authority. The phrase “other information” and the option to take “another administratively appropriate action” leave broad discretion. The regulation provides no specific objection deadline, no default time for deciding an inquiry, no maximum time for abeyance, and no stated requirement to give a written explanation to both parties. A local union cannot effectively contest or cure an objection if it is not told what controlling authority FMCS believes prevents service.

The screen should start with a threshold question about FMCS’s own act: what specific, presently applicable legal provision or binding order would make issuance of the requested panel unlawful? It should not start with whether an agency opposes arbitration, asserts an unresolved contract defense, or prefers a different forum. The burden of identifying the asserted bar should rest initially with the party seeking to block a service the regulation otherwise permits. FMCS should invite a short response from the requester, state whether the objection concerns an ordinary seven-name panel or a special service requiring joint authorization, and reach a written decision confined to the impediment identified.

FMCS should not treat an unsupported objection as a reason for an indefinite pause. An agency may have a serious position concerning an executive order, the duration of a negotiated agreement, an injunction, or the scope of chapter 71. The Union may have an equally serious response. The existence of litigation or opposing legal arguments does not itself tell FMCS which conduct a particular order prohibits. A genuinely applicable prohibition should be honored. A contested assertion that a prohibition exists should be checked against the actual operative text, parties, scope, and date of the cited authority. When that examination does not

establish that issuing a panel is unlawful, FMCS should issue the panel and preserve the parties' defenses for the proper forum.

These distinctions also matter after FMCS sends a list. Section 1404.12(b) retains a process under which one party's ranked preference is honored if the other does not respond within the specified period, but makes the process subject to § 1404.9(b). That nonparticipation safeguard prevents one party from stopping selection simply by ignoring the ranking request. If the threshold exception can be invoked at any stage through a bare refusal, the safeguard becomes unreliable. FMCS should clarify that a party's failure to rank or participate is not itself evidence that an appointment would violate law.

V Local Example: Environmental Differential Pay

On January 8, 2024, Local 2280 filed a Step 3 grievance concerning environmental differential pay for Environmental Management Service employees. The grievance alleges exposure to specified hazardous conditions during assigned work and alleges that qualifying work was not paid under the governing pay rules and the negotiated agreement. It refers to 5 C.F.R. § 532.511 and Appendix A to subpart E of part 532 and to Article 29 of the parties' agreement. The Union requests pay relief and related corrective action. Whether the regulatory criteria are met in particular assignments and periods remains a merits question; this comment does not assume the answer.

This matter has progressed to a hearing and post-hearing briefing. It still illustrates the cost of time: a grievance initiated more than two years ago awaits final resolution, and the work, records, and employees involved do not stand still. The August 2026 rule did not create the case's earlier delay, and I do not present it as proof of a denied FMCS panel in this particular matter. Rather, it shows what additional screening and open-ended abeyance can compound in other cases. A new delay before even selecting a neutral would be added to the preparation, hearing, briefing, and award periods that can follow selection.

For employees, disputed compensation is money that may have been due when the work was done, not merely an abstract number on a future award. For the VA, a prompt ruling can confirm the present practice or identify a problem before potential liability grows across further pay periods. For both sides, delays increase the difficulty of reconstructing assignments, exposures, and payroll records. A neutral decision can provide a stable rule for future work in a

hospital environment. Neither the Union's allegations nor the Agency's defenses become more accurate because the appointment process takes longer.

The grievance is also a reminder that the merits may be difficult. The asserted differential is not automatically payable because a job is demanding or occurs in a medical facility; the applicable regulatory criteria must be evaluated against the actual duties and exposures. That is exactly the sort of disputed record a neutral can hear. FMCS can facilitate selection without endorsing the Union's claim. Denying a service on the theory that the grievance might ultimately fail confuses the panel function with a merits decision the rule says FMCS does not make.

VI Local Example: Weather and Safety Leave

Local 2280 filed a Step 3 grievance on April 24, 2026, concerning the administration of weather and safety leave during the March 16–17, 2026 winter storm. The Union alleges inconsistent treatment by duty location and reporting status, changes or confusion in agency guidance, and an incomplete response to a related information request. The grievance describes severe conditions, including heavy snowfall, strong winds, blocked roads, employees unable to travel safely, and the VA's decision to offer sleeping space and meals to employees who remained on site. These are allegations and descriptions in the grievance record, not findings made by an arbitrator.

