

discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. A preliminary "Environmental Analysis Check List" supporting this determination is available in the docket under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1323 to read as follows:

#### § 165.1323 Regulated Navigation Area: Willamette River Portland, Oregon Captain of the Port Zone.

(a) *Location.* The following is a regulated navigation area (RNA): All waters of the Willamette River encompassed by a line commencing at 45°34'33" N, 122°44'17" W to 45°34'32"

N, 122°44'18" W thence to 45°34'35" N, 122°44'24" W thence to 45°34'35" N, 122°44'27" W thence to 45°34'35" N, 122°44'36" W thence to 45°34'35" N, 122°44'37" W thence to 45°34'38" N, 122°44'42" W to 45°34'39" N, 122°44'43" W thence to 45°34'44" N, 122°44'51" W thence to 45°34'45" N, 122°44'53" W thence to 45°34'47" N, 122°44'51" W thence to 45°34'45" N, 122°44'46" W to 45°34'45" N, 122°44'45" W thence to 45°34'47" N, 122°44'43" W thence to 45°34'46" N, 122°44'42" W thence to 45°34'48" N, 122°44'40" W thence to 45°34'48" N, 122°44'38" W and along the shoreline to 45°34'46" N, 122°44'39" W and back to the point of origin. All coordinates reference 1983 North American Datum (NAD 83).

(b) *Regulations.* (1) Anchoring, spudding, dredging, laying cable, dragging, trawling, conducting salvage operations, operating commercial vessels of any size, and operating recreational vessels greater than 30 feet in length are prohibited in the regulated area.

(2) All vessels transiting or accessing the regulated area shall do so at no wake speed or at the minimum speed necessary to maintain steerage.

Dated: May 6, 2008.

**J.P. Currier,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

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**BILLING CODE 4910–15–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 41

[Docket No. PTO–C02008–0004]

RIN 0651–AC21

### Revision of Patent Fees for Fiscal Year 2009

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is proposing to adjust certain patent fee amounts for fiscal year 2009 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business.

**DATES:** Written comments must be received on or before July 3, 2008. No public hearing will be held.

**ADDRESSES:** You may submit comments, identified by RIN number RIN 0651-AC21, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:*

*Walter.Schlueter@uspto.gov*. Include RIN number RIN 0651-AC21 in the subject line of the message.

- *Fax:* (571) 273-6299, marked to the attention of Walter Schlueter.

- *Mail:* Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Walter Schlueter.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this proposed rule making. For additional information on the rule making process, see the heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Walter Schlueter by e-mail at *Walter.Schlueter@uspto.gov*, by telephone at (571) 272-6299, or by fax at (571) 273-6299.

**SUPPLEMENTARY INFORMATION:** The Office is proposing to adjust certain patent fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act (Pub. L. 108-447, 118 Stat. 2809 (2004)).

*Background: Statutory Provisions:*

Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103-465, § 532(a)(2), 108 Stat. 4809, 4985 (1994)), and section 4506 of the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501, 1501A-565 (1999)). For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in

the CPI over the previous twelve months.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under 35 U.S.C. 41 may take effect thirty days after notice in the **Federal Register** and the **Official Gazette of the United States Patent and Trademark Office**.

The fiscal year 2005 Consolidated Appropriations Act (section 801 of Division B) provided that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108-447, 118 Stat. 2809, 2924-30 (2004). The patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act were extended through September 30, 2008, by subsequent legislation. *See* Pub. L. 110-161, 121 Stat. 1844 (2007), Pub. L. 110-149, 121 Stat. 1819 (2007), Pub. L. 110-137, 121 Stat. 1454 (2007), Pub. L. 110-116, 121 Stat. 1295 (2007), Pub. L. 110-92, 121 Stat. 989 (2007), Pub. L. 110-5, 121 Stat. 8 (2007), Pub. L. 109-383, 120 Stat. 2678 (2006), Pub. L. 109-369, 120 Stat. 2642 (2006), and Pub. L. 109-289, 120 Stat. 1257 (2006). The Office anticipates the introduction and enactment of legislation that would extend the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through fiscal year 2009.

