

burden of coming forward with evidence to the applicant to:

(1) Explicitly identify a specific and substantial utility for the claimed invention; and

(2) Provide evidence that one of ordinary skill in the art would have recognized that the identified specific and substantial utility was well established at the time of filing. The examiner should review any subsequently submitted evidence of utility using the criteria outlined above. The examiner should also ensure that there is an adequate nexus between the showing and the application as filed.

3. Any rejection based on lack of utility should include a detailed explanation why the claimed invention has no specific and substantial credible utility. Whenever possible, the examiner should provide documentary evidence (e.g., scientific or technical journals, excerpts from treatises or books, or U.S. or foreign patents) to support the factual basis for the *prima facie* showing of no specific and substantial credible utility. If documentary evidence is not available, the examiner should specifically explain the scientific basis for his or her factual conclusions.

(a) Where the asserted specific and substantial utility is not credible, a *prima facie* showing of no specific and substantial credible utility must establish that it is more likely than not that a person skilled in the art would not consider credible any specific and substantial utility asserted by the applicant for the claimed invention.

The *prima facie* showing must contain the following elements:

(1) An explanation that clearly sets forth the reasoning used in concluding that the asserted specific and substantial utility is not credible;

(2) Support for factual findings relied upon in reaching this conclusion; and

(3) An evaluation of all relevant evidence of record.

(b) Where no specific and substantial utility is disclosed or known, a *prima facie* showing of no specific and substantial utility must establish that it is more likely than not that a person skilled in the art would not be aware of any well-established credible utility that is both specific and substantial.

The *prima facie* showing must contain the following elements:

(1) An explanation that clearly sets forth the reasoning used in concluding that there is no known well established utility for the claimed invention that is both specific and substantial;

(2) Support for factual findings relied upon in reaching this conclusion; and

(3) An evaluation of all relevant evidence of record.

4. A rejection based on lack of utility should not be maintained if an asserted utility for the claimed invention would be considered specific, substantial, and credible by a person of ordinary skill in the art in view of all evidence of record.

Office personnel are reminded that they must treat as true a statement of fact made by an applicant in relation to an asserted utility, unless countervailing evidence can be provided that shows that one of ordinary skill in the art would have a legitimate basis to doubt the credibility of such a statement. Similarly, Office personnel must accept an opinion from a qualified expert that is based upon relevant facts whose accuracy is not being questioned; it is improper to disregard the opinion solely because of a disagreement over the significance or meaning of the facts offered.

Once a *prima facie* showing of no specific and substantial credible utility has been properly established, the applicant bears the burden of rebutting it. The applicant can do this by amending the claims, by providing reasoning or arguments, or by providing evidence in the form of a declaration under 37 CFR 1.132 or a printed publication that rebuts the basis or logic of the *prima facie* showing. If the applicant responds to the *prima facie* rejection, the Office personnel should review the original disclosure, any evidence relied upon in establishing the *prima facie* showing, any claim amendments, and any new reasoning or evidence provided by the applicant in support of an asserted specific and substantial credible utility. It is essential for Office personnel to recognize, fully consider and respond to each substantive element of any response to a rejection based on lack of utility. Only where the totality of the record continues to show that the asserted utility is not specific, substantial, and credible should a rejection based on lack of utility be maintained.

If the applicant satisfactorily rebuts a *prima facie* rejection based on lack of utility under section 101, withdraw the § 101 rejection and the corresponding rejection imposed under section 112, first paragraph.

Dated: December 16, 1999.

Q. Todd Dickinson,

Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks.

[FR Doc. 99-33054 Filed 12-20-99; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 15, 1999.

William E. Burrow,

Leader, Information Management Group,
Office of the Chief Information Officer.

**Office of Special Education and
Rehabilitative Services**

Type of Review: Extension.

Title: Application for grants under Disability and Rehabilitation Research.
Frequency: Annually.

Affected Public: Not-for-profit institutions; individuals or households; businesses or other for-profit; State, local, or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 805. Burden Hours: 16,100.

Abstract: The National Institute on Disability and Rehabilitation Research (NIDRR) provides grants for research and related activities in Rehabilitation of Individuals with disabilities. The grant application package contains program profiles, standard forms, program regulations, sample rating forms, and transmitting instructions. Applications are primarily institutions of higher education, but may also include hospitals, State Rehabilitation education agencies and voluntary and profit organizations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address OCIO _ IMG _ Issues@ed.gov or should be faxed to 202-708-9346.

Questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708-6287 or via her internet address Sheila _ Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-32971 Filed 12-20-99; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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Dated: December 16, 1999.

William E. Burrow,

*Leader, Information Management Group,
Office of the Chief Information Officer.*

Office of Postsecondary Education

Type of Review: Reinstatement

Title: Robert C. Byrd Honors

Scholarship Program Performance Report

Frequency: Annually

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 1

Burden Hours: 148

Abstract: This information is required of State agencies that administer the Robert C. Byrd Honors Scholarship Program under Title IV, Part A, Subpart

6 of the Higher Education Act of 1965, as amended and administered under 34 CFR Part 654. This information is used to monitor the compliance of the state educational agencies.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651, or should be electronically mailed to the internet address OCIO _ IMG _ Issues@ed.gov or should be faxed to 202-708-9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his internet address Joe _ Schubart@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-33078 Filed 12-20-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 5, 2000: 6 p.m.-9 p.m.

ADDRESSES: Embassy Suites Hotel, 4315 Swenson Street, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT:

Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193-8513, phone: 702-295-0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and discussion on Stewardship.
2. Discussion regarding the Underground Testing Area recommendation and letter.