

*Response:* NMFS has addressed the concern of the definition of TTS in previous small take authorizations (66 FR 22450, May 4, 2001; 67 FR 46712, July 16, 2002). These authorizations state that the best scientific information available supports NMFS' determination that TTS results in Level B harassment, rather than Level A harassment. Because TTS is unlikely to occur in bottlenose dolphins from this project (due to mitigation and monitoring discussed in this document), additional discussion is not warranted at this time.

#### Mitigation and Monitoring

NMFS is requiring the Corps to implement mitigation measures and a monitoring program that will establish caution-zone radii to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Mitigation measures include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hr before sunset to ensure adequate observation of marine mammals and sea turtles in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the caution zone radius; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or sea turtle; (5) matching, to the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal/sea turtle watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, for at least 30 minutes before and for 30 minutes after each detonation to ensure that there are no dolphins or sea turtles in the area at the time of detonation. The observer monitoring program will take place in the watch zone. Any marine mammal in the caution zone or the watch zone will not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal moves out of the caution zone on its own volition.

In the unlikely event a marine mammal or marine turtle is injured or killed during blasting, the Contractor shall notify the Corps and the NMFS Regional Office within 48 hours. In addition, the Contractor will also notify the Florida Marine Patrol and the USFWS in Vero Beach.

#### Reporting

The Corps anticipates completing the proposed activities within 24 months of the start date. Therefore, NMFS is issuing a 1-year IHA with the possibility for renewal upon application from the Corps. NMFS requires the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the Corps plans to request a renewal of its IHA, or 120 days after the expiration of the IHA if a renewal is not being requested.

#### Endangered Species Act

Under section 7 of the ESA, the Corps completed consultation with NMFS on September 23, 2002, and with the USFWS on June 19, 2002, for this project. Both agencies found that activities associated with the Corps' dredging project in the Dodge-Lummus Island Turning Basin were not likely to adversely affect listed species.

#### National Environmental Policy Act

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on the Corps' 1989 Environmental Impact Statement and Feasibility Report for the Navigation Study for the Miami Harbor Channel and the contents, results, and analyses of the Corps' blasting project, that this IHA will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Accordingly, this action qualifies for a categorical exemption and is exempted from further environmental review under NOAA Administrative Order 216-6.

#### Conclusions

NMFS determined that the short-term impact as described in the proposed authorization (68 FR 6116, February 6, 2003), should result, at worst, in the temporary modification in behavior by bottlenose dolphins. Although behavioral modifications, including temporarily vacating the area, may be made by this species to avoid the resultant visual and acoustic disturbance from dredging and detonations, this action is expected to have a negligible impact on the affected species or stocks. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of

the mitigation measures mentioned previously in this document.

#### Authorization

NMFS has issued an IHA to the Corps for the potential harassment of small numbers of bottlenose dolphins incidental to deepening the Turning Basin in Miami, FL, provided the previously described mitigation, monitoring, and reporting requirements are met. NMFS has determined that the activity would result in the Level B harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Dated: May 22, 2003.

**Donna Wieting,**

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

##### Patent and Trademark Office

##### **Practitioner Records Maintenance, Disclosure, and Discipline Before the Patent and Trademark Office (Formerly Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office)**

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 28, 2003.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202, by telephone at (703) 308-7400; by e-mail at [susan.brown@uspto.gov](mailto:susan.brown@uspto.gov); or by facsimile at (703) 308-7407.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Nora Cordova, Mail Stop OED, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450; by

telephone at (703) 306-4097; or by electronic mail at [nora.cordova@uspto.gov](mailto:nora.cordova@uspto.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Director of the United States Patent and Trademark Office (USPTO), under the direction of the Department of Commerce, has the authority to establish regulations for the conduct of proceedings before the agency and to prescribe regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. 2, 32 and 33). The USPTO Code of Professional Responsibility (37 CFR 10.20 to 10.112) describes how attorneys or practitioners should conduct themselves professionally and outlines their responsibilities for record keeping and reporting violations or complaints of misconduct to the USPTO, while the Investigations and Disciplinary Proceedings rules (37 CFR 10.130 to 10.170) outline how the USPTO can discipline attorneys and practitioners.