*Fee Adjustment Level:* The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted to reflect fluctuations occurring during the twelve-month period from October 1, 2007, through September 30, 2008, correspondingly, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised that in calculating these fluctuations, the Office should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, the Office bases this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2008, which is 4.0 percent. Based on this projected CPI-U, patent statutory fees are proposed to be adjusted by 4.0 percent. Before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI-U published by the Secretary of Labor.

The fee amounts were rounded by applying standard arithmetic rules so

that the amounts rounded will be convenient to the user. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

*General Procedures:* Any fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in the Office (37 CFR 1.6) or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of 37 CFR 1.8. Items for which a Certificate of Mailing or Transmission under 37 CFR 1.8 is not authorized include, for example, filing of national and international applications for patents. *See* 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in the Office on the date of deposit with the USPS. *See* 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

### Discussion of Specific Rules

*37 CFR 1.16 National application filing, search, and examination fees:* Section 1.16, paragraphs (a) through (e), (h) through (k), and (m) through (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.17 Patent application and reexamination processing fees:* Section 1.17, paragraphs (a)(2) through (a)(5), (l), and (m), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.18 Patent post allowance (including issue) fees:* Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.20 Post issuance fees:* Section 1.20, paragraphs (c)(3), (c)(4), and (d) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.492 National stage fees: Section 1.492, paragraphs (a), (b)(3), (b)(4), (c)(2), (d) through (f), and (j), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 41.20 Fees: Section 41.20, paragraphs (b)(1) through (b)(3), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Alternative Fee Amounts if Legislation Extending the Patent and Trademark

Fee Provisions of the Fiscal Year 2005 Consolidated Appropriations Act is Not Enacted: If legislation that would extend the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act into fiscal year 2009 is not enacted, patent fees under 35 U.S.C. 41(a), (b), and (d) will become the patent fees in effect in the absence of the fiscal year 2005 Consolidated Appropriations Act. The Office is therefore also proposing to adjust the

patent fees under 35 U.S.C. 41(a), (b), and (d) that would be in effect in the absence of the fiscal year 2005 Consolidated Appropriations Act for fiscal year 2009 to reflect fluctuations in the Consumer Price Index (CPI). The following table (Table 1) sets out the proposed fee amounts in the event that legislation extending the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act into fiscal year 2009 is not enacted.

TABLE 1

37 CFR sec.	Fee	Proposed fee amount (non-small entity)	Proposed fee amount (small entity)
1.16(a)	Basic filing fee—utility application	\$840.00	\$420.00
1.16(b)	Independent claims in excess of three	94.00	47.00
1.16(d)	Multiple dependent claim	320.00	160.00
1.16(f)	Basic filing fee—design application	370.00	185.00
1.16(g)	Basic filing fee—plant application	590.00	295.00
1.16(h)	Basic filing fee—reissue application	840.00	420.00
1.16(i)	Independent claims in excess of three—reissue	94.00	47.00
1.16(k)	Basic filing fee—provisional application	170.00	85.00
1.17(a)(2)	Extension for response within second month	460.00	230.00
1.17(a)(3)	Extension for response within third month	1,050.00	525.00
1.17(a)(4)	Extension for response within fourth month	1,640.00	820.00
1.17(a)(5)	Extension for response within fifth month	2,230.00	1,115.00
1.17(m)	Petition to revive—unintentionally abandoned application	1,470.00	735.00
1.18(a)	Issue fee—utility application	1,470.00	735.00
1.18(b)	Issue fee—design application	520.00	260.00
1.18(c)	Issue fee—plant application	710.00	355.00
1.20(e)	Maintenance fee—due at 3.5 years	1,010.00	505.00
1.20(f)	Maintenance fee—due at 7.5 years	2,300.00	1,150.00
1.20(g)	Maintenance fee—due at 11.5 years	3,550.00	1,775.00
1.492(a)(1)	IPEA—U.S.	800.00	400.00
1.492(a)(2)	ISA—U.S.	840.00	420.00
1.492(a)(3)	USPTO not ISA or IPEA	1,190.00	595.00
1.492(a)(5)	Filing with EPO or JPO search report	1,020.00	510.00
1.492(b)	Independent claims in excess of three	94.00	47.00
1.492(d)	Multiple dependent claim	320.00	160.00
41.20(b)(1)	Notice of appeal	360.00	180.00
41.20(b)(2)	Brief in support of an appeal	360.00	180.00
41.20(b)(3)	Request for oral hearing	320.00	160.00

## Rulemaking Considerations

### A. Initial Regulatory Flexibility Analysis

1. Description of the reasons that action by the agency is being considered: The Office is proposing to adjust the patent fees set under 35 U.S.C. 41(a) and (b) to ensure proper funding for effective Office operations. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis to recover the higher costs of Office's operations that occur due to the increase in the price of products and services. The lack of proper funding for effective Office operations would result in a significant increase in patent pendency levels.