According to the grievance, some employees at community-based outpatient clinics received weather and safety leave in connection with closures, while certain employees assigned to the main campus who could not safely travel were required to use personal leave. The circumstances of individual employees, including whether they were required to report, whether work was available by telework, and how instructions changed, will matter. The Union seeks restoration of leave allegedly charged in error, make-whole relief, clarity about the governing standard, and requested information. It does not follow from the bargaining unit's size that all of its more than 600 members lost leave. The importance of this grievance lies in both the number of potentially affected employees and the rule management and staff will use at the next storm.

When a weather and safety leave dispute remains unsettled, an employee may have to choose between hazardous travel and using accrued leave while waiting for an answer that

comes after the season has passed. Some may make different choices in the next storm because they cannot tell how leave decisions will be applied. Supervisors face the same unresolved operational question: which positions must report, which sites will close, how telework affects leave, and what facts justify different outcomes. A timely neutral interpretation could address contractual issues and an evidentiary record; a panel hold cannot.

This has a direct public dimension. A hospital must plan safe staffing during severe weather and continue serving Veterans. Clear, consistently applied decisions support those aims. Arbitration does not set clinical staffing policy for FMCS. It gives the parties a mechanism to resolve contested interpretations that affect staffing expectations and employee confidence before another emergency. Where a legal rule or contract does not support the Union's allegations, an award can say so; where it does, management can correct the practice. Both outcomes are more useful than an indefinite administrative limbo.

VII Discipline, Work Schedules, and Representation

Other matters I track concern discipline, mandatory overtime, performance decisions, official time, and representation. They arise under different provisions and facts, so no single grievance establishes the merits of another. Their common feature is that a management decision takes effect while the contractual challenge is pending. A reprimand may remain in a file; a suspension may already have been served; a schedule may be imposed; and a representative may spend additional time seeking records and preserving evidence. A later successful award may provide relief, but delay can leave employee uncertainty and lost time that no remedy fully erases.

Discipline provides a particularly clear example. A disputed action can influence how subsequent conduct is evaluated in a progressive-discipline system before a neutral has determined whether the initial action should stand. Witness recollection and access to supervisors or coworkers may deteriorate. The agency also deserves prompt finality when its decision is sound. Letting either party raise objections at the hearing preserves that opportunity. Letting the responding party's opposition prevent any panel from issuing can leave both sides under an unresolved cloud without producing a legally authoritative answer.

Working-time and official-time disputes have their own costs. When overtime practices are contested, employees and supervisors need clarity about who may be assigned, what notice and

compensation apply, and how future coverage will be managed. When official time or representational access is disputed, the delay can impede the Union's ability to investigate the next grievance and meet its deadlines. This effect can spread beyond the individual dispute: a representative who cannot obtain information or time to assist employees may struggle to protect the very process the parties negotiated. FMCS need not decide any of these issues to recognize why access to a neutral-selection mechanism matters.

The range of subjects is relevant to the rule's impact assessment. A threshold policy written in general terms does not affect only a single contested executive-order case. If broadly applied, it can slow ordinary grievances about wages, leave, safety, discipline, and representation. FMCS should assess that full set of foreseeable uses when measuring costs and considering procedural safeguards.

VIII The Cost of Delay Falls on Employees, the Agency, and Veterans

An employee may spend months following a grievance procedure, taking meetings, producing records, and waiting through denials before arbitration is invoked. At that stage, an unexplained or open-ended hold communicates that following the negotiated steps may never yield an independent answer. The costs differ across cases: withheld compensation can affect household finances; lost annual leave cannot always be restored in the season when it was needed; an unresolved discipline case can affect a career; and a disputed safety practice can recur during the next emergency. Those consequences are not identical, but each grows harder to address with time.

The agency incurs costs too. Managers, labor-relations staff, counsel, and witnesses revisit the same issue rather than apply an award that clarifies the parties' obligations. Records must be maintained and defenses prepared over a longer period. Potential monetary exposure may continue if a recurring practice is later found to violate an agreement or regulation. If management's position is correct, delay also postpones the ruling that could confirm it. An administrative rule that can suspend panel issuance should count these real downstream costs, even if it imposes no new recurring form or fee.

