

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

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§ 141.4 [Amended]

■ 20. In § 141.4, paragraph (b)(4) is amended by removing the words “Chapter 99, Subchapter V, U.S. Note 9, HTSUS;” and paragraph (d) is revised. The revision reads as follows:

§ 141.4 Entry required.

* * * * *

(d) *Railway locomotives and freight cars.* For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, to be excepted and released in accordance with paragraph (b)(4) of this section, the importer must first file a bond on CBP Form 301, containing the bond conditions set forth in either § 113.62 or 113.64 of this chapter.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 21. The general authority citation for part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

§ 162.76 [Amended]

■ 22. In § 162.76(c), the dollar amount “\$500” is removed, and the dollar amount “\$1,000” is added in its place.

PART 163—RECORDKEEPING

■ 23. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

Appendix to Part 163—[Amended]

■ 24. The Appendix to part 163 is amended by removing from listing IV the citation “§ 133.21(b)(6)” just prior to the words “Consent from trademark or trade name holder to import otherwise restricted goods” and by adding in its place, “§§ 133.21(e), 133.22(c)(3) and 133.23(e)”.

PART 171—FINES, PENALTIES, AND FORFEITURES

■ 25. The general authority citation for part 171 continues to read and the specific authority citation for subpart F is revised to read as follows:

Authority: 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614.

§ 171.51 [Amended]

■ 26. In § 171.51(b)(7), the citations “21 U.S.C. 881(a)(4), (6), and (7);” and “, and 49 U.S.C. 80303” are removed.

§ 171.52 [Amended]

■ 27. In § 171.52(a), the citations “21 U.S.C. 881(a)(4), (6) or (7);” and “and/or 49 U.S.C. 80303” are removed.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 28. The general authority for part 181 continues to read and a new specific authority for subpart D of part 181 is added to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314.

Subpart D of part 181 also issued under 19 U.S.C. 1520(d).

Dated: August 23, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–19577 Filed 8–26–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0287]

21 CFR Part 5

Change of Names and Addresses; Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended its regulations to reflect name and address changes for the Office of Compliance, Center for Drug Evaluation and Research (CDER). The document was published in the **Federal Register** of August 11, 2004 (69 FR 48774), with incorrect information regarding the mail codes for the Office of Compliance, CDER. This action is editorial in nature and is intended to provide accuracy and clarity to the agency’s regulations.

DATES: This rule is effective August 11, 2004.

FOR FURTHER INFORMATION CONTACT: Joyce A Strong, Office of Policy (HF–

27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: FDA is correcting a document that amended its regulations in 21 CFR part 5 to correct certain mail codes in the Office of Compliance, CDER.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—ORGANIZATION

■ 1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

■ 2. Section 5.1100 is amended under the heading “CENTER FOR DRUG EVALUATION AND RESEARCH.¹” by revising the entries under the subheading “*Office of Compliance.*” to read as follows:

§5.1100 Headquarters.

* * * * *

CENTER FOR DRUG EVALUATION AND RESEARCH.¹

* * * * *

*Office of Compliance.*¹

Division of New Drugs and Labeling Compliance (HFD–310).

Division of Manufacturing and Product Quality (HFD–320).

Division of Compliance Risk Management and Surveillance (HFD–330).

* * * * *

Dated: August 20, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19598 Filed 8–26–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–019]

RIN 1625–AA87 (Formerly 1625–AA00)

Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulations for the security of Department of Defense assets and military cargo in Puget Sound, Washington. This rule, when enforced by the Captain of the Port Puget Sound, would provide for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States.

DATES: This rule is effective August 27, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13-04-019 and are available for inspection or copying at Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217-6232. For specific information concerning enforcement of this rule, call Marine Safety Office Puget Sound at (206) 217-6200 or (800) 688-6664.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On May 14, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA" in the **Federal Register** (69 FR 26783). No written comments were received by the Coast Guard regarding this proposed rule. However, the Coast Guard received several telephone calls, which indicated that two of the latitude/longitude positions were transposed in the NPRM. These callers were correct and the positions have been corrected in this final rule. A public hearing was not requested and none was held.

