TABLE 1 TO § 100.501.—ALL COORDINATES LISTED IN TABLE 1 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location 1
56	September—4th or last Sunday.	Crystal Coast Super Boat Grand Prix.	Super Boat International Productions Inc.	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.
57	September—last Saturday.	Wilmington YMCA Triathlon.	Wilmington, NC, YMCA.	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

§ 100.502 [Removed].

3. Remove section 100.502.

§ 100.504 [Removed].

4. Remove section 100.504.

§ 100.505 [Removed].

5. Remove section 100.505.

§ 100.506 [Removed].

6. Remove section 100.506.

§ 100.507 [Removed].

7. Remove section 100.507.

§ 100.508 [Removed].

8. Remove section 100.508.

§ 100.509 [Removed].

9. Remove section 100.509.

§ 100.510 [Removed].

10. Remove section 100.510.

§ 100.511 [Removed].

11. Remove section 100.511.

§ 100.512 [Removed].

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§ 100.513 [Removed].

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§ 100.514 [Removed].

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§ 100.515 [Removed].

15. Remove section 100.515.

§ 100.517 [Removed].

16. Remove section 100.517.

§ 100.518 [Removed].

17. Remove section 100.518.

§ 100.519 [Removed].

18. Remove section 100.519.

§ 100.520 [Removed].

19. Remove section 100.520.

§ 100.522 [Removed].

20. Remove section 100.522.

§ 100.523 [Removed].

21. Remove section 100.523.

§ 100.525 [Removed].

22. Remove section 100.525.

§ 100.526 [Removed].

23. Remove section 100.526.

§ 100.527 [Removed].

24. Remove section 100.527.

§ 100.529 [Removed].

25. Remove section 100.529.

§ 100.530 [Removed].

26. Remove section 100.530.

§ 100.531 [Removed].

27. Remove section 100.531.

§ 100.532 [Removed].

28. Remove section 100.532.

§ 100.533 [Removed].

29. Remove section 100.533.

§ 100.534 [Removed].

30. Remove section 100.534.

§ 100.535 [Removed].

31. Remove section 100.535.

§ 100.536 [Removed].

32. Remove section 100.536.

Dated: February 28, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8–4707 Filed 3–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2006–0004]

RIN 0651–AC00

Examination of Patent Applications That Include Claims Containing Alternative Language

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Proposed rule; request for comment on initial regulatory flexibility analysis.

SUMMARY: The United States Patent and Trademark Office (Office) published a notice proposing to revise the rules of practice pertaining to any claim using alternative language to claim two or more independent and distinct inventions (Alternative Claims Notice of Proposed Rule Making). The Office has prepared an initial regulatory flexibility analysis (IRFA) on this proposed change to the rules of practice. This notice publishes the IRFA and requests public comment on the IRFA. This notice also invites public comment on the Alternative Claims Notice of Proposed Rule Making.

DATES: Written comments on the IRFA or Alternative Claims Notice of Proposed Rule Making must be received on or before April 9, 2008. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet. Comments on the IRFA should be addressed to *markush-irfa.comments@uspto.gov*, and comments on the proposed rule changes in the Alternative Claims Notice of Proposed Rule Making should be addressed to *markush.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda, Legal Advisor, Office of Patent Legal Administration. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

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

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available on the Office's Internet Web site at (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kathleen Kahler Fonda, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7754; by mail addressed to: Box Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda.

SUPPLEMENTARY INFORMATION: The Office published the Alternative Claims Notice of Proposed Rule Making in the **Federal Register** in August of 2007. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR 44992 (Aug. 10, 2007), republished at 1322 *Off. Gaz. Pat. Office* 22 (Sept. 4, 2007). This notice supplements the Alternative Claims Notice of Proposed Rule Making. The Alternative Claims Notice of Proposed Rule Making indicated that the changes being proposed involve rules of agency practice and procedure for which prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), and thus neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required under 5 U.S.C. 603. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44999.

