

by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be effective from 8 a.m. to 6 p.m. on September 27, 2008.

Dated: August 4, 2008.

F.M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard, District Five Commander.

[FR Doc. E8-18789 Filed 8-13-08; 8:45 am]

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## 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:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is adjusting 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. In addition, the Office is correcting the addresses for maintenance fee payments and correspondence, and deposit account replenishments.

**DATES:** *Effective Date:* October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The Office is adjusting certain patent fee amounts 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)). In addition, this final rule changes the addresses for maintenance fee payments and correspondence, and deposit account replenishments. The addresses are being changed to reflect the current addresses that should be used.

**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 fee amounts 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 Public Law 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 Public Law 110-161, 121 Stat. 1844 (2007), Public

Law 110-149, 121 Stat. 1819 (2007), Public Law 110-137, 121 Stat. 1454 (2007), Public Law 110-116, 121 Stat. 1295 (2007), Public Law 110-92, 121 Stat. 989 (2007), Public Law 110-5, 121 Stat. 8 (2007), Public Law 109-383, 120 Stat. 2678 (2006), Public Law 109-369, 120 Stat. 2642 (2006), and Public Law 109-289, 120 Stat. 1257 (2006). Legislation is pending before Congress which, if enacted, would extend the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through fiscal year 2009 (through September 30, 2009). See S. 3182, 110th Cong. (2008).

*Fee Adjustment Level:* The patent statutory fee amounts established by 35 U.S.C. 41(a) and (b) are 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 CPI-U for the twelve-month period ending September 30, 2008.

The Office published a notice proposing to adjust the patent fees charged under 35 U.S.C. 41(a), (b), and (d)(1) for fiscal year 2009 to reflect fluctuations in the CPI. See *Revision of Patent Fees for Fiscal Year 2009*, 73 FR 31655 (June 3, 2008), 1331 *Off. Gaz. Pat. Office* 97 (June 24, 2008) (proposed rule). While the proposed rule specified fee amounts based upon a projected CPI-U of 4.0 percent, the proposed rule indicated that the fee amounts adopted in a final rule may be based upon the actual fluctuations in the CPI-U as determined by the Secretary of Labor. See *Revision of Patent Fees for Fiscal Year 2009*, 73 FR at 31656, 1331-4 *Off. Gaz. Pat. Office* at 98. After the date the proposed rule was published, the projected CPI-U for the twelve-month period prior to the enactment of the fee amount adjustments has increased from 4.0 percent to 5.0 percent. Thus, this final rule adjusts the patent fees charged under 35 U.S.C. 41(a), (b), and (d)(1) by 5.0 percent based upon the current projected fluctuation in the CPI-U.

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 fee adjustment is subject to the new fees 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 new fee amounts

and change of addresses, a discussion of specific sections is set forth below.

#### Discussion of Specific Rules

**37 CFR 1.1** *Addresses for non-trademark correspondence with the United States Patent and Trademark Office.* Section 1.1, paragraph (d), is revised to change the maintenance fee payment and correspondence address.

**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), is revised to 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), (l), and (m), is revised to 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), is revised to 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), is revised to adjust fees established therein to reflect fluctuations in the CPI.

**37 CFR 1.25** *Deposit accounts:* Section 1.25, paragraph (c)(3), is revised to change the deposit account replenishment address. In addition, paragraph (c)(4) is removed.