The USPTO Code of Professional Responsibility requires that an attorney or agent maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties. These record keeping requirements are necessary to maintain the integrity of client property. Similar record keeping is required by each State Bar of its attorneys.

The Code also requires that an attorney or agent will report knowledge of certain violations of the Code to the USPTO. This collection requirement is necessary to investigate and possibly prosecute violations of the USPTO Code. If the complaint is found to have merit, the USPTO will provide the practitioner with the opportunity to respond to the complaint. The practitioner can request one 30-day extension of time to respond to the complaint. The USPTO also provides practitioners with the opportunity to respond to settlement offers. The Director may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO

based on noncompliance with the regulations established under the United States Code.

The information collected (reports of alleged violations of the USPTO Code of Professional Responsibility) is used by the Director of Enrollment and Discipline (OED) to conduct investigations and prosecute violations as appropriate. If this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce this provision of the USPTO Code.

The USPTO plans to publish a notice of proposed rulemaking, "Changes to Representation of Others Before the United States Patent and Trademark Office" in the **Federal Register**. This proposed rulemaking expands existing record keeping requirements. Under this proposed rulemaking, practitioners must keep copies or recordings of advertisements or communications disseminated in print or electronic media for two years after the last use of the advertisement, along with a record of when and where the advertisement was used. Additionally, practitioners who have been excluded or suspended from practice before the USPTO must keep and maintain records of their steps to comply with the suspension or exclusion order. These records serve as the practitioner's proof of compliance with the order.

Existing information requirements overlooked in previous submissions are being added to this collection for the first time. The USPTO has reviewed these requirements and determined that they should be submitted to OMB for review. Therefore, the Responses to Requests/Requirements for Information, Requests for Extensions of Time to Respond, Responses to Settlement Offers, and Responses to Show Cause are being incorporated into this collection.

##### II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when an individual is required to participate in the information collection.

##### III. Data

*OMB Number:* 0651-0017.

*Form Number(s):* There are no forms associated with this collection.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions, the Federal Government, and State, Local, or Tribal Government.

*Estimated Number of Respondents:* 582 responses per year.

*Estimated Time Per Response:* The USPTO estimates that practitioners spend 26 hours per year keeping and maintaining records concerning their client's cases. The USPTO estimates that practitioners seeking reinstatement to practice before the agency will spend 60 hours per year keeping and maintaining records showing their compliance with the suspension or exclusion orders. It is estimated that it takes 2 hours to report a complaint and that it takes 5 minutes (0.08 hours) to 4 hours to respond to a complaint and provide other information as necessary. The estimated times will vary, depending upon the request. These estimates include the time to gather the necessary information, prepare the complaint, response or request, to maintain records, and to submit the requests or responses to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 8,334 hours per year.

*Estimated Total Annual Respondent Cost Burden:* \$388,864 per year. Using the professional hourly rate of \$252 per hour for associate attorneys in private firms, and the hourly rate of \$30 for a para-professional/clerical worker, the USPTO estimates \$355,464 per year for salary costs associated with respondents for all of the information and recordkeeping requirements in this collection, with the exception of the complaint/violation reporting. The USPTO predicts that half of the complaints will be filed by practitioners and that the remaining complaints will be split evenly between non-legal/professionals and semi-professionals or skilled trade. The USPTO estimates that it will cost practitioners \$252 per hour, non-legal/professionals \$156 per hour, and semi-professionals or skilled trade \$60 per hour to submit a complaint, for a weighted average hourly rate of \$180 per hour. Considering these factors, the USPTO estimates \$36,000 per year for salary costs associated with filing a complaint, for a total annual respondent cost burden of \$391,464 per year.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements) .....	26	282	7,332

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Record Keeping Maintenance Under Suspension or Exclusion from the USPTO .....	60	5	300
Complaint/Violation Reporting .....	2	100	200
Responses to Requests/Requirements for Information .....	3	150	450
Requests for Extension of Time to Respond .....	<sup>1</sup> 5	30	2
Responses to Settlement Offers .....	3	10	30
Responses to Show Cause .....	4	5	20
<b>Total</b> .....		<b>582</b>	<b>8,334</b>

<sup>1</sup> Minutes.

