

**List of Subjects in 30 CFR Part 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 2, 2008.

**Bill Joseph,**

*Acting Regional Director, Mid-Continent Region.*

[FR Doc. E8-9194 Filed 4-25-08; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 13**

**RIN 1024-AD69**

**National Park System Units in Alaska**

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The NPS is proposing to implement recent management decisions affecting Denali National Park and Preserve regarding backcountry management, climbing Mount McKinley, and off-road vehicle use for subsistence purposes.

**DATES:** Comments must be received by June 27, 2008.

**ADDRESSES:** You may submit your comments, identified by Regulatory Information Number 1024-AD69 (RIN), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

**FOR FURTHER INFORMATION CONTACT:** National Park Service, Victor Knox, Deputy Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644-3501. E-mail: [akro\\_regulations@nps.gov](mailto:akro_regulations@nps.gov). Fax: (907) 644-3816.

**SUPPLEMENTARY INFORMATION:****Background**

In 1917 Congress established Mount McKinley National Park as a game refuge. By 1932, the park had been enlarged to approximately 2 million acres. In 1980 the Alaska National Interest Lands Conservation Act tripled the size of the park and renamed it Denali National Park and Preserve. At 6 million acres, Denali exemplifies interior Alaska's character as one of the world's last great frontiers for wilderness adventure. One third of the park is designated wilderness-the area

that roughly conforms to the boundaries of the former Mount McKinley National Park. The former Mount McKinley is closed to hunting and trapping and is managed to maintain the undeveloped wilderness parkland character. The 1980 park additions allow customary and traditional subsistence uses by local rural residents. The preserve is open to subsistence uses and also to hunting and trapping under Alaska state law.

The proposed regulations would revise Denali National Park and Preserve regulations in Subpart L of 36 CFR Part 13. The proposed rule implements the 2006 Final Environmental Impact Statement (EIS) and Record of Decision (ROD) regarding the Denali Backcountry Management Plan (BMP) as well as the 2007 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for subsistence use of off-road vehicles in the Cantwell Traditional Use Area. Specific proposed changes include (1) establishing group size limits in the backcountry, an annual limit of 1500 climbers on Mount McKinley, and camping permits where they are currently required through the compendium in accordance with the 2006 BMP/EIS; and (2) restricting off-road vehicle use for subsistence purposes to designated routes and trails in Windy Creek, Cantwell Creek, and Bull River drainages in the Cantwell Traditional Use Area in accordance with the 2007 EA/FONSI. Each proposal is identified in the Section-by-Section Analysis that follows. As used within this document, the terms "we," "our," and "us" refer to the National Park Service.

*Section-by-Section Analysis**Section 13.902 Subsistence Resident Zone*

ANILCA and NPS implementing regulations authorize subsistence hunting and fishing by local rural residents in parks and monuments established in 1980 and the portions of Denali National Park expanded in 1980. In Denali National Park, local rural residents are those who reside in a resident zone community identified in section 13.902, those who possess a permit issued by the superintendent under section 13.440 of this Part, and those who reside within the park boundary. A resident zone community consists of a significant concentration of local rural residents who customarily and traditionally engaged in subsistence uses in the park or monument. Section 808 of ANILCA establishes a Subsistence Resource Commission (SRC) to make recommendations to the

Secretary of the Interior regarding subsistence hunting matters for each national park or monument in Alaska where subsistence is authorized. In 1984, the NPS, in consultation with the Denali SRC, determined the area within a three mile radius of the Cantwell Post Office includes a significant concentration of local rural residents who customarily and traditionally engage in subsistence uses in the park additions. The three mile radius provision has been part of the Denali Subsistence Management Plan since August 2000 and the park compendium since 2001.

*Section 13.903 Subsistence Off-Road Vehicle Use*

The 1980 Alaska National Interest Lands Conservation Act (ANILCA) authorizes subsistence uses by local rural residents where traditional in the ANILCA additions of Denali National Park (Denali park additions). Section 811(b) of ANILCA authorizes the "appropriate use [of] \* \* \* surface transportation traditionally employed" for subsistence uses by federally qualified local rural residents, subject to reasonable regulation.