2. Succinct statement of the objectives of, and legal basis for, the proposed rules: The objective of the proposed change is to adjust patent fees set under

35 U.S.C. 41(a) and (b) to recover the higher costs of Office operations. Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the URAA, and 4506 of the AIPA. 35 U.S.C. 41(f) provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted every year to reflect fluctuations in the CPI over the previous twelve months.

3. Description and estimate of the number of affected small entities: The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a maximum number of employees or less than a specified level of annual receipts

for the entity's industrial sector or North American Industry Classification System (NAICS) code. The Office, however, has formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. See *Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is the previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. See 13 CFR 121.802. If patent applicants identify themselves on

the patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, this size standard is not industry-specific. Specifically, the Office's definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a "business concern or concern" set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose

number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR at 67112, 1313 *Off. Gaz. Pat. Office* at 63.

The changes in this proposed rule will apply to any small entity that files a patent application, or has a pending patent application or unexpired patent.

The changes in this proposed rule will specifically apply when an applicant or patentee pays an application filing or national stage entry fee, search fee, examination fee, excess or multiple dependent claim fee, application size fee, extension of time fee, notice of appeal fee, appeal brief fee, request for an oral hearing fee, disclaimer fee, petition to revive fee, issue fee, or patent maintenance fee. The following table (Table 2) indicates the applicable fee, the number of small entity payments of the fee received by the Office in fiscal year 2007 (number of small entities who paid the applicable fee in fiscal year 2007), the current small entity fee amount, the proposed small entity fee amount, and the net amount of the small entity fee adjustment.

TABLE 2

Fee	Fiscal year 2007 small entity payments	Current fee amount	Proposed fee amount	Fee adjustment
Basic filing fee—utility application—electronic filing .....	41,519	75.00	80.00	5.00
Basic filing fee—utility application (on or after December 8, 2004) .....	45,832	155.00	160.00	5.00
Basic filing fee—utility application (before December 8, 2004) .....	66	405.00	420.00	15.00
Basic filing fee—design application (on or after December 8, 2004) .....	12,846	105.00	110.00	5.00
Basic filing fee—design application (before December 8, 2004) .....	11	180.00	185.00	5.00
Basic filing fee—plant application (on or after December 8, 2004) .....	327	105.00	110.00	5.00
Basic filing fee—plant application (before December 8, 2004) .....	0	285.00	295.00	10.00
Basic filing fee—provisional application .....	83,712	105.00	110.00	5.00
Basic filing fee—reissue application (on or after December 8, 2004) .....	181	155.00	160.00	5.00
Basic filing fee—reissue application (before December 8, 2004) .....	1	405.00	420.00	15.00
Independent claims in excess of three .....	26,418	105.00	110.00	5.00
Claims in excess of 20 .....	41,100	25.00	26.00	1.00
Multiple dependent claim .....	2,503	185.00	190.00	5.00
Search fee—utility application (on or after December 8, 2004) .....	86,469	255.00	265.00	10.00
Search fee—plant application (on or after December 8, 2004) .....	326	155.00	160.00	5.00
Search fee—reissue application (on or after December 8, 2004) .....	180	255.00	265.00	10.00
Examination fee—utility application (on or after December 8, 2004) .....	86,658	105.00	110.00	5.00
Examination fee—design application (on or after December 8, 2004) .....	12,615	65.00	70.00	5.00
Examination fee—plant application (on or after December 8, 2004) .....	327	80.00	85.00	5.00
Examination fee—reissue application (on or after December 8, 2004) .....	191	310.00	320.00	10.00
Application size fee greater than 100 pages .....	5,469	130.00	135.00	5.00
Extension for response within second month .....	17,339	230.00	235.00	5.00
Extension for response within third month .....	23,818	525.00	540.00	15.00
Extension for response within fourth month .....	2,277	820.00	845.00	25.00
Extension for response within fifth month .....	2,700	1,115.00	1,150.00	35.00
Petition to revive—unavoidably abandoned application .....	174	255.00	265.00	10.00
Petition to revive—unintentionally abandoned application .....	3,271	770.00	800.00	30.00
Issue fee—utility application .....	33,718	720.00	750.00	30.00
Issue fee—design application .....	10,398	410.00	425.00	15.00
Issue fee—plant application .....	298	565.00	590.00	25.00
Reexamination independent claims in excess of three .....	37	105.00	110.00	5.00
Reexamination claims in excess of 20 .....	45	25.00	26.00	1.00
Statutory disclaimer .....	6,248	65.00	70.00	5.00
Maintenance fee—due at 3.5 years .....	32,577	465.00	485.00	20.00
Maintenance fee—due at 7.5 years .....	20,981	1,180.00	1,225.00	45.00
Maintenance fee—due at 11.5 years .....	8,130	1,955.00	2,035.00	80.00
Filing of PCT application—USPTO ISA—national stage .....	11,807	155.00	160.00	5.00
National stage search fee—search report to USPTO .....	8,440	205.00	215.00	10.00
National stage search fee—all other situations .....	1,029	255.00	265.00	10.00
National stage examination fee—all other situations .....	11,262	105.00	110.00	5.00
Independent claims in excess of three .....	3,272	105.00	110.00	5.00
Claims in excess of 20 .....	5,913	25.00	26.00	1.00
Multiple dependent claim .....	1,178	185.00	190.00	5.00
Application size fee greater than 100 pages .....	573	130.00	135.00	5.00
Notice of appeal .....	5,978	255.00	265.00	10.00
Brief in support of an appeal .....	2,640	255.00	265.00	10.00
Request for oral hearing .....	233	515.00	535.00	20.00