*Estimated Total Annual Nonhour Respondent Cost Burden:* \$661. There are no capital start-up or maintenance costs associated with this information collection. However, there are postage costs associated with this collection.

The public may submit the complaints, responses, and requests in this collection to the USPTO by mail through the United States Postal Service. If these documents are sent by first-class mail, a certificate of mailing for each piece of correspondence, stating the date of deposit or transmission to the USPTO, may also be included.

The USPTO expects that the complaints will be mailed to the USPTO by first-class postage, for an average cost of 49 cents. The USPTO estimates that up to 100 responses may be mailed by first-class mail (49 cents), for a total postage cost of \$49 per year.

The USPTO believes that the responses to requests/requirements for information and the responses to show cause will be mailed to the USPTO by first-class or priority mail. Since these submissions are frequently bulky in nature, the USPTO estimates that they could weigh up to one pound, for an average postage cost of \$3.85. The USPTO estimates that up to 155 responses may be mailed by first-class or priority mail (\$3.85), for a total postage cost of \$597 per year.

The USPTO believes that the requests for extension of time to respond and the responses to settlement offers will be mailed to the USPTO by first-class postage, for an average cost of 37 cents. The USPTO estimates that up to 40 responses may be mailed by first-class mail (37 cents), for a total postage cost of \$15 per year.

Therefore, this information collection has a total of \$661 in postage costs.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 21, 2003.

**Susan K. Brown,**

*Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 03-13316 Filed 5-28-03; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF THE DEFENSE

### Office of the Secretary

#### **Notice of Availability for Public Viewing of the Draft Environmental Assessment for the Pulsed Fast Neutron Analysis Cargo Inspection System Test Facility at the Ysleta Port of Entry Commercial Cargo Facility, El Paso, TX**

**AGENCY:** Counterdrug Technology Development Program Office (CTDPO), DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The notice announces that a draft Environmental Assessment (EA) regarding potential environmental impacts resulting from the Pulsed Fast Neutron Analysis (PFNA) Cargo Inspection System Test Facility is available for public review. The facility will be constructed at the Ysleta Port of Entry cargo lot in El Paso, Texas. The Counterdrug Technology Development

Program Office (CTDPO) will consider comments before issuing a final EA.

**DATES:** The draft EA will be available for public review for a 30-day period beginning on May 29, 2003. Written comments must be received by June 30, 2003.

**ADDRESSES:** Written comments may be submitted to the Department of Defense, Counterdrug Technology Development Program Office, Naval Surface Warfare Center, 17320 Dahlgren Road, Dahlgren, Virginia 22448-5100, Attn: Dr. Stephen Haimbach. Copies of the draft EA will be available for viewing at the above address. Copies may also be obtained by telephone request through the following phone number: 540/653-2374, and by accessing the following Internet address: <http://www.scainc.biz/EA>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephen Haimbach at 540/653-2374 or at [PFNAmail@dodcounterdrug.com](mailto:PFNAmail@dodcounterdrug.com).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

##### *Introduction*

In its counter-terrorism and counter-drug efforts, the Federal government has invested considerable resources into developing technologies for detecting explosives, narcotics or other contraband hidden among the freight imported into the United States. Radiation-based, non-intrusive inspections systems, such as X-ray and gamma ray, have been in use for several years by Federal government agencies. A related technology, called Pulsed Fast Neutron Analysis (PFNA), was developed several years ago for cargo inspection. PFNA is designed to directly and automatically detect and measure the presence of specific materials, such as cocaine or explosives, which may have been hidden within the vehicle. PFNA technology uses pulses of neutrons as the radiation source to non-intrusively examine packages and containers for suspect materials. While PFNA has been successfully demonstrated in a laboratory setting, it