For the public, the effect is indirect but serious. Healthcare employees who serve Veterans should be able to work under clear rules concerning hazardous duties, emergency weather, scheduling, and fair discipline. Disputes do not disappear when the route to a neutral is

obstructed. They remain in workplace relationships, staffing decisions, and the time spent repeatedly arguing the same interpretation. Prompt adjudication can settle an issue or at least define it for lawful review. The public need not take a side in a particular grievance to have an interest in a functioning method of resolution.

The risk is especially acute where the initiating party has no control over whether the respondent consents to a fresh panel request. Arbitration exists for disputes in which both parties may sincerely and strongly disagree. If a denial followed by withholding consent ends the case in practice, the party whose conduct is challenged controls access to review. I am not asserting that every agency objection is strategic or in bad faith. The rule must work even when one party has a strong incentive to resist a hearing, and it must give good-faith legal objections a timely and transparent process.

IX Executive Orders, Court Orders, and Real Alternatives

FMCS explains that recent executive orders and related litigation can present difficult threshold questions. I agree that a binding order applicable to a request cannot be ignored. The answer, however, must be tied to the specific request and the operative legal text. An exclusion from chapter 71, a dispute about termination of a negotiated agreement, an injunction preserving an agreement, and a stay concerning particular relief are distinct propositions. One cannot assume from the mere existence of litigation that every panel request is forbidden or that every asserted agreement provision has been definitively enforced. FMCS should state which controlling authority applies and why providing an administrative panel would conflict with it.

The VA litigation illustrates the need for that care. In its May 16, 2026 ruling on a stay pending appeal, the First Circuit distinguished reinstatement of the VA agreement as a binding agreement from a separate court order requiring compliance with individual grievance and arbitration terms. The court partially stayed the latter relief while allowing reinstatement relief to remain in effect pending appeal; it did not finally adjudicate every grievance or decide whether FMCS must issue a particular panel. *AFGE Local 2305 v. Department of Veterans Affairs*, No. 26-1321 (1st Cir. May 16, 2026). This comment does not ask FMCS to decide that litigation, compel arbitration of every grievance, or disregard a stay. FMCS should identify the actual scope of any cited order and explain whether it prohibits FMCS's specific administrative act, leaving underlying rights to the court and proper adjudicative forum.

FMCS suggests that parties may seek relief at the Federal Labor Relations Authority (FLRA), in court, or before another provider. Those possibilities require a case-specific analysis. A statutory election of remedies may limit moving a grievance to another administrative forum. An unfair-labor-practice claim about refusal to honor a bargaining obligation addresses a different wrong from the original dispute over weather leave, pay, or discipline. Court proceedings require jurisdiction, time, and resources; litigation over the meaning of executive orders and injunctions can itself be prolonged. The availability of FLRA processes where chapter 71 coverage is contested is one of the disputed questions, not an answer that can be assumed for every employee.

Another panel provider also may not be a practical substitute under a negotiated selection procedure that specifies FMCS or assumes its roster, ranking, fees, and geographic process. A different provider may require agreement, revised procedures, or additional expense. FMCS need not guarantee that every remedy is convenient. It should avoid treating nominal alternatives as evidence that an indefinite panel hold imposes no real burden. In the final rule's explanation, FMCS should identify the factual and legal circumstances under which each proposed alternative actually supplies an equivalent path to a neutral.

FMCS's April 22, 2026 guidance makes the practical concern concrete. For agencies covered by the cited executive orders, it instructed FMCS staff to confirm the agency's current consent before issuing a panel, to place the request on hold if consent was withheld, and not to infer consent from a collective bargaining agreement. That document preceded the August interim rule and is not itself the regulatory text under comment. It shows, however, how a broad consent theory can operate in practice even while a later regulation says unilateral standard-panel requests are permitted. FMCS should explain whether, and in what circumstances, that guidance remains operative after the rule's adoption. If a federal agency need only state that it does not presently consent, FMCS should address how such a result can coexist with the rule's unilateral-request language and 5 U.S.C. § 7121(b)(1)(C)(iii).