The Office has also been advised that a number of small entity applicants and patentees do not claim small entity status for various reasons. See *Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for*

*Patent-Related Regulations*, 71 FR at 67110, 1313 *Off. Gaz. Pat. Office* at 61. Therefore, the Office is also considering all other entities paying patent fees as well. The following table (Table 3) indicates the applicable fee, the number of non-small entity payments of the fee

received by the Office in fiscal year 2007 (number of non-small entities who paid the applicable fee in fiscal year 2007), the current non-small entity fee amount, the proposed non-small entity fee amount, and the net amount of the non-small entity fee adjustment.

TABLE 3

Fee	Fiscal year 2007 non-small entity payments	Current fee amount	Proposed fee amount	Fee adjustment
Basic filing fee—utility application (on or after December 8, 2004)	209,577	310.00	320.00	10.00
Basic filing fee—utility application (before December 8, 2004)	311	810.00	840.00	30.00
Basic filing fee—design application (on or after December 8, 2004)	13,400	210.00	220.00	10.00
Basic filing fee—design application (before December 8, 2004)	72	360.00	370.00	10.00
Basic filing fee—plant application (on or after December 8, 2004)	680	210.00	220.00	10.00
Basic filing fee—plant application (before December 8, 2004)	0	570.00	590.00	20.00
Basic filing fee—provisional application	47,925	210.00	220.00	10.00
Basic filing fee—reissue application (on or after December 8, 2004)	689	310.00	320.00	10.00
Basic filing fee—reissue application (before December 8, 2004)	1	810.00	840.00	30.00
Independent claims in excess of three	77,135	210.00	220.00	10.00
Claims in excess of 20	102,973	50.00	52.00	2.00
Multiple dependent claim	5,944	370.00	380.00	10.00
Search fee—utility application (on or after December 8, 2004)	209,135	510.00	530.00	20.00
Search fee—plant application (on or after December 8, 2004)	681	310.00	320.00	10.00
Search fee—reissue application (on or after December 8, 2004)	688	510.00	530.00	20.00
Examination fee—utility application (on or after December 8, 2004)	209,465	210.00	220.00	10.00
Examination fee—design application (on or after December 8, 2004)	13,261	130.00	140.00	10.00
Examination fee—plant application (on or after December 8, 2004)	681	160.00	170.00	10.00
Examination fee—reissue application (on or after December 8, 2004)	707	620.00	640.00	20.00
Application size fee greater than 100 pages	11,257	260.00	270.00	10.00
Extension for response within second month	42,308	460.00	470.00	10.00
Extension for response within third month	41,489	1,050.00	1,080.00	30.00
Extension for response within fourth month	3,105	1,640.00	1,690.00	50.00
Extension for response within fifth month	3,482	2,230.00	2,300.00	70.00
Petition to revive—unavoidably abandoned application	127	510.00	530.00	20.00
Petition to revive—unintentionally abandoned application	4,180	1,540.00	1,600.00	60.00
Issue fee—utility application	122,251	1,440.00	1,500.00	60.00
Issue fee—design application	12,433	820.00	850.00	30.00
Issue fee—plant application	673	1,130.00	1,180.00	50.00
Reexamination independent claims in excess of three	132	210.00	220.00	10.00
Reexamination claims in excess of 20	151	50.00	52.00	2.00
Statutory disclaimer	21,218	130.00	140.00	10.00
Maintenance fee—due at 3.5 years	125,653	930.00	970.00	40.00
Maintenance fee—due at 7.5 years	88,487	2,360.00	2,450.00	90.00
Maintenance fee—due at 11.5 years	42,193	3,910.00	4,070.00	160.00