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

**37 CFR 41.20** *Fees:* Section 41.20, paragraphs (b)(1) through (b)(3), is revised to 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. In that event, the Office will publish a final rule adjusting the patent fees under 35 U.S.C. 41(a), (b), and (d) in effect in the absence of the fiscal year 2005 Consolidated Appropriations Act to reflect fluctuations in the Consumer Price Index (CPI-U). The following table (Table 1) sets out the fee amounts that would be published in a final rule 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	Alternative fee amount (non-small entity)	Alternative fee amount (small entity)
1.16(a)	Basic filing fee—utility application	850.00	425.00
1.16(b)	Independent claims in excess of three	94.00	47.00
1.16(d)	Multiple dependent claim	330.00	165.00
1.16(f)	Basic filing fee—design application	380.00	190.00
1.16(g)	Basic filing fee—plant application	600.00	300.00
1.16(h)	Basic filing fee—reissue application	850.00	425.00
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)(1)	Extension for response within first month	120.00	60.00
1.17(a)(2)	Extension for response within second month	480.00	240.00
1.17(a)(3)	Extension for response within third month	1,100.00	550.00
1.17(a)(4)	Extension for response within fourth month	1,720.00	860.00
1.17(a)(5)	Extension for response within fifth month	2,340.00	1,170.00
1.17(m)	Petition to revive—unintentionally abandoned application	1,480.00	740.00
1.18(a)	Issue fee—utility application	1,480.00	740.00
1.18(b)	Issue fee—design application	530.00	265.00
1.18(c)	Issue fee—plant application	710.00	355.00
1.20(e)	Maintenance fee—due at 3.5 years	1,020.00	510.00
1.20(f)	Maintenance fee—due at 7.5 years	2,320.00	1,160.00
1.20(g)	Maintenance fee—due at 11.5 years	3,580.00	1,790.00
1.492(a)(1)	IPEA—U.S.	810.00	405.00
1.492(a)(2)	ISA—U.S.	850.00	425.00
1.492(a)(3)	USPTO not ISA or IPEA	1,200.00	600.00
1.492(a)(5)	Filing with EPO or JPO search report	1,030.00	515.00
1.492(b)	Independent claims in excess of three	94.00	47.00
1.492(d)	Multiple dependent claim	330.00	165.00
41.20(b)(1)	Notice of appeal	370.00	185.00
41.20(b)(2)	Brief in support of an appeal	370.00	185.00

TABLE 1—Continued

37 CFR Sec.	Fee	Alternative fee amount (non-small entity)	Alternative fee amount (small entity)
41.20(b)(3) .....	Request for oral hearing .....	330.00	165.00

*Response to Comments:* As discussed previously, the Office published a notice proposing to adjust the patent fees charged under 35 U.S.C. 41(a), (b), and (d)(1) for fiscal year 2009 to reflect fluctuations in the CPI. *See Revision of Patent Fees for Fiscal Year 2009*, 73 FR 31655 *et seq.*, 1331–4 *Off. Gaz. Pat. Office* 97 *et seq.* The Office received one comment (from an individual) in response to this notice. The comment stated that small entity fees should not be increased, but rather should be reduced.

The small entity reduction amounts are provided by 35 U.S.C. 41(h)(1) (“fees charged under [35 U.S.C. 41](a), (b) and (d)(1) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director”) and 41(h)(3) (“[t]he fee charged under [35 U.S.C. 41](a)(1)(A) shall be reduced by 75 percent with respect to its application to any entity to which [35 U.S.C. 41(h)(1)] applies, if the application is filed by electronic means as prescribed by the Director”). The Office has no authority to change (increase or reduce) the percentage by which the patent fees charged under 35 U.S.C. 41(a), (b), and (d)(1) are reduced for small entities. The Office also has no authority to adjust the patent fee amounts specified in [35 U.S.C. 41](a), (b) and (d)(1) to reflect fluctuations in the CPI (which is necessary to recover the higher costs associated with doing business) only with respect to non-small entities.

**Rulemaking Considerations**

*A. Final Regulatory Flexibility Analysis*

1. Description of the reasons that action by the Office is being considered: The Office is adjusting 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 the 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 final rule: The objective of the 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 final 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 rule 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 new small entity fee amount, and the net amount of the small entity fee adjustment.