The Coast Guard finds good cause exists to make this rule effective less than 30 days after publication. This rule establishes security zones during military cargo loading and unloading operations. The Captain of the Port Puget Sound deems it necessary to make this rule effective upon publication in the **Federal Register** given the unpredictable schedule of these military cargo loading and unloading operations and because of the vital importance of these operations to national security. Moreover, the Captain of the Port Puget Sound will only enforce this rule after issuing a notice of enforcement.

Background and Purpose

Hostile entities continue to operate with the intent to harm U.S. National Security by attacking or sabotaging national security assets. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. ((67 FR 58317, Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks); (67 FR 59447, Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism); (68 FR 55189, Sept. 22, 2003) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)).

The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et. seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215, Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations). Moreover, the ongoing hostilities in Afghanistan and Iraq make it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. The Coast Guard, through this rule, intends to assist the Department of Defense to protect vital national security assets, in waters of Puget Sound. This rule establishes security zones and notification requirements that will exclude persons and vessels from these zones during military cargo loading and unloading operations. Entry into these zones will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Since January 29 of this year, the Captain of the Port has issued four temporary final rules establishing security zones in Commencement Bay, Washington. These temporary final rules have been established to protect facilities used by vessels to load and/or unload military cargo. Moreover, these temporary zones have differed in size and description. This rule would

establish a permanent, uniform, security zone, which would control vessel movement in and around the Blair and Sitcum Waterways, Commencement Bay, WA. However, the Captain of the Port will only enforce this rule after issuing a notice of enforcement. Upon notice of suspension of enforcement, all persons and vessels are authorized to enter, move within and exit these security zones. This rule is deemed necessary to protect vital national security assets and military cargo.

Discussion of Comments and Changes

No comments were received by the Coast Guard as a result of the request for comments in our NPRM. However, we did receive several telephone calls regarding the latitude and longitude positions of the proposed zone. These callers identified two points (the point for the approximate location of the private buoy and the northwestern corner of Pier No. 5) that had been transposed in paragraphs (c)(1) and (c)(2) of our proposed rule. These points have been corrected to accurately reflect the location of these two security zones.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule would restrict access to the regulated area, the effect of this rule would not be significant. This expectation is based on the fact that the regulated area established by the rule would encompass a limited area in the Blair and Sitcum Waterways, Commencement Bay, WA. In addition, temporary final rules established for past cargo loading and unloading operations have only lasted from a few days to over a week in duration. Hence, the Coast Guard expects that enforcement of this rule will be of similar duration. Further, Coast Guard forces will actively monitor and enforce the Blair Waterway and Sitcum Waterway security zones and are authorized by the Captain of the Port to grant authorization to vessels to enter these waterways. In addition, in certain circumstances VTS may grant authorization to enter, move within or depart these waterways. In other words,

those vessels or persons who may be impacted by this rule may request permission to enter, move within or depart these security zones. Finally, the Coast Guard will cause a notice of suspension of enforcement to be published when cargo loading or unloading operations have concluded. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of Blair and/or Sitcum Waterways.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual security zones are limited in size; (ii) designated representatives of the Captain of the Port may authorize access to the security zone; (iii) security zones for any given operation will affect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly and (v) the Coast Guard will cause a notice of suspension of enforcement to be published when cargo loading or unloading operations have concluded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can

better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that these security zones and fishing rights protection need not be incompatible. We have also determined that this 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this 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.

Environment

The Coast Guard’s preliminary review indicates this rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be

prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1321 to read as follows:

§ 165.1321 Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA.

(a) *Notice of enforcement or suspension of enforcement.* The Captain of the Port Puget Sound will enforce the security zones established by this section only upon notice. Captain of the Port Puget Sound will cause notice of the enforcement of these security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these security zones is suspended.

(b) *Definitions.* The following definitions apply to this section:

Designated Representative means those persons designated by the Captain of the Port to monitor these security zones, permit entry into these zones, give legally enforceable orders to persons or vessels with in these zones and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (g) to enforce this section and Vessel Traffic Service Puget Sound (VTS) are Designated Representatives.

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties

involve the enforcement of criminal laws of the United States.