Filing of PCT application—USPTO ISA—national stage	41,842	310.00	320.00	10.00
National stage search fee—search report to USPTO	38,457	410.00	430.00	20.00
National stage search fee—all other situations	2,429	510.00	530.00	20.00
National stage examination fee—all other situations	41,044	210.00	220.00	10.00
Independent claims in excess of three	9,367	210.00	220.00	10.00
Claims in excess of 20	14,983	50.00	52.00	2.00
Multiple dependent claim	3,998	370.00	380.00	10.00
Application size fee greater than 100 pages	2,102	260.00	270.00	10.00
Notice of appeal	21,646	510.00	530.00	20.00
Brief in support of an appeal	11,950	510.00	530.00	20.00
Request for oral hearing	736	1,030.00	1,070.00	40.00

4. Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: This notice does not propose any reporting, recordkeeping and other compliance

requirements. This notice proposes only to adjust patent fees (as discussed previously) to reflect changes in the CPI.

5. Description of any significant alternatives to the proposed rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities: The alternative of not adjusting patent fees

would have a lesser economic impact on small entities, but would not accomplish the stated objectives of applicable statutes. The Office is proposing to adjust the patent fees to ensure proper funding for effective Office operations. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis to recover the higher costs of

Office's operations that occur due to the increase in the price of products and services. The lack of proper funding for effective Office operations would result in a significant increase in patent pendency levels.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rules: The Office is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other federal, state, or local entity shares jurisdiction over the examination and granting patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)).

Nevertheless, the Office believes that there are no other duplicative or overlapping rules.

#### *B. Executive Order 13132 (Federalism)*

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

#### *C. Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

#### *D. Executive Order 13175 (Tribal Consultation)*

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

#### *E. Executive Order 13211 (Energy Effects)*

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy

Effects is not required under Executive Order 13211 (May 18, 2001).

#### *F. Executive Order 12988 (Civil Justice Reform)*

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

#### *G. Executive Order 13045 (Protection of Children)*

This rulemaking is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

#### *H. Executive Order 12630 (Taking of Private Property)*

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

#### *I. Congressional Review Act*

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes proposed in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not likely to result in a "major rule" as defined in 5 U.S.C. 804(2).

#### *J. Unfunded Mandates Reform Act of 1995:*

The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are

necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

#### *K. National Environmental Policy Act*

This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

#### *L. National Technology Transfer and Advancement Act*

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rulemaking does not contain provisions which involve the use of technical standards.