Relying on information available at the time, the 1986 Denali General Management Plan (GMP) did not consider ORVs to have been regularly used for subsistence purposes and therefore did not consider them a traditional means of subsistence access. In the 1990s, several Cantwell residents provided information new to the NPS regarding historic off-road vehicle use for subsistence purposes in the Cantwell area of the Denali park additions and requested a revision to the GMP to allow traditional subsistence ORV use. The information included affidavits from Cantwell residents describing their use of ORVs for subsistence purposes, including types of ORVs, periods of use, location of use, purpose of use, and identified individuals who used ORVs. Upon reviewing the information, in 2005 the NPS determined that ORVs were used by successive generations of Cantwell residents for subsistence in the Cantwell area (Cantwell Traditional Use Area or TUA) of the Denali National Park additions (see 2005 Determination for Traditional ORV Use for Subsistence in the Cantwell Area) and therefore are authorized for subsistence purposes in this area under ANILCA section 811 and 36 CFR 13.460.

In 2005 the park initiated a planning process and accompanying EA to assure that subsistence ORV use in the Cantwell Traditional Use Area is managed to minimize adverse impacts to the resources and values for which

the park was established while continuing to provide reasonable access for subsistence purposes. Each year since the 2005 Determination, the NPS has implemented seasonal closures to subsistence ORV use in the Traditional Use Area—excluding the trails identified in this proposal—during the fall subsistence hunting season to protect park resources while the EA was being prepared and until permanent regulations are put into place.

The Cantwell Subsistence Off-Road Vehicle Management EA was completed in 2007 and a FONSI was signed shortly thereafter. The NPS decided that only designated trails and areas in the Traditional Use Area would remain open to use of ORVs by federally qualified subsistence users from Cantwell and those residents of Game Management Unit 13E holding a permit issued pursuant to 36 CFR 13.440 for subsistence purposes. The designated trails and areas are: Windy Creek Access Trail, Windy Creek Bowl Trail, Cantwell Airstrip Trail, Pyramid Peak Trail, and the Cantwell Creek Floodplain Corridor. Future designation of a trail and area along the Bull River Floodplain Corridor is contingent upon access being secured across adjacent state lands, construction of an NPS approved trail, and a determination by the superintendent that ORV use continues to be necessary for reasonable access to the Bull River for subsistence resources. ORV use within the Bull River Floodplain Corridor and Cantwell Creek Floodplain Corridor would be limited to designated trails and unvegetated gravel bars. Motor vehicle use off of designated trails or areas would be prohibited.

This provision would also establish the types of ORVs that may be operated on designated trails or areas, who is authorized to use ORVs, and methods to notify the public of closures or restrictions should changing environmental conditions warrant. Nothing in this provision would supersede the provisions of 36 CFR 13.460(d), which requires that ORVs be operated in compliance with applicable state and federal laws, and prohibits damaging park resources or harassing wildlife.

Should credible information become available in the future regarding subsistence ORV use in other areas of the park additions or preserve, the park will at that time consider whether such ORV use is traditional under ANILCA section 811.

The 2005 Cantwell Subsistence Traditionally Employed ORV Determination as well as the 200 EA and FONSI are available at park headquarters, <http://www.regs.gov>, and

<http://www.nps.gov/dena/parkmgmt/managementdocs.htm>.

#### *Section 13.904 Camping*

This provision would replace the existing camping regulation that allows camping in accordance with the BMP, moving a camping permit requirement in the high visitation areas of the park from the compendium to regulation. This proposal would clarify that camping permits are required in the former Mount McKinley National Park and the Kantishna area. Based on visitation patterns, the NPS does not believe camping permits are necessary in other areas of the park or preserve at this time and therefore are not required.

#### *Section 13.905 Group Size*

This provision would implement the 2006 BMP/EIS decisions on group size. The BMP/EIS calls for a maximum backcountry group size of 12 for the eastern half of the park and a maximum of 6 in the western half of the park and preserve. The western half of the park has a lower group size limit. The western portion of the park and preserve are managed to provide opportunities for extended expeditions that are remote with little evidence of humans and few encounters with other visitors. The eastern half of the park receives more visitation, has more evidence of humans, and visitors should expect a greater likelihood of contacting others. This proposal would also provide the superintendent with discretion to authorize larger groups on a case by case basis.

#### *Section 13.910 Mountain Climbing*

This provision would implement sections of the 2006 BMP/EIS by requiring a permit to climb Mount McKinley or Mount Foraker and also establish a limit on the number of climbers on Mount McKinley. An existing 60 day advance registration requirement under current regulations was crafted with the intention of reducing climbing-related accidents and altitude illnesses on Mount McKinley and Mount Foraker. Prior to its promulgation, mountaineering teams could register the same day they departed for the mountain, often with little or no advance preparation or contact with experienced mountaineering rangers. With the advance contact, rangers have an early opportunity to evaluate an expedition's climbing history and make safety recommendations accordingly. These recommendations include urging additional glacier travel, altitude, or winter camping experiences prior to any ascent of Mount McKinley or Foraker;

suggesting climbing with an authorized guiding service; or encouraging a more appropriate route based on the reported level of expertise. The advance notice also provides a climbing team adequate time to choose a leader, organize its members, and pre-plan the expedition for improved safety.