Navigable waters of the United States means those waters defined as such in 33 CFR Part 2.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security zone.* The following areas are security zones:

(1) *Blair Waterway Security Zone:* The Security Zone in the Blair Waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16'57" N, 122°24'39" W, which is approximately the beginning of Pier No. 23 (also known as the Army pier); then northwesterly to 47°17'05" N, 122°24'52" W, which is the end of the Pier No. 23 (Army pier); then southwesterly to 47°16'42" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southeasterly to 47°16'33" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northeasterly to the northwestern end of Pier No. 1; then southeasterly along the shoreline of the Blair Waterway to the Blair Waterway turning basin; then along the shoreline around the Blair Waterway turning basin; then northwesterly along the shoreline of the Blair Waterway to the Commencement Bay Directional Light (light list number 17159); then northeasterly along the shoreline to the point of origin. [Datum: NAD 1983].

(2) *Sitcum Waterway Security Zone:* The Security Zone in the Sitcum Waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16'33" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northwesterly to 47°16'42" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southwesterly to 47°16'23" N, 122°25'36" W; then southeasterly to 47°16'10" N, 122°25'27" W, which is the northwestern corner of Pier No. 2; then extending northeasterly to 47°16'13" N, 122°25'13" W; then extending southeasterly along the shoreline of the Sitcum Waterway; then northeasterly along the shoreline at the terminus of the Sitcum Waterway and then northwesterly along the shoreline of the

Sitcum Waterway; then northeasterly along the shoreline of Pier No. 5 to the point of origin. [Datum: NAD 1983].

(d) *Obtaining permission to enter, move within, or exit the security zones.* All vessels must obtain permission from the COTP or a Designated Representative to enter, move within, or exit the security zones established in this section when these security zones are enforced. Vessels 20 meters or greater in length should seek permission from the COTP or a Designated Representative at least 4 hours in advance. Vessels less than 20 meters in length should seek permission at least 1 hour in advance. VTS Puget Sound may be reached on VHF channel 14.

(e) *Compliance.* Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce these security zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit these security zones.

(f) *Regulations.* Under the general regulations in 33 CFR part 165 subpart D, this section applies to any vessel or person in the navigable waters of the United States to which this section applies. No person or vessel may enter the security zones established in this section unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. All vessels shall operate at the minimum speed necessary to maintain a safe course.

(g) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section pursuant to 33 CFR 6.04–11.

(h) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(i) *Waiver.* For any vessel, the Captain of the Port Puget Sound may waive any

of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: August 6, 2004.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04-19566 Filed 8-26-04; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. 2003-C-027]

RIN 0651-AB70

Revision of Patent Fees for Fiscal Year 2005

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this notice) is adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

DATE: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT:

Tamara McClure by e-mail at Tamara.McClure@uspto.gov, by telephone at (703) 308-5075, or by fax at (703) 308-5077.

SUPPLEMENTARY INFORMATION: This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106-113). This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

A proposed rule notice was published at 69 FR 25861 on May 10, 2004, which requested comments by June 9, 2004. No comments were received.

Legislation has been proposed and passed by the House of Representatives that would alter our fee amounts and procedures. The United States Patent and Trademark Fee Modernization Act of 2004 (H.R. 1561) passed the House of Representatives on March 3, 2004. Similar legislation is pending in the Senate as S. 1760. Customers should be aware that legislative changes to our fees would supersede certain patent fees in this final rule. If such legislative changes occur, we will need to make corresponding changes to the rules of practice to conform them to the fees as set forth in such legislation. Customers may wish to refer to our official Web site at <http://www.uspto.gov> for the most current fee amounts.

In addition, certain rules on fees associated with practices of the Board of Patent Appeals and Interferences are being consolidated in a new part 41 of 37 CFR. These changes were made in accordance with applicable provisions set forth in the final rule notice *Rules of Practice Before the Board of Patent Appeals and Interferences* published at 69 FR 49960 on August 12, 2004.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. 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(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(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(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be

adjusted on October 1, 2004, to reflect fluctuations occurring during the twelve-month period from October 1, 2003, through September 30, 2004, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2004, which is 3.01 percent. Based on this projected CPI-U, patent statutory fees will be adjusted by 3.01 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Pub. L. 103-465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

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 will 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 our office 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 § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other 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 our 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.