#### *M. Paperwork Reduction Act*

This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this proposed rule have been reviewed and approved by OMB under OMB control numbers 0651-0016, 0651-0021, 0651-0031, 0651-0032, and 0651-0033. The Office is not resubmitting information collection packages to OMB for its review and approval at this time because the changes proposed in this notice revise the fees for existing information collection requirements associated with the information collections under OMB control numbers 0651-0016, 0651-0021, 0651-0031, 0651-0032, and 0651-0033. The Office will submit fee revision changes for OMB control numbers 0651-0016, 0651-0021, 0651-0031, 0651-0032, and 0651-0033 to OMB for review if the changes proposed in this notice are adopted.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC

20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert A. Clarke, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 41*

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1 and 41 are proposed to be amended as follows:

**PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.16 is amended by revising paragraphs (a) through (e), (h) through (k), and (m) through (s) to read as follows:

**§ 1.16 National application filing, search, and examination fees.**

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2)) .....	\$80.00
By a small entity (§ 1.27(a)) .....	160.00
By other than a small entity .....	320.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$420.00
By other than a small entity .....	840.00

(b) Basic fee for filing each application for an original design patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$110.00
-------------------------------------	----------

By other than a small entity ..... 220.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$185.00
By other than a small entity .....	370.00

(c) Basic fee for filing each application for an original plant patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$110.00
By other than a small entity .....	220.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$295.00
By other than a small entity .....	590.00

(d) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a)) .....	\$110.00
By other than a small entity .....	220.00

(e) Basic fee for filing each application for the reissue of a patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$160.00
By other than a small entity .....	320.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$420.00
By other than a small entity .....	840.00

\* \* \* \* \*

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a)) .....	\$110.00
By other than a small entity .....	220.00

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) .....	\$26.00
By other than a small entity .....	52.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a)) .....	\$190.00
By other than a small entity .....	380.00

(k) Search fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a)) .....	\$265.00
By other than a small entity .....	530.00

\* \* \* \* \*

(m) Search fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a)) .....	\$160.00
By other than a small entity .....	320.00

(n) Search fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a)) .....	\$265.00
By other than a small entity .....	530.00

(o) Examination fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a)) .....	\$110.00
By other than a small entity .....	220.00

(p) Examination fee for each application filed on or after December 8, 2004, for an original design patent:

By a small entity (§ 1.27(a)) .....	\$70.00
By other than a small entity .....	140.00

(q) Examination fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a)) .....	\$85.00
By other than a small entity .....	170.00

(r) Examination fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a)) .....	\$320.00
By other than a small entity .....	640.00

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a)) .....	\$135.00
By other than a small entity .....	270.00

\* \* \* \* \*

3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (l), and (m) to read as follows:

**§ 1.17 Patent application and reexamination processing fees.**

(a) \* \* \*

(2) For reply within second month:

By a small entity (§ 1.27(a)) .....	\$235.00
By other than a small entity .....	470.00

(3) For reply within third month:

By a small entity (§ 1.27(a)) .....	\$540.00
By other than a small entity .....	1,080.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a)) .....	\$845.00
By other than a small entity .....	1,690.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a)) .....	\$1,150.00
By other than a small entity .....	2,300.00

\* \* \* \* \*

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133,

364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a)) ..... \$265.00
By other than a small entity ..... 530.00

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a)) ..... \$800.00
By other than a small entity ..... 1,600.00

\* \* \* \* \*

4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a small entity (§ 1.27(a)) ..... \$750.00
By other than a small entity ..... 1,500.00

(b) Issue fee for issuing an original design patent:

By a small entity (§ 1.27(a)) ..... \$425.00
By other than a small entity ..... 850.00

(c) Issue fee for issuing an original plant patent:

By a small entity (§ 1.27(a)) ..... \$590.00
By other than a small entity ..... 1,180.00

\* \* \* \* \*

5. Section 1.20 is amended by revising paragraphs (c)(3), (c)(4), and (d) through (g) to read as follows:

§ 1.20 Post issuance fees.

\* \* \* \* \*

(c) \* \* \*

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:

By a small entity (§ 1.27(a)) ..... \$110.00
By other than a small entity ..... 220.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) ..... \$26.00
By other than a small entity ..... 52.00

\* \* \* \* \*

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.27(a)) ..... \$70.00
By other than a small entity ..... 140.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

By a small entity (§ 1.27(a)) ..... \$485.00
By other than a small entity ..... 970.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

By a small entity (§ 1.27(a)) ..... \$1,225.00
By other than a small entity ..... 2,450.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a)) ..... \$2,035.00
By other than a small entity ..... 4,070.00

\* \* \* \* \*

6. Section 1.492 is amended by revising paragraphs (a), (b)(3), (b)(4), (c)(2), (d) through (f) and (j) to read as follows:

§ 1.492 National stage fees.