TABLE 2

Fee	Fiscal year 2007 small entity payments	Former fee amount	Adjusted fee amount	Fee adjustment
Basic filing fee—utility application—electronic filing .....	41,519	75.00	82.00	7.00
Basic filing fee—utility application (on or after December 8, 2004) .....	45,832	155.00	165.00	10.00
Basic filing fee—utility application (before December 8, 2004) .....	66	405.00	425.00	20.00
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	190.00	10.00
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	300.00	15.00
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	165.00	10.00
Basic filing fee—reissue application (before December 8, 2004) .....	1	405.00	425.00	20.00
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	195.00	10.00
Search fee—utility application (on or after December 8, 2004) .....	86,469	255.00	270.00	15.00
Search fee—plant application (on or after December 8, 2004) .....	326	155.00	165.00	10.00
Search fee—reissue application (on or after December 8, 2004) .....	180	255.00	270.00	15.00
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	325.00	15.00
Application size fee greater than 100 pages .....	5,469	130.00	135.00	5.00
Extension for response within first month .....	30,722	60.00	65.00	5.00
Extension for response within second month .....	17,339	230.00	245.00	15.00
Extension for response within third month .....	23,818	525.00	555.00	30.00
Extension for response within fourth month .....	2,277	820.00	865.00	45.00
Extension for response within fifth month .....	2,700	1,115.00	1,175.00	60.00
Petition to revive—unavoidably abandoned application .....	174	255.00	270.00	15.00
Petition to revive—unintentionally abandoned application .....	3,271	770.00	810.00	40.00
Issue fee—utility application .....	33,718	720.00	755.00	35.00
Issue fee—design application .....	10,398	410.00	430.00	20.00
Issue fee—plant application .....	298	565.00	595.00	30.00
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	490.00	25.00
Maintenance fee—due at 7.5 years .....	20,981	1,180.00	1,240.00	60.00
Maintenance fee—due at 11.5 years .....	8,130	1,955.00	2,055.00	100.00
Filing of PCT application—USPTO ISA—national stage .....	11,807	155.00	165.00	10.00
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	270.00	15.00
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	195.00	10.00
Application size fee greater than 100 pages .....	573	130.00	135.00	5.00
Notice of appeal .....	5,978	255.00	270.00	15.00
Brief in support of an appeal .....	2,640	255.00	270.00	15.00
Request for oral hearing .....	233	515.00	540.00	25.00

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 has also

considered 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 revised 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	Former fee amount	Adjusted fee amount	Fee adjustment
Basic filing fee—utility application (on or after December 8, 2004)	209,577	310.00	330.00	20.00
Basic filing fee—utility application (before December 8, 2004)	311	810.00	850.00	40.00
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	380.00	20.00
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	600.00	30.00
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	330.00	20.00
Basic filing fee—reissue application (before December 8, 2004)	1	810.00	850.00	40.00
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	390.00	20.00
Search fee—utility application (on or after December 8, 2004)	209,135	510.00	540.00	30.00
Search fee—plant application (on or after December 8, 2004)	681	310.00	330.00	20.00
Search fee—reissue application (on or after December 8, 2004)	688	510.00	540.00	30.00
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	650.00	30.00
Application size fee greater than 100 pages	11,257	260.00	270.00	10.00
Extension for response within first month	88,684	120.00	130.00	10.00
Extension for response within second month	42,308	460.00	490.00	30.00
Extension for response within third month	41,489	1,050.00	1,110.00	60.00
Extension for response within fourth month	3,105	1,640.00	1,730.00	90.00
Extension for response within fifth month	3,482	2,230.00	2,350.00	120.00
Petition to revive—unavoidably abandoned application	127	510.00	540.00	30.00
Petition to revive—unintentionally abandoned application	4,180	1,540.00	1,620.00	80.00
Issue fee—utility application	122,251	1,440.00	1,510.00	70.00
Issue fee—design application	12,433	820.00	860.00	40.00
Issue fee—plant application	673	1,130.00	1,190.00	60.00
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	980.00	50.00
Maintenance fee—due at 7.5 years	88,487	2,360.00	2,480.00	120.00
Maintenance fee—due at 11.5 years	42,193	3,910.00	4,110.00	200.00
Filing of PCT application—USPTO ISA—national stage	41,842	310.00	330.00	20.00
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	540.00	30.00
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	390.00	20.00
Application size fee greater than 100 pages	2,102	260.00	270.00	10.00
Notice of appeal	21,646	510.00	540.00	30.00
Brief in support of an appeal	11,950	510.00	540.00	30.00
Request for oral hearing	736	1,030.00	1,080.00	50.00

4. Description of the reporting, recordkeeping and other compliance requirements of the final rule, 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 rule does not require any reporting or recordkeeping or incorporate other compliance requirements. This rule only adjusts patent fees (as discussed previously) to reflect changes in the CPI.

5. Description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule 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 adjusting the patent fee amounts 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 the 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 final 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 final 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 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.*), the United States Patent and Trademark Office has submitted a report containing the final rule and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this final rule will not 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 final rule is not a "major rule" as defined in 5 U.S.C. 804(2).