This proposal would change the current registration requirement to a permit requirement and would establish an annual limit of 1500 climbers on Mount McKinley as called for in the BMP/EIS. Due to limited capacity by the NPS to provide required safety briefings, conduct ranger patrols, contact climbers on Mount McKinley, and respond to search and rescue incidents, the NPS determined more than 1500 climbers may compromise visitor and employee safety, potentially resulting in more fatalities. Over the past ten years, there has been an annual average of 1226 climbers attempting Mount McKinley, with a maximum of 1340 in 2005.

#### **Compliance With Other Laws**

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

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. However, it is anticipated that governmental processes and economic efficiency in Denali National Park and Preserve would be improved by this proposed regulatory action.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency-specific rule that will not interfere with other agencies or local government plans, policies, or controls. The proposals included with this rulemaking apply to areas managed by the National Park Service and do not conflict with other federal regulations. The review process used to develop the rulemaking proposals included consultation with the State of Alaska.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other

forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule implements existing legislative enactments, judicial interpretations, regulatory provisions, and planning decisions. It is not a completely new proposal, but rather a continuation of the rulemaking process begun in 1980 to implement various provisions of the Alaska National Interest Lands Conservation Act (ANILCA). In implementing ANILCA, NPS has sought to promulgate only those regulations necessary to interpret the law and to provide for the health and safety of the public and the environment.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The proposals in this rulemaking will either implement rules unrelated to business activity or, in the case of the proposed annual climbing limits for Mount McKinley, does not extend beyond the usual contractual limits for small entities authorized to do business in the park. Consequently, the proposed rule will have no effect on small entities.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. Expenses related to compliance with various provisions of this proposed rule are slight. No new user fees or charges are proposed. Any incidental costs associated with the proposed climbing permits would be covered by or instead of those for the existing registration, check-in, or orientation programs and would not be additional.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Most of the proposed provisions of this rulemaking will generally continue existing rules and use patterns for Denali National Park and Preserve.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this proposed rule do not apply differently to U.S.-

based enterprises and foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rulemaking addresses only actions that will be taken by the NPS. It will not require any State, local or tribal government to take any action that is not funded. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. This rule is an agency specific rule and imposes no other requirements on small governments.

b. This rule will not produce a federal mandate of \$100 million or greater in any year, i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because no taking of property will occur as a result of this proposed rule.

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

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to federal lands and waters managed by the NPS and will not have a substantial direct effect on state and local government in Alaska. This proposed rule was initiated in part at the request of the state and has been drafted in close consultation with the State of Alaska and, as such, promotes the principles of federalism.

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

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the order. This rule does not impose a new burden on the judicial system.

#### *Paperwork Reduction Act*

This regulation requires information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the

public to obtain benefits in the form of camping and climbing permits.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A Record of Decision (ROD) for the Denali National Park and Preserve Final Backcountry Management Plan Environmental Impact Statement was approved on February 21, 2006. On September 18, 2007, a Finding of No Significant Impact (FONSI) was approved for the Cantwell Subsistence ORV Management Environmental Assessment. These documents together represent the environmental analysis for this proposed rule, and are available for review at: <http://www.nps.gov/dena/parkmgmt/managementdocs.htm>, or <http://www.regulations.gov>

#### *Government-to-Government Relationship With Tribes*

In accordance with Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249); the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); the Department of the Interior—Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; part 512 of the Departmental Manual, Chapter 2 “Departmental Responsibilities for Indian Trust Resources”; and park consultation agreements with tribal governments, the potential effects on Federally-recognized Indian tribes have been evaluated, and it has been determined at this time that there are no potential effects that have not been addressed in prior decision documents.

While the consultation agreements noted above have not resulted in findings of new potential effects, various proposals are of interest to local residents using Denali National Park and Preserve and have been facilitated by the relationships established through government-to-government consultation. Finally, the initial determination of effect noted here is dynamic and subject to change throughout this rulemaking process due to the ongoing nature of government-to-government consultation for the NPS areas in Alaska.