The guidance also states that a request held for lack of consent retains its original filing date and suggests that other providers or forums remain available. Preserving a filing date is useful, and parties should not have to resubmit a timely request because FMCS kept it pending. But a preserved date does not appoint an arbitrator, prevent witnesses from leaving, determine whether leave should be restored, or end the effect of contested discipline. Nor can a local

union necessarily compel the agency to agree to a different provider when the source of the impasse is the agency's asserted inability to participate. FMCS's final explanation should respond to those precise costs instead of equating continued intake of requests with continued access to resolution.

X The Rule's Cost and Reliance Analysis Needs the Local Record

The preamble says FMCS expects little cost because it changes internal processing rules and adds no recurring reporting duty. It acknowledges that parties have relied on prior panel practice but says previously submitted requests and panels are not retroactively invalidated. Those points answer only part of the question. A prior request can keep its original date on the books and still languish without a panel. That date does not restore charged leave, remove a disputed reprimand, or resolve which rule will govern the next storm. New requests face the same need for a usable procedure. The practical effect depends on how many requests receive a threshold inquiry, how long they remain open, and how many are ultimately served, declined, or abandoned.

Collective bargaining parties have built arbitration clauses, timelines, panel selection, and expectations around FMCS's established service. A local union may have no ready way to rewrite the procedure unilaterally when FMCS changes its processing practice. Reliance therefore includes more than an expectation that a particular request would be honored: it includes the cost of negotiating and administering a process in which either party could move an unresolved grievance toward a neutral. The final rule should examine this dependence with concrete data and address how parties can use the procedure while an authority objection is considered.

The comment period is especially important because the rule took effect immediately. FMCS republished it on August 28, 2026 after a technical error and extended comments through September 28. It invoked good cause to bypass prior notice and comment and to make the change effective on publication. FMCS should now use the comments it requested to test its assumptions about delay and alternatives, disclose any available data on holds, and revise the final rule as warranted. If it cannot yet measure practical effects, it should provide for prompt review of actual implementation instead of assuming a negligible impact from the absence of a new form.

XI Specific Changes Requested

First, state expressly that an ordinary seven-name panel request authorized by a statute or agreement should proceed when made by either party unless FMCS identifies a specific, presently applicable legal prohibition on providing that service. Clarify that lack of contemporaneous consent by the responding party is not, standing alone, such a prohibition when a federal-sector grievance has been invoked under an applicable negotiated procedure. Preserve the different joint-authorization rule for direct appointments, altered panel size, special qualifications, and other special services when the regulation or agreement actually requires it.

Second, confine the threshold inquiry to FMCS's authority to provide the requested administrative act. Require an objecting party to cite the statute, regulation, binding order, or other source that allegedly prohibits service, explain how it applies to this request, and supply the pertinent text. FMCS may request the specific agreement provision or order needed for that determination. Ordinary factual, contractual, timeliness, and merits defenses should not be decided through this screen. An objection should not automatically suspend a request merely because it uses terms such as "jurisdiction," "consent," or "arbitrability."

Third, establish short default time limits. For example, FMCS could ask for a documented objection within five business days of notice and give the requesting party five business days to respond; it could resolve the threshold question within ten additional business days absent stated good cause. The final rule need not use these exact numbers, but it should specify predictable periods and require notice before an extension. Requests should not remain in an unspecified "abeyance until further notice" without a date for reconsideration.

Fourth, require a short written disposition to both parties whenever FMCS declines, suspends, or conditions service. The disposition should identify the service requested, the specific controlling authority, how that authority applies to issuing a panel or appointment, the status of the original request date, and what event or submission would permit FMCS to reconsider. Protect sensitive employee information while allowing the parties to understand and respond to the reason for delay. A conclusory statement that an agency has not consented is not enough to test the legality of FMCS's own service.

Fifth, provide a defined reconsideration route and periodic review of every hold. A requester should be able to submit a later order, clarification, agreement, or change in law

without starting from scratch or paying an unnecessary new fee. FMCS should notify both parties when a cited injunction or other asserted impediment changes and should review pending holds on a stated schedule. Preserve the original receipt date and the request's position to the extent consistent with law and the normal panel process.

Sixth, clarify the appointment provisions so that the one-party ranking process in § 1404.12(b) continues to operate when the other party simply declines to rank arbitrators. Joint authorization should not be silently imported into standard unilateral panels through the screening provisions. If FMCS concludes that a particular appointment, as distinct from panel issuance, would itself violate a controlling order, it should identify that distinct obstacle in writing and explain why lesser administrative steps cannot proceed.