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

The changes in this final rule 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 rule making does not contain provisions which involve the use of technical standards.

#### *M. Paperwork Reduction Act*

This 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 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 but will update the fee amounts 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 at the time these collections are resubmitted to OMB for renewal.

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 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 1.1 is amended by revising paragraph (d) to read as follows:

**§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.**

\* \* \* \* \*

(d) Payments of maintenance fees in patents not submitted electronically over the Internet, and correspondence related to maintenance fees may be addressed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

\* \* \* \* \*

■ 3. Part 1 of 37 CFR is amended immediately after the undesignated center heading “Fees and Payment of Money” to include the following authority citation:

**Authority:** Secs. 1.16 to 1.22 also issued under 35 U.S.C. 41, 111, 119, 120, 132(b), 156, 157, 255, 302, and 311, and Public Laws 103–465, and 106–113.

■ 4. 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)) .....	\$82.00
By a small entity (§ 1.27(a)) .....	\$165.00
By other than a small entity .....	\$330.00

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

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

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

(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)) .....	\$300.00
By other than a small entity .....	\$600.00

(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)) .....	\$165.00
By other than a small entity .....	\$330.00

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

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

\* \* \* \* \*

(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)) .....	\$195.00
By other than a small entity .....	\$390.00

(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)) .....	\$270.00
By other than a small entity .....	\$540.00

\* \* \* \* \*

(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)) .....	\$165.00
By other than a small entity .....	\$330.00

(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)) .....	\$270.00
By other than a small entity .....	\$540.00

(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)) .....	\$325.00
By other than a small entity .....	\$650.00

(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

\* \* \* \* \*

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

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

(a) Extension fees pursuant to

§ 1.136(a):

(1) For reply within first month:

By a small entity (§ 1.27(a)) .....	\$65.00
By other than a small entity .....	\$130.00

(2) For reply within second month:

By a small entity (§ 1.27(a)) .....	\$245.00
By other than a small entity .....	\$490.00

(3) For reply within third month:

By a small entity (§ 1.27(a)) .....	\$555.00
By other than a small entity .....	\$1,110.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a)) .....	\$865.00
By other than a small entity .....	\$1,730.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a)) .....	\$1,175.00
By other than a small entity .....	\$2,350.00

\* \* \* \* \*

(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)) .....	\$270.00
By other than a small entity .....	\$540.00

(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)) .....	\$810.00
By other than a small entity .....	\$1,620.00

\* \* \* \* \*

■ 6. 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)) .....	\$755.00
By other than a small entity .....	\$1,510.00

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

By a small entity (§ 1.27(a)) .....	\$430.00
By other than a small entity .....	\$860.00

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

By a small entity (§ 1.27(a)) .....	\$595.00
By other than a small entity .....	\$1,190.00

\* \* \* \* \*

■ 7. 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)) .....	\$490.00
By other than a small entity .....	\$980.00

(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)) .....	\$1,240.00
By other than a small entity .....	\$2,480.00

(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)) .....	\$2,055.00
By other than a small entity .....	\$4,110.00

\* \* \* \* \*

■ 8. Section 1.25 is amended by removing paragraph (c)(4) and revising paragraph (c)(3) to read as follows:

**§ 1.25 Deposit accounts.**

\* \* \* \* \*

(c) \* \* \*

(3) A payment to replenish a deposit account may be addressed to: Director of

the United States Patent and Trademark Office, Attn: Deposit Accounts, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

■ 9. 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)) .....	\$165.00
By other than a small entity .....	\$330.00

(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)) .....	\$270.00
By other than a small entity .....	\$540.00

(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)) .....	\$195.00
By other than a small entity .....	\$390.00

\* \* \* \* \*

(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**

■ 10. 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.

■ 11. 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) .....	\$270.00
By other than a small entity .....	\$540.00

(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) .....	\$270.00
By other than a small entity .....	\$540.00

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

Dated: August 8, 2008.

