4. How do we evaluate your word recognition ability if you are not fluent in English?

If you are not fluent in English, you should have word recognition testing using an appropriate word list for the language in which you are most fluent. The person conducting the test should be fluent in the language used for the test. If there is no appropriate word list or no person who is fluent in the language and qualified to perform the test, it may not be possible to measure your word recognition ability. If your word recognition ability cannot be measured, your hearing loss cannot meet 102.10B2 or 102.11B. Instead, we will consider the facts of your case to determine whether you have difficulty understanding words in the language in which you are most fluent, and if so, whether that degree of difficulty medically equals 102.10B2 or 102.11B. For example, we will consider how you interact with family members, interpreters, and other persons who speak the language in which you are most fluent.

5. What do we mean by a marked limitation in speech or language as used in 102.10B3?

a. We will consider you to have a marked limitation in speech if:

(i) Entire phrases or sentences in your conversation are intelligible to unfamiliar listeners at least 50 percent (half) of the time but no more than 67 percent (two-thirds) of the time on your first attempt; and

(ii) Your sound production or phonological patterns (the ways in which you combine speech sounds) are atypical for your age.

b. We will consider you to have a marked limitation in language when your current and valid test score on an appropriate comprehensive, standardized test of overall language functioning is at least two standard deviations below the mean. In addition, the evidence of your daily communication functioning must be consistent with your test score. If you are not fluent in English, it may not be possible to test your language performance. If we cannot test your language performance, your hearing loss cannot meet 102.10B3. Instead, we will consider the facts of your case to determine whether your hearing loss medically equals 102.10B3.

* * * * *

102.01 Category of Impairments, Special Senses and Speech

* * * * *

102.10 Hearing Loss Not Treated With Cochlear Implantation

A. For children from birth to the attainment of age 5, an average air conduction hearing threshold of 50 decibels or greater in the better ear (see 102.00B2).

OR

B. For children from age 5 to the attainment of age 18:

1. An average air conduction hearing threshold of 70 decibels or greater in the better ear and an average bone conduction hearing threshold of 40 decibels or greater in the better ear (see 102.00B2f); or

2. A word recognition score of 40 percent or less in the better ear determined using a standardized list of phonetically balanced monosyllabic words (see 102.00B2f); or

3. An average air conduction hearing threshold of 50 decibels or greater in the better ear and a marked limitation in speech or language (see 102.00B2f and 102.00B5).

102.11 Hearing Loss Treated With Cochlear Implantation

A. Consider under a disability until the attainment of age 5 or for 1 year after initial implantation, whichever is later.

OR

B. Upon the attainment of age 5 or 1 year after initial implantation, whichever is later, a word recognition score of 60 percent or less determined using the HINT or the HINT–C (*see* 102.00B3b).

* * * * *

[FR Doc. 2010–13094 Filed 6–1–10; 8:45 am]

BILLING CODE 4191–02–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN 3076–AA12

Arbitration Services

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Mediation and Conciliation Service (FMCS) rules pertaining to arbitration services. It revises rules addressing the removal of arbitrators from the FMCS roster, the process relating to complaints about arbitrators, procedures for requesting lists and panels, arbitrators' inactive status, the selection by parties and appointment of arbitrators, and arbitrators' obligation to provide FMCS with certain case information. The final rule also provides that FMCS may decline to service any request by a party for an arbitration list or panel based on the party's non-payment of arbitrator fees. In addition, the final rule raises the annual listing fee for all arbitrators on the FMCS roster. The changes will promote more efficient and effective procedures involving arbitrator retention and arbitration services. The increased annual listing fee more accurately reflects FMCS's costs of maintaining and responding to requests for arbitrators' biographical data. The final rule withdraws the proposed revisions to § 1404.9(b).

DATES: This final rule is effective July 2, 2010.

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 under collective bargaining agreements and provide fact finding and interest arbitration. FMCS amends its rules pertaining to such arbitration services as follows: The revised rule relating to the removal of arbitrators from the roster provides that FMCS will give written notice of removal to the affected arbitrator. The revised rule relating to complaints against arbitrators provides that complaints should be in writing and directed to the director of the office of arbitration services, and should cite specific sections of the professional code or FMCS rules allegedly violated by the arbitrator. The revised rule on arbitrators' inactive status clarifies the applicable annual listing fee and suggests that arbitrators use inactive status to assist them in certain scheduling circumstances. The revised rule on procedures for requesting panels and lists provides that FMCS may decline to service any request from a party for arbitration lists or panels based on the party's non-payment of arbitrator fees. The revised rule on the selection by parties and appointment of arbitrators provides that arbitrators must provide FMCS with certain information upon being selected by a party. The revised rules describe the methods of arbitrator selection that FMCS will accept, where the parties' collective agreement is silent on the manner of selection. These changes are intended to make FMCS's arbitration procedures more efficient and effective.