Seventh, publish deidentified implementation data. FMCS should report how many federal-sector panel requests were joint or unilateral; how many received threshold inquiries; the asserted category of legal impediment; median and maximum time in inquiry or abeyance; the number served, declined, withdrawn, or still pending; and the time from receipt to panel or appointment. Aggregate reporting can protect the identities of employees and the parties' litigation positions while allowing the public to test the rule's claimed limited scope and low cost.

Eighth, consider the narrower alternative of issuing a standard panel with an explicit reservation that the service expresses no view on consent, contract validity, arbitrability, or the merits whenever no specific legal bar to the administrative act is established. FMCS already disclaims deciding those questions in § 1404.9(b)(4). This approach allows a party to preserve all defenses while keeping the negotiated process moving. If FMCS rejects it, the final rule should explain why that disclaimer and the available adjudicative defenses do not adequately address the identified legal concern.

XII A Workable Standard for the Final Rule

The final rule could say, in substance: When a party requests a standard panel under an applicable agreement or statute, the Office of Arbitration will process a joint or unilateral request unless it determines, after notice to both parties and a limited inquiry, that providing the specific service would violate identified applicable law, a binding court order, or a limitation on FMCS's statutory or regulatory authority. An objection by the other party, without such a

determination, does not prevent panel issuance. Any decline or abeyance will be explained in writing, will state how and when it may be reviewed, and will not adjudicate grievance merits, contractual defenses, or arbitrability.

That proposed standard is intended as a safeguard, not an instruction to disregard a real prohibition. It distinguishes a standard seven-name list from a direct appointment that requires joint authorization; a court's actual command from a party's prediction about litigation; and FMCS's limited administrative function from the arbitrator's authority to resolve a grievance. It supplies an answer within a defined time even where FMCS must deny service. The parties can then determine what further legal step is available, rather than wait indefinitely without knowing the ground for FMCS's action.

The principle should govern pending as well as future requests to the extent lawful. FMCS says the rule does not retroactively invalidate earlier requests. It should also specify how it will review requests held under its April 22, 2026 federal-sector arbitration guidance or under the interim rule, particularly when later orders or clarifications change the legal basis on which a hold was placed. A date preserved in an intake system is meaningful only if the party can learn what is needed to move the request forward.

XIII Conclusion

After a grievance is denied and arbitration is invoked, employees and managers need a neutral forum that can give an answer. Our pay grievance shows how long resolution can take even after a hearing; our weather grievance shows why an answer matters before the next emergency. Discipline and representation disputes continue to affect people while they wait. An administrative hold before neutral selection has real consequences.

FMCS should respect genuine legal restraints through a narrow, prompt, transparent inquiry while keeping ordinary unilateral access to standard panels usable. A respondent's denial should not become its last word because neutral selection has stalled. Please address these local effects and the requested procedural protections in the final rule.

Respectfully submitted,
Wyatt Gibler
Vice President, AFGE Local 2280
September 23, 2026

Authorities and Record Materials

1. Requests for Arbitration Panels, 91 Fed. Reg. 55,473–77 (Aug. 28, 2026), RIN 3076-AA31, particularly the preamble’s discussion of impact and reliance and revised 29 C.F.R. §§ 1404.9–1404.12. <https://www.federalregister.gov/documents/2026/08/28/2026-17652/requests-for-arbitration-panels>
2. FMCS General Counsel, “Aligning Federal Mediation and Conciliation’s Arbitration Services with Executive Orders 14251 and 14343” memorandum (Apr. 22, 2026), reproduced in litigation materials concerning FMCS’s treatment of agency consent and requests held in abeyance. The memorandum is discussed solely as relevant administrative context; the interim final rule is the subject of this comment.
3. American Federation of Government Employees Local 2305 v. United States Department of Veterans Affairs, No. 26-1321, slip op. at 27–32 (1st Cir. May 16, 2026) (ruling on motions for a stay pending appeal; distinguishing reinstatement of the agreement from specific enforcement of grievance and arbitration procedures). <https://law.justia.com/cases/federal/appellate-courts/ca1/26-1321/26-1321-2026-05-16.html>