\* \* \* \* \*

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

By a small entity (§ 1.27(a)) ..... \$160.00
By other than a small entity ..... 320.00

(b) \* \* \*

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a small entity (§ 1.27(a)) ..... \$215.00
By other than a small entity ..... 430.00

(4) In all situations not provided for in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

By a small entity (§ 1.27(a)) ..... \$265.00
By other than a small entity ..... 530.00

(c) \* \* \*

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a small entity (§ 1.27(a)) ..... \$110.00

By other than a small entity ..... 220.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a)) ..... \$110.00
By other than a small entity ..... 220.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) ..... \$26.00
By other than a small entity ..... 52.00

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a)) ..... \$190.00
By other than a small entity ..... 380.00

\* \* \* \* \*

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a)) ..... \$135.00
By other than a small entity ..... 270.00

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

7. The authority citation for 37 CFR part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

8. Section 41.20 is amended by revising paragraph (b) to read as follows:

§ 41.20 Fees.

\* \* \* \* \*

(b) Appeal fees.

(1) For filing a notice of appeal from the examiner to the Board:

By a small entity (§ 1.27(a) of this title) ..... \$265.00
By other than a small entity ..... 530.00

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a) of this title) ..... \$265.00
By other than a small entity ..... 530.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a)) ..... \$535.00
By other than a small entity ..... 1,070.00



Dated: May 29, 2008.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E8-12364 Filed 6-2-08; 8:45 am]

**BILLING CODE 3510-16-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R05-OAR-2007-1097; FRL-8572-7]

#### **Approval and Promulgation of Air Quality Implementation Plans Minnesota; Maintenance Plan Update for Dakota County Lead Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing an update to the lead maintenance plan for Dakota County, Minnesota. This plan update demonstrates that Dakota County will maintain attainment of the National Ambient Air Quality Standard for lead through 2014. Minnesota has verified that the emission limits adopted to demonstrate modeled attainment continue to be met, that there are no new significant sources of lead or increases in background emissions, and that the state has in place a comprehensive program to identify sources of violations and address any violation through enforcement and implementation of a contingency plan.

**DATES:** Comments must be received on or before July 3, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1097, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).
3. *Fax*: (312) 886-5824.
4. *Mail*: Doug Aburano, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Doug Aburano, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 12, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E8-12242 Filed 6-2-08; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

#### **Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking from the Center for Auto Safety (CAS) asking that we initiate rulemaking to require that any vehicle integrated personal communication systems including cellular phones and text messaging systems be inoperative when the vehicle is in motion.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Ms. Gayle Dalrymple of the NHTSA Office of Crash Avoidance Standards, at 202-366-5559.

For legal issues, you may call Ms. Dorothy Nakama of the NHTSA Office of Chief Counsel at 202-366-2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

#### **Petition for Rulemaking**

The Center for Auto Safety (CAS) submitted a petition for rulemaking asking that we "initiate rulemaking to prohibit the use of integrated cellular telephones and other interactive communication and data transmission devices that can be used for personal conversations and other interactive personal communication or messaging while a vehicle is in motion." CAS stated that the purpose of the petition was to "make the driving environment safer by reducing the availability of devices that have been proven to be traffic hazards." CAS specifically petitioned NHTSA to undertake the following:

First, CAS petitioned NHTSA to issue a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission shift lever sequence, starter interlock, and transmission braking effect*, by adding a new provision that would state:

Any vehicle integrated personal communication systems including cellular phones and text messaging shall be inoperative when the transmission shift lever is in a forward or reverse drive position.

Second, CAS petitioned NHTSA to issue an advance notice of proposed rulemaking (ANPRM) to consider "subjecting other vehicle integrated telematic<sup>1</sup> systems that significantly

<sup>1</sup> At *AskOxford.com*, the online edition of the Oxford Dictionary of the English language, "telematics" is defined as "the branch of information technology which deals with the long-distance transmission of computerized information."