and C each have a zero stock basis and X does not have any indebtedness to A, B, or C. For the 2008 taxable year, X excludes from gross income $30,000 of COD income under section 108(a)(1)(A). The COD income (had it not been excluded) would have been allocated $10,000 to A, $10,000 to B, and $10,000 to C under section 1366(a). For the 2008 taxable year, X has $30,000 of losses and deductions that X passes through pro-rata to A, B, and C in the amount of $10,000 each. The losses and deductions that pass through to A, B, and C are disallowed under section 1366(d)(1). In addition, B has $10,000 of section 1366(d) losses from prior years and C has $20,000 from prior years. A's ($10,000), B's ($20,000) and C's ($30,000) combined $60,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute for X under section 108(d)(7)(B) (deemed NOL) for purposes of the section 108(b) reduction of tax attributes.

(ii) *Allocation.* Under section 108(b)(2)(A), X's $30,000 of excluded COD income reduces this $60,000 deemed NOL to $30,000. Therefore, X has a $30,000 excess net operating loss (excess deemed NOL) to allocate to the shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the $30,000 excess deemed NOL is allocated to A because A's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($10,000) do not exceed A's share of the excluded COD income for 2008 ($10,000). Thus, A has no shareholder's excess amount. Each of B's and C's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of B's and C's respective shares of the excluded COD income for 2008. B's excess amount is $10,000 ($20,000 − $10,000) and C's excess amount is $20,000 ($30,000 − $10,000). Therefore, the total of all shareholders' excess amounts is $30,000. Under paragraph (d)(2) of this section, X will allocate $10,000 of the $30,000 excess deemed NOL to B ($30,000 × $10,000/$30,000) and $20,000 of the $30,000 excess deemed NOL to C ($30,000 × $20,000/$30,000). These amounts are treated as losses and deductions disallowed under section 1366(d)(1) for the taxable year of the discharge. Accordingly, at the beginning of 2009, A has no section 1366(d)(2) carryovers, B has $10,000 of carryovers, and C has $20,000 of carryovers.

(iii) *Character.* Immediately prior to the section 108(b)(2)(A) reduction, B's $20,000 of section 1366(d) losses and deductions consisted of $8,000 of long-term capital losses, $7,000 of section 1231 losses, and $5,000 of ordinary losses. After the section 108(b)(2)(A) tax attribute reduction, X will allocate $10,000 of the excess deemed NOL to B. Under paragraph (d)(3) of this section, the $5,000 of ordinary losses are treated as reduced first, followed by $5,000 of section 1231 losses. Accordingly, the $10,000 of losses allocated to B consist of the remaining $2,000 of section 1231 losses and $8,000 of long-term capital losses. As a result, at the beginning of 2009, B's $10,000 of section 1366(d)(2) carryovers include $2,000 of section 1231 losses and $8,000 of long-term capital losses.

Example 6. (i) A and B each own 50 percent of the shares of stock in X, a calendar year S corporation. On June 30, 2008, A sells all of her shares of stock in X to C in a transfer not described in section 1041(a). For the 2008 taxable year, X excludes from gross income $12,000 of COD income under section 108(a)(1)(A). The COD income (had it not been excluded) would have been allocated $3,000 to A, $6,000 to B, and $3,000 to C under section 1366(a). Prior to the section 108(b)(2)(A) reduction, for the taxable year of the discharge the shareholders have disallowed losses and deductions under section 1366(d) (including disallowed losses carried over to the current year under section 1366(d)(2)) in the following amounts: A—$9,000, B—$9,000, and C—$2,000. These combined $20,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute for X under section 108(d)(7)(B) (deemed NOL).

(ii) Under section 108(b)(2)(A), X's $12,000 of excluded COD income reduces the $20,000 deemed NOL to $8,000. Therefore, X has an $8,000 excess net operating loss (excess deemed NOL) to allocate to the shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the $8,000 excess deemed NOL is allocated to C because C's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($2,000) do not exceed C's share of the excluded COD income for 2008 ($3,000). However, each of A's and B's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of A's and B's respective shares of the excluded COD income for 2008. A's excess amount is $6,000 ($9,000 − $3,000) and B's excess amount is $3,000 ($9,000 − $6,000). Therefore, the total of all shareholders' excess amounts is $9,000. Under paragraph (d)(2) of this section, X will allocate $5,333 of the $8,000 excess deemed NOL to A ($8,000 × $6,000/$9,000) and $2,667 of the $8,000 excess deemed NOL to B ($8,000 × $3,000/$9,000). However, because A transferred all of her shares of stock in X in a transaction not described in section 1041(a), A's $5,333 of section 1366(d) losses and deductions are permanently disallowed under paragraph (d)(2)(iii) of this section. Accordingly, at the beginning of 2009, B has $2,667 of section 1366(d)(2) carryovers and C has no section 1366(d)(2) carryovers.

(f) *Effective/applicability date*—(1) Paragraphs (a), (b), (c), and *Examples 1, 2, 3*, and *4* of paragraph (e) of this section apply to discharges of indebtedness occurring on or after May 10, 2004.