The Office received several comments concerning the impact of the proposed rules on small businesses and independent inventors. The Office continues to believe that a regulatory flexibility analysis is not required for the Alternative Claims Notice of Proposed Rule Making. The Office, however, has decided to subject the proposed rules to a regulatory flexibility analysis to provide a further opportunity for comment on the small business impact of the proposed rules. Specifically, the Office has commissioned a detailed analysis of the impact of the proposed rules on small entities, and has prepared an IRFA. This notice publishes and requests public comment on the IRFA.

The Alternative Claims Notice of Proposed Rule Making indicated that comments on the proposed changes to the rules of practice were to have been submitted by October 9, 2007. This notice also provides another opportunity to submit comments on the changes to the rules of practice proposed in the Alternative Claims Notice of Proposed Rule Making.

1. *Description of the reasons that action by the agency is being considered:* The Office is proposing to revise the rules of practice pertaining to any claim using alternative language because patent applicants sometimes use Markush or other alternative formats to claim two or more independent and distinct inventions and/or to recite hundreds, if not thousands, of alternative embodiments in one claim. Such claims are confusing, difficult to understand, and frequently border on being unmanageable. Proper search of such complex claims, particularly those using Markush language, often consume a disproportionate amount of Office resources as compared to other types of claims. The prosecution of these complex claims likewise often requires separate examination and patentability determinations for each of the alternatives within the claim, *e.g.*, if the alternatives raise separate prior art, enablement, or utility issues. Furthermore, the variety and frequency of alternatives recited in claims filed in applications pending before the Office, driven in part by trends in emerging technologies, have exacerbated problems with pendency. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44992–97.

2. *Succinct statement of the objectives of, and legal basis for, the proposed rules:* The objective of the proposed changes is to improve practices pertaining to claims that recite alternatives in a manner that will enhance the Office's ability to grant quality patents that effectively promote innovation in a timely manner. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44992. The authority for the proposed changes is 35 U.S.C. 2(b)(2)(A) and (C) (authorizes the establishment of regulations to govern the conduct of proceedings in the Office and facilitate and expedite the processing of patent applications), 112 (requires applicants to submit one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention), 121 (authorizes the Office to restrict an application to a single invention when two or more independent and distinct inventions are claimed), and 131 (authorizes the Office to cause an examination to be made of an application). *See In re Harnisch*, 631 F.2d 716, 722 n.6, 206 USPQ 300, 306 n.6 (CCPA 1980) (inviting the Office to exercise its rule making powers to forestall procedural problems arising from Markush claims).

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).[1]

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.

The proposed rule will apply to any such small entity who files a patent application and chooses to use alternative language in claiming his or her invention. To estimate the number of applications containing alternative language that are submitted by small entities, Office staff analyzed applications filed in fiscal year 2005 (FY05) (the most recent year for which complete eighteen-month publication data are available). Using the preceding definition of small entity, the Office screened these published applications for commonly used alternative language (*e.g.*, ''contains one selected from the group consisting of'') and identified 20,824 small entity applications as containing alternative language and, therefore, as potentially affected by the proposed rule. The Office estimates that this represents approximately 31 percent of total applications containing alternative language.

As anticipated, a larger proportion of applications containing alternative language is concentrated in the biotechnology/chemical arts (an estimated 9,186 of the 21,187 small entity applications in the biotechnology/chemical arts or 43.4 percent). The remaining applications with alternative language are distributed throughout the electrical and mechanical arts (an estimated 11,638 of the 73,831 small entity applications in the electrical/mechanical arts or 15.8 percent). These results are summarized in Table 1.