*Clarity of This Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Drafting Information:** The principal contributors to this proposed rule are: Peter Armington, Steve Carwile, Philip Hooge, and Joe Van Horn, Denali National Park and Preserve; Andee Sears and Paul Hunter, NPS Alaska Regional Office; and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

**Public Participation**

You may submit comments online at: <http://www.regulations.gov>. Follow the instructions for submitting comments. You may also mail or hand deliver comments to: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 36 CFR Part 13**

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

**PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Subpart N also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681–259, October 21, 1998; Pub. L. 106–31, 113 Stat. 72, May 21, 1999; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

**Subpart L—[Amended]**

2. Revise § 13.902 to read as follows:

**§ 13.902 Subsistence resident zone.**

The following communities and areas are included within the resident zone for Denali National Park addition: Cantwell (limited to the area within a 3 mile radius of the Cantwell post office as shown on a map available at the park visitor center), Minchumina, Nikolai, and Telida.

3. Add § 13.903 to subpart L to read as follows:

**§ 13.903 Subsistence use of off-road vehicles.**

Operating a motor vehicle off road is prohibited except by authorized residents as defined in this section when engaged in subsistence uses. For purposes of this section, “authorized residents” means residents of the Cantwell resident zone community as defined by this subpart or those residents of Alaska Game Management Unit 13E holding a permit issued under § 13.440 of this part. Operating a motor vehicle off road for subsistence purposes outside any area designated by this section is prohibited. A map and GPS coordinates of designated trails and areas are available on the park Web site and at the park visitor center.

(a) Authorized residents may operate vehicles off road only in the following designated areas and trails:

- (1) The Windy Creek Trail;
- (2) The Cantwell Airstrip Trail;
- (3) The Pyramid Trail;
- (4) The Cantwell Creek Floodplain Trail/Corridor; and

(5) A trail or area along the Bull River Floodplain designated by the superintendent under paragraph (b) of this section.

(b) The superintendent may designate a trail or area along the Bull River Floodplain Corridor for motor vehicle use by authorized residents if the superintendent determines that the following conditions are met:

- (1) Access across adjacent non-NPS lands has been secured;
- (2) An NPS-approved trail has been constructed on NPS lands; and

(3) Off-road vehicle use continues to be necessary for reasonable access to the Bull River for subsistence resources by authorized residents.

(c) All of the following are prohibited:

- (1) Motor vehicles greater than 5.5 feet wide;
- (2) Motor vehicles exceeding 1,000 pounds curb (unloaded) weight;
- (3) Motor vehicles that steer by locking or skidding a wheel or track; and

(4) Operating a motor vehicle in violation of § 13.460(d) of this part.

(d) The superintendent may restrict or prohibit motor vehicle use authorized by this section in accordance with § 13.460(b) of this part. The Superintendent will notify the public of the proposed restriction or closure by:

- (1) Publishing a notice in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate;
- (2) Making information about the proposed or emergency actions available for broadcast on local radio stations; and
- (3) Posting information about the proposed or emergency actions at local post offices, on the park Web site, and, if appropriate, on signs at the designated trails or areas.

4. Revise § 13.904 to read as follows:

**§ 13.904 Camping.**

Camping without a permit in designated areas in the former Mount McKinley National Park or the Kantishna area is prohibited. A map showing areas where a permit is required for camping is available at the park visitor center and on the park Web site. Violating terms and conditions of the permit is prohibited.

5. Add § 13.905 to subpart L to read as follows:

**§ 13.905 Group size.**

(a) The following are prohibited:

(1) Group sizes exceeding 12 individuals on the east side of the park outside the Frontcountry Developed Area as defined by this subpart.

(2) Group sizes exceeding 6 individuals on the west side of the park outside the Frontcountry Developed Area as defined by this subpart.

(b) A map showing the east and west boundaries is available at the park visitor center.

(c) The superintendent may authorize larger groups on a case-by-case basis.

6. Revise § 13.910 to read as follows:

**§ 13.910 Mountain climbing.**

(a) Climbing Mount McKinley and Mount Foraker without a permit is prohibited. Climbers must apply for a permit at least 60 days in advance of

any climb. The superintendent may authorize a maximum of 1500 climbers on Mount McKinley each year.

(b) Violating terms and conditions of the permit is prohibited.

Dated: April 8, 2008.