FMCS also amends Appendix to Part 1404 to increase the annual listing fee from $100 to $150 for all arbitrators on the FMCS roster. With increasing frequency, parties have been requesting that FMCS furnish arbitration panels that are individualized to the dispute at issue. This requires detailed research and review of arbitrators' biographies. The increased listing fee reflects the cost in staff time necessary to be responsive to these requests as well as the costs 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.

Background: On August 6, 2008, FMCS published a Notice of Proposed

Rulemaking (NPRM) proposing changes to its rules relating to the removal of arbitrators from the FMCS roster, the process relating to complaints about arbitrators, procedures for requesting arbitrator lists and panels, arbitrators' inactive status, the selection by parties and appointment of arbitrators, and arbitrators' obligation to provide FMCS with certain case information. The proposed rules also addressed FMCS's response to requests for arbitration lists or panels made by one party, where the collective bargaining agreement requires that the request be jointly submitted. In addition, the proposed rules addressed FMCS's option to decline to service any request from a party, based on the party's non-payment of arbitrator fees, and raised the annual listing fee for arbitrators on the FMCS roster.

FMCS is adopting the final rule with one change from that which was proposed. The final rule withdraws the proposed revisions to § 1404.9(b), which had modified FMCS's response to requests for arbitration lists or panels made by one party, where the collective bargaining agreement requires that the request be jointly submitted.

Discussion of Comments: FMCS received comments from two sources in response to the NPRM. One commentator suggested that the proposed changes to § 1404.9(b) insert FMCS into the arena of administering and interpreting collective bargaining agreements, and do not take into account the parties' past practices. FMCS has given careful review and consideration to the comment and the language in the proposed revision to § 1404.9(b) and has determined it will withdraw the revision to § 1404.9(b).

FMCS received comments from two sources regarding the proposed changes to § 1404.9(d). One commentator opposed the revision to the extent that it could allow a single failure to pay an arbitrator's fees to disqualify a party from obtaining a panel. Another commentator objected to the revision because the proposed rule does not differentiate between a genuine fee dispute and simple nonpayment. FMCS has given careful review and consideration to the comments. FMCS has determined, however, that the proposed rule, by stating only that FMCS's office of arbitration services *may* decline to service any request from a party based on the party's non-payment of fees, will ensure that decisions whether to decline services will be considered. Accordingly, no changes are made to the final rule.

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Labor management relations.

■ For the reasons stated in the preamble, FMCS amends 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. Amend § 1404.5 by revising paragraph (d) introductory text 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 heath, 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 paragraph (d) to read as follows:

§ 1404.9 Procedures for requesting arbitration lists and panels.

* * * * *

(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.

Dated: May 26, 2010.

Jeannette Walters-Marquez,

Attorney Advisor.

[FR Doc. 2010–13120 Filed 6–1–10; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0158]

RIN 1625–AA00

Safety Zone; Wilson Bay, Jacksonville, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Wilson Bay at Jacksonville, North Carolina for training purposes. The safety zone is necessary to provide for the safety of the general public and exercise participants from potential hazards associated with low flying helicopters and vessels participating in this multi agency exercise.

DATES: This rule is effective from 6 a.m. until 5 p.m. on June 9, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0158 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0158 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons2@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 2, 2010, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Wilson Bay, Jacksonville, NC in the **Federal Register** (75 FR 16703). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

The Onslow County North Carolina Emergency Services will be conducting a multi agency exercise to test response capabilities of water rescue services in a mass casualty scenario on the waters of Wilson Bay, Onslow County, North Carolina from 6 a.m. to 5 p.m. June 9, 2010. The exercise is designed to train and test air and surface personnel in the judgmental decisionmaking process necessary to safely and effectively respond to a mass casualty incident. The exercise will involve helicopters, vessels, safety craft, divers, and rescue swimmers. This zone is necessary to establish a temporary restricted area in Wilson Bay to ensure the safety of participants within the exercise site.

Discussion of Comments and Changes

We received no comments on the proposed rule. No public meeting was requested, and none was held. The Coast Guard is implementing the rule as proposed, without change.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will only be in effect from 6 a.m. to 5 p.m. on June 9, 2010, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to a section of Wilson Bay, it will not restrict vessel traffic in the federally marked channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and