

include information for persons wishing to observe the round table meeting.

**FOR FURTHER INFORMATION CONTACT:**

Angie Reilly by telephone at (703) 305-9300 or by electronic mail at [interpartesreexam@uspto.gov](mailto:interpartesreexam@uspto.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Ex parte* reexamination of patents, and the procedures for same, were enacted by Congress in 1980 to serve as expedited, low-cost alternatives to patent litigation in reviewing certain aspects of patent validity. Subsequent Congressional review indicated that *ex parte* reexamination of patents was being used infrequently, primarily because a third party who requested reexamination was unable to participate after initiating the reexamination proceeding. Interested parties suggested that the volume of lawsuits in district courts would be reduced if third parties were encouraged and able to use reexamination procedures that provided an opportunity to argue their case for patent invalidity at the USPTO. To address those concerns and provide such an opportunity, Congress enacted the "Optional *Inter Partes* Reexamination Procedure Act of 1999" as Subtitle F of the "American Inventors Protection Act of 1999" (Pub. L. 106-113). While the existing *ex parte* reexamination procedures remain intact, the separate optional *inter partes* reexamination procedures enacted in 1999 permit third party requesters to submit a written comment each time the patent owner files a response to the USPTO, to appeal an adverse decision of the patent examiner to the Board of Patent Appeals and Interferences (BPAI), and to participate in a patent owner's appeal to the BPAI in support of the patent examiner's rejection of claims. Third party requesters did not, however, have the ability to appeal further to the Court of Appeals for the Federal Circuit, nor to participate in the patent owner's appeal to the Court. In addition, an estoppel adverse to a third party requester (which does not exist in *ex parte* reexamination) attaches, if the requester is unsuccessful in the *inter partes* reexamination proceeding. The requester is estopped from later asserting in any civil action, or in a subsequent *inter partes* reexamination, the "invalidity/unpatentability" of any claim finally determined to be valid and patentable on any ground the third party requester raised or could have raised in the *inter partes* reexamination. (35 U.S.C. 315(c).) Also, the requester is estopped from later challenging in a civil action any "fact" determined in the

*inter partes* reexamination. (Section 4607 of the Optional *Inter Partes* Reexamination Procedure Act of 1999.)

In order to make the optional *inter partes* procedures a more attractive alternative to litigation, Congress enacted, in 2002, sections 13105 and 13106 of subtitle A of the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107-273). Those sections (1) provide third party *inter partes* reexamination requesters with the right to appeal to the Court of Appeals for the Federal Circuit and to participate in the patent owner's appeal to the Court and (2) clarify that reexamination (both *ex parte* and *inter partes* reexamination) may be based on a patent or printed publication previously cited by or to USPTO, or considered by USPTO, as long as a substantial new question of patentability is raised. The estoppel provisions of the Optional *Inter Partes* Reexamination Procedure Act of 1999 were not, however, deleted by the Justice Appropriations Authorization Act.

To assist Congress in its continuing oversight of patent operations, Section 4606 of the "Optional *Inter Partes* Reexamination Procedure Act of 1999" includes the requirement that the USPTO submit to the Congress, within five years of the 1999 enactment, a report evaluating whether the *inter partes* reexamination proceedings established by the Act are "inequitable to any of the parties in interest." If inequity is determined to exist, the USPTO's report must then contain "recommendations for changes \* \* \* to remove such inequity."

**Request for Comments**

To aid the USPTO in compiling the required report to Congress, the USPTO requests that interested parties having comments and/or recommendations on promoting equity in *inter partes* reexamination proceedings submit same to the USPTO. It is suggested that any such input to the USPTO include responses to the following questions:

- (1) Do you qualify as, or do you represent, a small entity?
- (2) Have you been a participant, *i.e.*, a third party requester or a patent owner party, in one or more *inter partes* reexamination proceedings?
- (3) Are *inter partes* reexamination proceedings inequitable to any of the parties in interest?
- (4) What particular procedures or lack of procedures do you feel are inequitable?
- (5) What administrative action(s) should USPTO take to remove the identified inequities?