TABLE 1.—SMALL ENTITY APPLICATIONS (FY05)

Type of art	Number of small entity applications	Number of small entity applications containing alternative language	Percent
Biotechnology/Chemical Applications	21,187	9,186	43.4
Electrical/Mechanical Applications	73,831	11,638	15.8
Total Applications	95,018	20,824	21.9

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: The proposed rule could potentially impact applicants in two ways. First, it would require that a claim must be limited to a single invention. Consequently, if a submitted application contains a single claim that defines multiple independent and distinct inventions, then the examiner may apply a restriction requirement. *See Examination of Patent Applications That Include Claims Containing Alternative Language*, 72 FR at 44995. In this case of an intra-claim restriction, applicants who wish to pursue patent protection for the full scope covered by their initial application would have to file a divisional application for each additional invention defined in that original claim. For example, if a single claim contains three independent and distinct inventions and the Office requires restriction, the applicant could file two divisional applications to prosecute the full scope of the original claims. Alternatively, the applicant could elect not to file any divisional applications, in which case he or she would be limited to the one invention elected in the initial application.

To estimate the costs of one divisional application, the Office is using unit cost data from the American Intellectual Property Law Association (AIPLA) Report of the Economic Survey[2] and the Office fee schedule for fiscal year 2007. Based on these data, the Office estimates that the cost of filing one divisional application is $10,258 (expressed in present value terms using a 7 percent discount rate). The cost faced by applicants could be greater than this amount if the applicant files more than one divisional.

Second, the proposed rule allows examiners to require applicants to simplify the presentation of claims with alternative language so that:

[1] 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.

[2] *AIPLA Report of the Economic Survey 2007*. Table Q33g, Third Quartile, ''Patent application amendment/argument, relatively complex, biotechnology/chemical (Preparation and Filing).'' Page I–74; Table Q33l, Third Quartile, ''Issuing an allowed application (all post-allowance activity).'' Page I–81; Table Q33n, Third Quartile, ''Pay a Maintenance Fee.'' Page I–76.

(1) The number and presentation of alternatives in a single claim are not difficult to construe.

(2) No alternative is itself defined as a set of further alternatives within the claim.

(3) No alternative is encompassed by any other alternative within a list of alternatives unless there is no other practical way to define the invention.

(4) All alternatives are substitutable for each other.

See Examination of Patent Applications That Include Claims Containing Alternative Language, 72 FR at 44996.

Consequently, if an examiner determines that a claim does not comply with one or more of the format requirements listed above, the applicant can be required to correct the claim. The applicant would provide this correction to the claim by submitting an amendment to the application.

To estimate the cost of amending an application in order to correct the format of the claim(s), the Office is using unit cost data on amendments from the AIPLA Report of the Economic Survey.[3] Based on the AIPLA data, the Office estimates that the cost of filing one amendment to correct the format of the claim(s) is $4,029 (expressed in present value terms using a 7 percent discount rate). The cost faced by applicants could be less than or greater than this amount, depending on how difficult it is to correct the format of the claim(s).

Any particular application containing alternative language could be impacted by either, both, or neither of these two effects, and would fall into one of the following four categories:

(1) Applications with alternative language that do not claim multiple inventions in a single claim and have claim(s) in a proper format.

(2) Applications with alternative language that claim multiple inventions in a single claim and have claim(s) in a proper format.

(3) Applications with alternative language that do not claim multiple inventions in a single claim but have claim(s) in an improper format.

(4) Applications with alternative language that claim multiple inventions in a single claim and have claim(s) in an improper format.

Applications within the first of these categories have ''acceptable'' alternative language, and small entities submitting such applications would not incur any incremental costs of note. The remaining three categories, however, contain applications that generally would lead to incremental costs. Applications in category 4, which require both a divisional application and an amendment, incur the greatest cost ($14,287). Table 2 summarizes the compliance activities and corresponding cost estimates.

TABLE 2.—INCREMENTAL COST ESTIMATES

Compliance activity	Cost (present value)
Category 1 applications containing acceptable alternative language	n.a.
Category 2 applications needing one divisional application	$10,258
Category 3 applications needing one amendment to correct the format of the claim(s)	4,029
Category 4 applications needing one divisional application and one amendment to correct the format of the claim(s)	14,287

To estimate the number of small entity applications in each category, the Office examined a sample of 102 FY05 small entity applications with alternative language from the biotechnology/chemical arts and 57 FY05 small entity applications with alternative language from the electrical/mechanical arts. For these applications, the Office identified and categorized the impact of the proposed rule. The Office then scaled these findings to the overall number of small entity applications.