**Margaret J. A. Peterlin,**

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

[FR Doc. E8-18822 Filed 8-13-08; 8:45 am]

**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2006-0571; FRL-8703-3]

**Approval and Promulgation of Implementation Plans for Arizona; Maricopa County PM-10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM-10 Standards**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action under the Clean Air Act (CAA) to approve the Best Available Control Measure (BACM) and the Most Stringent Measure (MSM) demonstrations in the

serious area particulate matter (PM-10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) nonattainment area (Maricopa County area). EPA is also confirming that it appropriately granted Arizona's request to extend the attainment deadline from 2001 to 2006. EPA originally approved these demonstrations and granted the extension request on July 25, 2002. Thereafter EPA's action was challenged in the U.S. Court of Appeals for the Ninth Circuit. In response to the Court's remand, EPA reassessed the BACM demonstration for the significant source categories of on-road motor vehicles and nonroad engines and equipment exhaust, specifically regarding whether or not California Air Resources Board (CARB) diesel is a BACM and/or MSM. As a result of this reassessment, EPA in 2006 again approved the BACM and MSM demonstrations in the plan and granted the request for an attainment date extension. In light of its 2007 finding that the Maricopa County area failed to attain the 24-hour PM-10 National Ambient Air Quality Standard (NAAQS) by December 31, 2006, EPA has again reassessed the BACM and MSM demonstrations and is again approving these demonstrations.

**DATES:** *Effective Date:* This rule is effective on September 15, 2008.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-0091 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location, e.g., copyrighted material, and some may not be publicly available in either location, e.g., confidential business information. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Carol Weisner, EPA Region IX, (415) 947-4107, [weisner.carol@epa.gov](mailto:weisner.carol@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

**I. Summary of Proposed Action**

On June 8, 2007, EPA proposed to re-approve the BACM and MSM demonstrations in Arizona's serious area PM-10 plan for the Maricopa County area. EPA also proposed to confirm that it appropriately granted Arizona's request for an extension of the area's attainment deadline from

December 31, 2001 to December 31, 2006. 72 FR 31778. EPA originally approved the BACM and MSM demonstrations and granted the attainment date extension in 2002.<sup>1</sup> EPA's 2002 action was subsequently challenged in the U.S. Court of Appeals for the Ninth Circuit. On May 10, 2004, the Court issued its opinion which upheld EPA's final approval in part but remanded to EPA the issue of whether CARB diesel must be included in the serious area plan as a BACM and a MSM. See *Vigil v. Leavitt*, 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

In response to the Ninth Circuit's remand, EPA re-examined the feasibility of CARB diesel for both the on-road motor vehicle exhaust and nonroad engines and equipment exhaust significant source categories. On August 3, 2006, EPA again approved the BACM and MSM demonstrations in the MAG plan for these significant source categories without CARB diesel and granted the State's request to extend the attainment deadline from 2001 to 2006. 71 FR 43979. In this final action, EPA concluded that implementation of CARB diesel was not feasible for (1) on-road motor vehicle exhaust because Arizona would not be able to make a "necessity" showing for CARB diesel and thus, would not be able to obtain a waiver of federal preemption under CAA section 211(c)(4)(C)(i) in light of EPA's prior approval of the PM-10 attainment demonstration that did not rely on reductions associated with the use of CARB diesel, and (2) nonroad engines and equipment exhaust because of the uncertainties with fuel availability, storage and segregation and

<sup>1</sup> On July 25, 2002, EPA approved multiple documents submitted to EPA by Arizona for the Maricopa County area as meeting the CAA requirements for serious PM-10 nonattainment areas for the 24-hour and annual PM-10 national ambient air quality standards (NAAQS). Among these documents is the "Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County Nonattainment Area," February 2000 (MAG plan) that includes the BACM demonstrations for all significant source categories (except agriculture) for both the 24-hour and annual PM-10 standards and the State's request and supporting documentation, including the most stringent measure analysis (except for agriculture) for an attainment date extension for both standards. EPA's July 25, 2002 final action included approval of these elements of the MAG plan. For a detailed discussion of the MAG plan and the serious area PM-10 requirements, please see EPA's proposed and final approval actions at 65 FR 19964 (April 13, 2000), 66 FR 50252 (October 2, 2001) and 67 FR 48718 (July 25, 2002).

Note that, effective December 18, 2006, EPA revoked the annual PM-10 standard. 71 FR 61144 (October 17, 2006). References to the annual standard in this final rule are for historical purposes only. EPA is not taking any regulatory action with regard to this former standard.