(6) What legislative/statutory action(s) should Congress take to remove the identified inequities?

Comments must be received by February 20, 2004, to ensure consideration. Such comments should be addressed as indicated above, and clearly identified as Comments in response to the **Federal Register** Notice titled "Request for comments and notice of round table meeting regarding The Equities of *Inter Partes* Reexamination Proceedings."

**Round Table Meeting**

In addition, the USPTO will conduct a round table meeting to hear views on the effectiveness and possible improvement of *inter partes* reexamination proceedings. The round table meeting is tentatively scheduled for February 17, 2004, in USPTO offices in Arlington, Virginia.

Requests to participate in the round table meeting must be received by January 28, 2004. Such requests should be addressed as indicated above, and clearly identified as requests to participate in the round table meeting. The USPTO will make reasonable efforts to balance the interests represented at the round table meeting tentatively scheduled for February 17, 2004. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. Notice of the specific time and location for the round table meeting will be communicated to participants and posted on USPTO's Web site at [www.uspto.gov](http://www.uspto.gov). That notice also will include information for persons wishing to observe the round table meeting.

Dated: December 19, 2003.

**Jon W. Dudas,**

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

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**BILLING CODE 3510-16-P**

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Submission for OMB Review; Comment Request**

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by January 29, 2004.

*Title, Form, and OMB Number:* Vessel Operation Report; OMB Number 0710-0006.

*Type of Request:* Reinstatement.

*Number of Respondents:* 1,217.

*Responses per Respondent:* 159 (average).

*Annual Responses:* 193,906.

*Average Burden per Response:* 18 minutes.

*Annual Burden Hours:* 43,213.

*Needs and uses:* This is a U.S. Army Corps of Engineers information collection that serves as the basic instrument to collect waterborne commerce statistics. These data constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors. These data, collected from vessel operating companies, are essential to plans for maintaining U.S. navigable waterways and are critical to the enforcement of the "Harbor Maintenance Tax" authorized under Pub. L. 99-662, Section 1402.

*Affected Public:* Business or other for profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: December 19, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 03-31920 Filed 12-29-03; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by January 29, 2004.

*Title, Form, and OMB Number:* TRICARE Prime Enrollment/Disenrollment Applications; OMB Number 0720-0008.

*Type of Request:* Reinstatement.

*Number of Respondents:* 20,689.

*Responses per Respondent:* 1.

*Annual Responses:* 20,689.

*Average Burden Per Response:* 7 minutes.

*Annual Burden Hours:* 2,150.

*Needs and Uses:* These collection instruments serve as applications for the enrollment, disenrollment, and Primary Care Manager (PCM) Change for the Department of Defense's TRICARE Prime program established in accordance with title 10 U.S.C. 1099, which calls for a healthcare enrollment system. Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with title 10 U.S.C. 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change Form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change, in accordance with the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, Section 723(b)(E). The TRICARE Prime Disenrollment Application serves to disenroll an enrollee from TRICARE Prime on a voluntary basis.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: December 19, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Critical Homeland Installation Protection will meet in closed sessions on January 20-21, 2004; February 26-27, 2004; April 1-2, 2004; May 10-11, 2004; June 17-18, 2004, in Arlington, VA (exact location to be determined). The Task Force will assess best practices for protecting U.S. homeland installations and recommend various approaches to enhancing security and protection of these facilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess investments in technology and manpower in order to ensure proper security levels at our nation's high-value installations with particular emphasis on airports, harbors, nuclear power facilities and military bases. To that end, the Task Force will review existing best practices in force protection and security at civil, industrial and military complexes; assess shortfalls and deficiencies associated with operational security; identify promising technology and/or processes that will enhance security; and recommend methods for reducing overall manpower requirements without relinquishing robust security measures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: December 19, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**BILLING CODE 5001-06-M**