**Lyle Lavery,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. E8-9184 Filed 4-25-08; 8:45 am]

**BILLING CODE 4310-EF-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 2

[Docket No. PTO-T-2006-0011]

RIN 0651-AC05

#### **Institution of a Fee To File on Paper a Request for Reconsideration of a Final Office Action in a Trademark Case**

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

**ACTION:** Supplemental notice of proposed rule and withdrawal of proposed rule.

**SUMMARY:** In response to objections raised, the United States Patent and Trademark Office ("USPTO") withdraws its prior proposal to amend the Rules of Practice in Trademark Cases to require a request for reconsideration of an examining attorney's final refusal or requirement to be filed through the Trademark Electronic Application System ("TEAS") within three months of the mailing date of the final action. The USPTO instead proposes to require a fee of \$50 for filing a request for reconsideration on paper, whereas no fee would be required for a request for reconsideration filed through TEAS. The proposed fee would cover the USPTO's added costs of processing a request for reconsideration filed on paper, rather than through TEAS. Currently, no fee is required in connection with a request for reconsideration, filed either on paper or through TEAS.

**DATES:** Comments must be received by June 27, 2008 to ensure consideration.

**ADDRESSES:** The Office prefers that comments be submitted via electronic mail message to [TMRECONCOMMENTS@USPTO.GOV](mailto:TMRECONCOMMENTS@USPTO.GOV). Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Cynthia C. Lynch; or by hand delivery to the

Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message 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 on the Office's Web site at <http://www.uspto.gov>, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

#### **FOR FURTHER INFORMATION CONTACT:**

Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272-8742.

**SUPPLEMENTARY INFORMATION:** The USPTO withdraws its prior proposal to amend the Rules of Practice in Trademark Cases to shorten the deadline for filing a request for reconsideration of a final Office action and to mandate that such a request be filed through TEAS. The USPTO received comments about practical difficulties presented by the potentially shorter deadline, and has determined that, at this time, the benefits that would be achieved by the shortened deadline do not outweigh the objections expressed by some commenters.

Regarding the proposal to mandate filing through TEAS, the Office remains convinced that, as set forth in the previous notice, the filing of requests for reconsideration electronically, rather than on paper, promotes efficiency in processing the requests and, thereby, in the prosecution of the application. Paper-filed requests necessitate: (1) Manual scanning and uploading of the documents into the USPTO database, and (2) the creation of paper application file wrappers in which to store the original of the paper-filed request for those applications where all previous filings were through TEAS. In contrast, TEAS-filed requests are automatically uploaded into the USPTO database and require no manual scanning or creation of a file wrapper.

Paper-filed requests also introduce processing delays in addition to those described above. Many applicants simultaneously seek reconsideration of a final refusal and file an appeal to the Trademark Trial and Appeal Board ("TTAB"). Because the examining attorney loses jurisdiction over the application upon the filing of an appeal to the TTAB, this simultaneous pursuit

of reconsideration and appeal necessitates a remand by the TTAB to the examining attorney for a decision on the request for reconsideration. Where the applicant has filed the request on paper, the application is often remanded to the examining attorney before the request has been received and/or uploaded into the USPTO database, and so is not immediately available for the examining attorney's review and consideration. Thus, filing through TEAS expedites the examining attorney's notice of and access to the request, shortens pendency, requires less manual processing, and is more cost efficient for the USPTO.

While not disputing the efficiencies achieved by TEAS-filing, some commenters indicated their desire to avoid filing through TEAS when the request for reconsideration would include voluminous attachments that the applicant must scan for submission through TEAS. As an initial matter, the USPTO notes that by the request for reconsideration stage, an applicant has already received at least one non-final action and, in response thereto, has had an opportunity to submit available evidence in support of registration. A request for reconsideration is not intended as an opportunity for an applicant to put forth evidence that could have been provided in response to an initial action. As such, a legitimate need to attach voluminous evidence to a request for reconsideration should only arise where significantly different evidence is included in the final action, which the applicant wishes to rebut.

In addition, the USPTO notes that most filers are able to scan even voluminous evidence, and file it electronically. Nonetheless, in an effort to provide customer service to those who prefer to file requests for reconsideration on paper and therefore shift to the USPTO the burden of scanning and storing the request and all attachments, the USPTO proposes to permit such paper-filing upon payment of a fee in the amount of \$50. This fee for paper filing would cover the USPTO's added costs of processing a request for reconsideration filed on paper. No fee would be required for filing a request for reconsideration through TEAS. A TEAS Plus applicant who files a request for reconsideration on paper would also be responsible for the fee for the loss of TEAS Plus status pursuant to §§ 2.23(b) and 2.23(a)(1)(i).

References in this notice to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.