(2) Paragraph (d) and *Examples 5* and *6* of paragraph (e) of this section apply to discharges of indebtedness occurring on or after the date that these regulations are published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–17952 Filed 8–5–08; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN 3076–AA12

Arbitration Services

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) proposes to amend its rules relating to arbitrators' inactive status, removal, appointment, referral and obligation to provide FMCS with information. The proposed rules also address the appointment of arbitrators where a party has failed to pay fees in previous cases. In addition, the proposed rules raise the annual listing fee for arbitrators on the FMCS Roster. The changes will promote more efficient and effective procedures involving arbitrator retention and arbitration services. The increased cost of listing arbitrator biographical data more accurately reflects FMCS' costs of maintaining and administering this information.

DATES: Comments must be submitted to the office listed in the address section below on or before October 6, 2008.

ADDRESSES: Submit written comments, identified by RIN number, by mail to Vella M. Traynham, Director, Office of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Comments may be submitted by fax to (202) 606–3749. Comments may also be submitted electronically to *vtraynham@fmcs.gov*. All comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vella M. Traynham, Director, Office of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone: (202) 606–5111.

SUPPLEMENTARY INFORMATION: Pursuant to 29 U.S.C. 171(b) and 29 CFR Part 1404, FMCS maintains a Roster of qualified labor arbitrators to hear disputes arising from collective bargaining agreements and to provide fact finding and interest arbitration. FMCS proposes to amend its rules pertaining to arbitration services by revising: the arbitrator complaint process; circumstances applicable to inactive arbitrator status; procedures for the request of arbitration panels; the obligation of arbitrators to provide FMCS with designated information; and

methods for selecting an arbitrator panel. These changes are intended to make FMCS arbitration procedures more efficient and effective.

FMCS also proposes in the Appendix to Part 1404 to increase the listing fee for an arbitrator's first business address from $100 to $150. Increasingly, parties are requesting more individualized panels based on their requirements and arbitrator experience. The increased listing fee reflects the additional FMCS staff time and effort necessary to be responsive to these requests as well as that associated with updating arbitrator biographies.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism or tribal implications.

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Labor management relations.

For the reasons stated in the preamble, FMCS proposes to amend 29 CFR part 1404 as follows:

PART 1404—ARBITRATION SERVICES

1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

2. In § 1404.5, revise paragraph (d) to read as follows:

§ 1404.5 Listing on the roster; criteria for listing and retention.

* * * * *

(d) *Listing on roster, removal.* Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal, and the Director may remove, any person listed on the Roster for violation of this Part or of the Code of Professional Responsibility. FMCS will provide to the affected arbitrator written notice of removal from the Roster. Complaints about arbitrators should be in writing and sent to the Director of OAS. The complaint should cite the specific section of the Code or the FMCS rule the arbitrator has allegedly violated. The following criteria shall be a basis for the Board to recommend and/or the Director to initiate a member's removal from the Roster:

* * * * *

3. Revise § 1404.6 to read as follows:

§ 1404.6 Inactive status.

(a) A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule or other reasons.

(b) Arbitrators whose schedules do not permit cases to be heard within six months of assignment are encouraged to make themselves inactive temporarily until their caseload permits the earlier scheduling of cases.

(c) An arbitrator can remain on inactive status without paying any annual listing fee for a period of two (2) years. If an arbitrator is on inactive status for longer than two (2) years, the arbitrator will be removed from the Roster unless he or she pays the annual listing fee.

4. Amend § 1404.9 by revising paragraphs (b) and (d) to read as follows:

§ 1404.9 Procedures for requesting arbitration lists and panels.

* * * * *

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. FMCS will abide by language in the parties' collective bargaining agreement specifying the conditions under which a panel of arbitrators will be referred. If the parties' collective bargaining agreement requires that the request for a panel of arbitrators be jointly submitted, FMCS will not proceed with an arbitrator selection if one party communicates to FMCS that it does not concur in the request. In the event, however, that the request is made by only one party without objection, the OAS will submit a panel of arbitrators. The issuance of a panel—pursuant to either a joint or a unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by the FMCS regarding the arbitrability of any dispute or a ruling that an agreement to arbitrate exists.

* * * * *

(d) The OAS reserves the right to decline to submit a panel or to make an appointment of an arbitrator if the request submitted is overly burdensome or otherwise impracticable. The OAS, in such circumstances, may refer the parties to an FMCS mediator to help in the design of an alternative solution. The OAS may also decline to service any request from a party based on the party's non-payment of arbitrator fees or other behavior that constrains the spirit or operation of the arbitration process.

* * * * *

5. Revise § 1404.12 to read as follows:

§ 1404.12 Selection by parties and appointment of arbitrators.

(a) After receiving a panel of names, the parties must notify the OAS of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, the OAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must promptly notify the OAS of the selection and of his or her willingness to serve. The arbitrator must provide the OAS with the FMCS case number and other pertinent information for the OAS to make an appointment. A pattern of failure by an arbitrator to notify FMCS of a selection in an FMCS case may result in suspension or removal from the Roster. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the OAS. Consistent failure to follow these procedures may lead to a denial of future OAS services.