Using this methodology, the Office estimates that 82 percent of affected small entity applications in the biotechnology/chemical arts and 98 percent of affected small entity applications in the electrical/mechanical arts would fall into category 1 and would not incur any notable incremental costs associated with the rule. The remaining 18 percent of affected small entity applications in the biotechnology/chemical arts and 2 percent of affected small entity applications in the electrical/mechanical arts would incur costs to comply with the proposed rule requirements. In total, the analysis shows that an estimated 1,825 small entity applications would incur compliance costs under the proposed rule. Table 3 summarizes these results.

TABLE 3.—SMALL ENTITY APPLICATIONS CONTAINING ALTERNATIVE LANGUAGE BY COST IMPACT CATEGORY

	Biotechnology/chemical applications FY05		Electrical/mechanical applications FY05		Total	
	Number	Percent	Number	Percent	Number	Percent
Category 1: Small entity applications with acceptable alternative language	7,565	82	11,434	98	18,999	91
Category 2: Small entity applications with alternative language that claim multiple inventions in a single claim	991	11	204	2	1,195	6
Category 3: Small entity applications with alternative language that have claim(s) in an improper format	270	3	0	0	270	1
Category 4: Small entity applications with alternative language that claim multiple inventions in a single claim and have claim(s) in an improper format	360	4	0	0	360	2
Total Small Entity Applications with Alternative Language (Categories 1–4)	9,186	100	11,638	100	20,824	100

[3] *AIPLA Report of the Economic Survey 2007*. Table Q33g, Third Quartile, ''Patent application amendment/argument, relatively complex, biotechnology/chemical (Preparation and Filing).'' Page I–74.

TABLE 3.—SMALL ENTITY APPLICATIONS CONTAINING ALTERNATIVE LANGUAGE BY COST IMPACT CATEGORY—Continued

	Biotechnology/chemical applications FY05		Electrical/mechanical applications FY05		Total	
	Number	Percent	Number	Percent	Number	Percent
Total Small Entity Applications with a Cost Impact (Categories 2–4)	1,621	18	204	2	1,825	9

In the Office's analysis of these applications, the number of claims in an improper format ranged from one to four claims per application. Some applications had only dependent claims that were in an improper format, while others had only independent claims that were in an improper format. One application had independent and dependent claims in an improper format. Although the incremental cost faced by applicants could vary depending on the complexity and number of claims needing correction, the Office's use of AIPLA's 75th percentile unit cost estimate for an amendment already accounts for some variation in costs (*i.e.*, the 75th percentile may be a high estimate for most applications) and would seem to be a conservative figure.

In the Office's analysis of the sampled applications containing two or more independent and distinct inventions that are claimed in the alternative in a single claim, the median number of divisional applications required to maintain the scope of the application was 5, although some applications would have required more than 100 divisional applications to maintain scope.

The wide variation in the estimated number of divisional applications is informative when considering the cost impact of the proposed rule for small entity applicants. However, the Office believes that an applicant would need to file at most approximately seven divisional applications following an examiner's restriction requirement, even if more were needed to seek patent protection for the full scope of the originally claimed inventions.[4] Therefore, while the cost impact of intra-claim restrictions could be as low as zero for applicants that elect not to maintain scope, it could range as high as the cost of seven divisional applications (present value of approximately $42,000). However, the Office believes these applications are relatively few in number and the impact for most applicants will be far less.

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 Office has considered a number of alternatives; however, none of these alternatives would accomplish the stated objectives of applicable statutes with a lesser economic impact on small entities.

(1) *Hiring more examiners:* This alternative would increase the number of examiners available to review patent applications in general, thereby improving pendency. It would not lead to impacts on small entities. However, this alternative also would not make it any easier to review applications containing problematic alternative language. The Office is currently hiring as many examiners as resources permit. The Office's ability to hire qualified new examiners is affected by many components, such as budget, the economy, the availability of scientists and engineers, and the ability to absorb and train new employees. Thus, the Office already is employing this ''alternative'' to the extent that its resources permit, but relying upon this alternative ''alternative'' alone without taking additional steps would frustrate the Office's ability to grant quality patents in a timely manner that effectively promote innovation.