(b) If the parties request a list of names and biographical sketches rather than a panel, the parties may choose to contact and select an arbitrator directly from that list. In this situation, neither the parties nor the arbitrator is required to furnish any additional information to FMCS and no case number will be assigned.

(c) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, FMCS will accept one of the following methods for selection from a panel:

(1) A selection by mutual agreement;

(2) A selection in which each party alternately strikes a name from the submitted panel until one remains;

(3) A selection in which each party advises OAS of its order of preference by numbering each name on the panel and submitting the numbered list in writing to OAS. If the parties separately notify OAS of their preferred selections, OAS, upon receiving the preferred selection of the first party, will notify the other party that it has fourteen (14) days in which to submit its selections. Where both parties respond, the name that has the lowest combined number will be appointed. If the other party fails to respond, the first party's choice will be honored.

(d) Where the parties' collective bargaining agreement permits each party to separately notify OAS of its preferred

selection, OAS will proceed with the selection process as follows. When the OAS receives the preferred selection from one party, it will notify the other party that it has fourteen (14) days in which to submit its selections. If that party fails to respond within the deadline, the first party's choice will be honored unless prohibited by the collective bargaining agreement. Where both parties respond, the name that has the lowest combined number will be appointed. If, within fourteen (14) days, a second panel is requested, and is permitted by the collective bargaining agreement, the requesting party must pay a fee for the second panel.

(e) The OAS will make a direct appointment of an arbitrator only upon joint request or as provided by paragraphs (c)(3) or (d) of this section.

(f) A direct appointment in no way signifies a determination of arbitrability or a ruling that an agreement to arbitrate exists. The resolution of disputes over these issues rests solely with the parties.

6. Amend the Appendix to 29 CFR Part 1404 by removing ''$100'' and adding ''$150'' in its place.

Michael J. Bartlett,

Deputy General Counsel.

[FR Doc. E8–17674 Filed 8–5–08; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. PTO–P–2008–0022]

RIN 0651–AC27

Changes to Practice for Documents Submitted to the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice to limit the types of correspondence that may be submitted to the Office by facsimile. The Office is also proposing an increased minimum font size for use on papers submitted to the Office for a patent application, patent or reexamination proceeding. The proposed changes will improve the legibility of documents in the Office's files of patent applications and reexamination proceedings.

DATES: Written comments must be received on or before October 6, 2008. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail over the Internet addressed to *AC27.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration (OPLA). Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site *(http://www.regulations.gov)* for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, currently located at Room 7D74 of Madison West, 600 Dulany Street, Alexandria, Virginia and will also be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or a telephone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((571) 272–7707), Senior Legal Advisor, or Raul Tamayo, Legal Advisor, ((571) 272–7728), Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, directly by telephone, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of the Office of Patent Legal Administration.

For information regarding reexamination issues, contact Stephen Marcus ((571) 272–7743) or Kenneth Schor ((571) 272–7710), Senior Legal Advisors, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Office is proposing to revise the rules of practice in title 37 of the Code of Federal Regulations (CFR) for facsimile transmissions of correspondence, and the minimum font size required to be used. The Office is specifically proposing revising §§ 1.6, 1.52, 1.366, 2.195, 3.24, and 3.25.

I. Background

The number of patent applications and patent-related correspondence received by the Office has increased substantially over the last few years, and submissions are expected to continue to increase in the next few years. Processing paper is extremely labor-intensive and subject to error and misfiling, particularly as the Office must sort through several thousand pieces of patent correspondence that are received on a daily basis. Although the Office has made substantial changes in an attempt to accurately and efficiently process the increased number of correspondence received, the Office believes that it should make further changes in its business practices to improve its handling of patent correspondence.

II. Facsimile Transmission

In 1988, the Office, due to widespread use of facsimile transmission and the resulting time saved in correspondence between applicants and the Office, established a trial program to accept facsimile transmission of certain correspondence. In light of the success of the trial program, a policy on acceptance of facsimile transmissions was incorporated into the rules of practice. *See Changes in Signature and Filing Requirements for Correspondence Files in the Patent and Trademark Office,* 58 FR 54494 (October 22, 1993). Facsimile transmission of correspondence has grown to over 240,000 pieces of patent correspondence per year sent to the Office's central facsimile number. While the number of facsimile transmissions in any one application may be small, the overall number of facsimile transmissions represents a significant processing burden on the Office.

The advantage of facsimile transmitting patent and assignment correspondence has been the quick submission of such correspondence to the particular area of the Office concerned with promptly acting on them. The advantage, however, is not exclusive to facsimile transmissions. EFS–Web offers this advantage as well as others not available with facsimile transmission. For example, EFS–Web submissions are ''soft scanned'' (*i.e.*, electronically uploaded) directly into the official application file, so multiple Office employees can simultaneously view the document(s). Furthermore, when documents are submitted via EFS–Web, the Office's electronic system sends an auto-generated message notifying the appropriate area which treats the type of documents submitted. Additionally, EFS–Web offers