(2) *Charging additional fees for applications containing claims using alternative language:* This option could reduce the number of affected small entities by creating a financial disincentive to submitting applications containing claims using alternative language. However, the Office's past efforts to seek patent fee adjustments does not lead to an expectation that the Office would be successful in obtaining a patent fee adjustment that would in fact recover the Office's actual cost of examining applications containing claims using alternative language. In addition, any patent fee adjustment for applications containing claims using alternative language that was sufficient to recover the Office's actual cost of examining applications would likely have a greater economic impact on a larger number of small entities than the proposed rule changes. Finally, for applicants that chose to submit alternative language despite the requirement to pay additional fees, this alternative would not improve the patent prosecution process or result in higher quality patents.

(3) *Limiting the number of species that may be presented in an application:* The rules of practice currently provide that if an ''application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.'' *See* 37 CFR 1.146. A rule that set out a per se limit on the number of species that may be claimed in an application would not accomplish the objective of the proposed rules of treating applications with two or more independent and distinct inventions presented in a single claim. Furthermore, the potential change in the scope of protection available via a single patent application likely would have a greater economic impact on larger number of small entities than the proposed rule changes.

(4) *Exempting small entities (or take no action):* While exempting small entities from coverage of the proposed rules or any part thereof (or taking no action) would avoid any incremental economic impact on small entities, such exemption (or lack of action) would frustrate the Office's ability to grant quality patents in a timely manner that effectively promote innovation. It also would result in small entity applications (or, in the case of no action, all applications) with two or more independent and distinct inventions presented in single claim that either: (1) Consume a disproportionate share of Office examination resources per application and thus not effectively promoting innovation in a timely manner; or (2) receive a less thorough examination, which would decrease, rather than enhance, the Office's ability to grant quality patents. Finally, given

[4] Applicants may file divisional applications sequentially to keep a case pending for the lifetime of a patent (twenty years) to take advantage of the time to determine whether any of their inventions turn out to have market value. The least-cost method of achieving this result would involve an applicant pursuing one divisional application at a time over a twenty-year period. Assuming the prosecution of each divisional application lasts three years, an applicant would be able to minimize the total cost by filing approximately seven divisional applications during this period.

the Office's estimate (as previously noted) that close to one third of all patent applications containing alternative language are submitted by small entities, this alternative would greatly diminish the rule making's ability to improve the patent prosecution process and result in higher quality patents.

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 U.S. government agency 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.

7. Request for data and information in support of the Final Regulatory Flexibility Analysis: The Office welcomes comments addressing the economic impact on small entities of any or all provisions of the proposed rule. In particular, however, the Office is soliciting information on the following:

1. Alternative approaches that would reduce the burden of the rule for small entities while meeting the Office's objectives.

2. The costs of modifying an application that already is under review as needed to comply with the rule:

a. The cost of filing one or more divisional applications.

b. The cost of correcting a claim that is in an improper format, and factors that might cause this cost to vary.

3. The number of patent applications submitted by unique small entities per year (or per decade).

4. Factors that influence an applicant's decision to file divisional applications.

5. Issues that might affect the combined impact of alternative language that requires intra-claim restriction and is of an improper format.

6. The extent to which applicants will adjust to the new rules over time, such that future initial patent applications containing alternative language will comply with the proposed rule (*i.e.*, the applications will not need to incur the cost of amendments or divisional applications due to alternative language that is of an improper format or requires intra-claim restriction).

7. The benefits of the rule making.

8. Other information related to this Initial Regulatory Flexibility Analysis, including any assumptions or findings stated above.

Dated: March 5, 2008.

John Doll,

Commissioner for Patents.

[FR Doc. E8–4744 Filed 3–7–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7765]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before June 9, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7765, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (email) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental