instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

§ 1430.315 Termination of program.

This program ends after payment has been made to those applicants certified as eligible pursuant to the application period established in § 1430.304. All eligibility determinations shall be final except as otherwise determined by the Deputy Administrator.

Signed at Washington, DC, on September 13, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–19127 Filed 9–23–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

RIN 1010–AD16

Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)—Cost Recovery

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; delay of effective date.

SUMMARY: MMS is delaying until January 1, 2006, the effective date of a rule that will implement fees to offset MMS's costs of providing certain services related to its mineral programs. This delay is necessary because of damage caused in the New Orleans area by Hurricane Katrina and subsequent flooding. The delay will provide relief to the government and the oil and gas industry as they recover from this disaster.

DATES: The effective date of the rule amending 30 CFR Parts 250 and 256 published at 70 FR 49871, August 25, 2005 is delayed until January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Angela Mazzullo, Offshore Minerals Management (OMM) Budget Office at (703) 787–1691.

SUPPLEMENTARY INFORMATION: The rule published August 25, 2005, requires MMS to develop additional procedures that MMS will provide to the oil and gas industry in the form of a Notice to Lessees. The primary office responsible for developing those procedures, the MMS Gulf of Mexico Regional Office in New Orleans, Louisiana, has been closed since Hurricane Katrina and the flooding that followed that disaster. Moreover, many of the lessees and operators subject to the rule are similarly engaged in the restoration of normal operations following Hurricane Katrina. Lessees and operators will be making changes in their own procedures to comply with the rule. Lessees and operators whose operations have been interrupted as a result of the hurricane may not be able to make these changes until normal operations resume. Accordingly, the Department of the Interior is postponing the effective date of the final rule until January 1, 2006.

Dated: September 20, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–19223 Filed 9–23–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, 3, 5, and 10

[Docket No.: 2005–P–053]

RIN 0651–AB85

Provisions for Claiming the Benefit of a Provisional Application With a Non-English Specification and Other Miscellaneous Matters

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending the rules of practice to require that: A copy of the English translation of a foreign-language provisional application be filed in the provisional application if a nonprovisional application claims the benefit of the provisional application; a copy of documentary evidence supporting a claim of ownership be recorded in the Office's assignment records when an assignee takes action in a patent matter; and separate copies of a document be submitted to the Office for recording in the Office's assignment records, each accompanied by a cover sheet, if the document to be recorded includes an interest in, or a transaction involving, both patents and trademarks.

DATES: *Effective* November 25, 2005.

Applicability Date: The changes apply to any paper, application or reexamination proceeding filed in the Office on or after November 25, 2005. Further, if a nonprovisional patent application claims the benefit of the filing date of a non-English provisional application, a translation of the provisional application and a statement that the translation was accurate required by 37 CFR 1.78(a)(5)(iv) will not be required to be filed in the provisional application, if the translation and statement were filed in the nonprovisional application before November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Karin Ferriter (571–272–7744), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, or Robert J. Spar (571–272–7700), Director of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, directly by phone, or by facsimile to 571–273–7744, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: This final rule revises the rules of practice in title 37 of the Code of Federal Regulations (CFR) pertaining to records related to signature, availability of patent application files, power of attorney, provisional applications, and assignments.

Discussion of Specific Rules

Section 1.4: Section 1.4(d)(2) is amended to delete ''with a signature in permanent dark ink or its equivalent,'' because dark ink applies to handwritten signatures, not S-signatures. Section 1.4(d)(2)(ii) is amended to move the word ''only'' in the second sentence thereof from immediately preceding the word ''be'' to immediately following the word ''used'' and to change ''registered practitioner'' to ''patent practitioner (§ 1.32(a)(1)).'' The term ''patent practitioner'' is defined in § 1.32(a).

Section 1.11: Section 1.11(a) is amended for clarity and to reflect the policy regarding availability to the public of papers in the files of applications that have been published. For example, § 1.11(a) is amended to remove ''abandoned'' before ''published application.'' Published applications are not physically available to the public to copy and inspect if the file is maintained in a paper file wrapper. If a published application is not maintained in paper, but is instead maintained in the image file wrapper (IFW) system, the application is made available for public inspection through the Patent Application Information Retrieval (PAIR) system pursuant to § 1.14(a)(1)(iii) and 1.14(b). Since most

pending applications have become available through PAIR, the reference to only abandoned published applications in § 1.11 may have been misleading. In addition, § 1.11(a) is amended to include: ''If an application was published in redacted form pursuant to § 1.217, the complete file wrapper and contents of the patent application will not be available if: the requirements of paragraphs (d)(1), (d)(2), and (d)(3) of § 1.217 have been met in the application; and the application is still pending.''

Section 1.17: Section 1.17(f) is amended to add ''§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.'' See the discussion of the change to § 1.36(a). This change corrects § 1.17 by including § 1.36(a) in the list of petitions for which a fee set forth in § 1.17 can be charged, and also groups the fee for a petition under § 1.36(a) with similar petitions (under § 1.182 and § 1.183).

Section 1.25: Section 1.25(c)(4) is amended to change the address for payment to replenish a deposit account submitted by mail with a private delivery service or hand-carrying the payment to: Director of the U.S. Patent and Trademark Office, Attn: Deposit Accounts, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

Section 1.31: Section 1.31 is amended to change the title to ''Applicant may be represented by one or more patent practitioners or joint inventors'' in order to make the title of the rule more descriptive of the revised rule. A definition for ''patent practitioner'' is added to § 1.32(a), as discussed below, and the term ''patent practitioner'' is used in place of ''registered patent attorney or agent'' in § 1.31, and in other rules. Further, § 1.31 is amended to indicate that one or more patent practitioners or joint inventors may be given a power of attorney to thereby recognize that there may be a single person appointed or an appointment of more than one practitioner or joint inventor to represent the applicant. Section 1.32(c)(1) permits one or more joint inventors to be given power of attorney to represent the other joint inventor or inventors; accordingly, the revision to § 1.31 is necessary for consistency with § 1.32(c)(1).

Section 1.32: Section 1.32(a)(1) is amended to set forth the definition of ''patent practitioner'' and to renumber sections (a)(1) to (a)(4) as (a)(2) through (a)(5), respectively.

Revised § 1.32(a)(1) defines the term ''patent practitioner'' as ''a registered patent attorney or registered patent agent under § 11.6.''

Section 1.32(a)(1) is renumbered as § 1.32(a)(2) and further revised to change ''registered patent attorneys or registered patent agents'' to ''one or more patent practitioners or joint inventors'' to reflect that one or more patent practitioner(s) may be appointed in a power of attorney. Section 1.31 permits a power of attorney to be given to one or more patent practitioners or joint inventors, and this change is consistent therewith.

Section 1.32(a)(2) is renumbered as § 1.32(a)(3) and further revised to add ''or, in a reexamination proceeding, the assignee of the entirety of ownership of a patent'' to reflect that the assignee of the entire interest in a patent may authorize a patent practitioner to represent the assignee in reexamination proceedings, for example, in addition to patent applications. In addition, § 1.32(a)(3) is amended to change ''registered patent attorney or registered patent agent'' to ''patent practitioners or joint inventors.''

Any power of attorney given to a practitioner who has been suspended or disbarred by the Office is ineffective, and does not authorize the person to practice before the Office or to represent applicants or patentees in patent matters.

Section 1.32(a)(3) is renumbered as § 1.32(a)(4), and further revised to change ''registered patent attorney or registered patent agent'' to ''patent practitioner or joint inventor.''

Section 1.32(a)(4) is renumbered as § 1.32(a)(5), and the resulting new paragraph § 1.32(a)(5)(i) is amended to change both instances of ''patent application or patent'' to ''patent application, patent or other patent proceeding'' and the resulting new paragraph § 1.32(a)(5)(iii) is amended to delete ''registered.''

Section 1.32(c)(3) is amended such that the first sentence reads: ''Ten or fewer patent practitioners, stating the name and registration number of each patent practitioner.'' The Office needs the registration number of the patent practitioner to make the practitioner of record. Because the former rules did not require a registration number, registration numbers were sometimes omitted, leading to delays in Office processing of powers of attorney. Accordingly, § 1.32(c)(3) is amended to add a requirement for the registration number of the patent practitioner to assist the Office in making the practitioner of record. If the name submitted on the power of attorney does not match the name associated with the registration number provided in the Office of Enrollment and Discipline records for patent practitioners, the person that the Office will recognize as being of record will be the person associated with the registration number provided, because the Office enters the registration number, not the name, when making the practitioner of record. Accordingly, if the wrong registration number is provided, a new power of attorney will be required to correct the error.

Section 1.33: Section 1.33(a) is amended to use the generic term ''patent practitioner'' instead of ''registered patent attorney or patent agent.'' Specifically, § 1.33(a) is amended to change ''registered patent attorney or patent agent'' to ''patent practitioner'' in two places. In addition, § 1.33(a) is amended to revise the sixth sentence to read: ''If more than one correspondence address is specified in a single document, the Office will select one of the specified addresses for use as the correspondence address and, if given, will select the address associated with a Customer Number over a typed correspondence address.'' Furthermore, § 1.33(a)(1) is amended to change ''If the application was filed by a registered attorney or agent, any other registered practitioner named in the transmittal papers may also change the correspondence address'' to ''If the application was filed by a patent practitioner, any other patent practitioner named in the transmittal papers may also change the correspondence address.''

Neither § 1.33 nor any other rule authorize a practitioner who has been suspended or disbarred by the Office to practice before the Office.

Section 1.33(b)(1) and § 1.33(b)(2) are revised to change ''registered patent attorney or patent agent'' to ''patent practitioner.''

Section 1.33 is also revised to add new paragraph (e) to remind patent practitioners that the attorney roster must be updated separately from and in addition to any change of address filed in individual patent applications. Section 1.33 is amended to state: ''(e) A change of address filed in a patent application or patent does not change the address for a patent practitioner in the roster of patent attorneys and agents. See § 11.11 of this part.''

Section 1.34: Section 1.34 is amended to change ''registered patent attorney or patent agent'' to ''patent practitioner'' in two places, to change ''in whose behalf'' to ''on whose behalf,'' and to change ''must specify his or her registration number and name with his or her signature'' to ''must set forth his or her registration number, his or her name, and signature'' in order to clarify that

the name and signature are separate requirements.

Section 1.36: Section 1.36(a) is amended to change § 1.17(h) to § 1.17(f). The fee for a petition to allow a split power of attorney should be the same regardless of whether the split power of attorney results from revocation by fewer than all of the inventors, as provided in § 1.36(a), or from a petition under § 1.183 to waive the provisions of § 1.32(b)(4) requiring that a power of attorney be signed by the applicant for patent (§ 1.41(b)) or the assignee of the entire interest of the applicant. Furthermore, ''only'' has been moved from immediately preceding the word ''revoke'' to immediately following the term ''power of attorney'' and ''registered patent attorney or patent agent'' is changed to ''patent practitioner.'' Section 402.01 of the *Manual of Patent Examining Procedure* (MPEP) provides additional information on a split power of attorney. *See* MPEP § 402.01 (8th ed. 2001) (Rev. 3, August 2005).

Section 1.52: Section 1.52 is amended by removing paragraphs (a)(5), (a)(7), and (b)(7), and by redesignating paragraph (a)(6) as paragraph (a)(5). The removed paragraphs explained the practice set forth in § 1.135(c) wherein the Office will give applicant a new period of time to file a reply, if the initial reply was not complete or compliance with a requirement was inadvertently omitted. The paragraphs have been removed as unnecessary in view of § 1.135(c).

Section 1.78: Section 1.78(a)(5)(iv) is amended to require the English translation of a foreign-language provisional application be filed in the provisional application, instead of also permitting the translation to be filed in each nonprovisional application that claims the benefit of the filing date of the provisional application. Section 1.78(a)(5)(iv) is also amended to provide that applicant must file, in a nonprovisional application, confirmation of the filing of the translation and statement, when a notice is mailed in the nonprovisional application requiring the translation and statement. Previously, § 1.78(a)(5)(iv) provided that when, pursuant to 35 U.S.C. 119(e), benefit was being claimed of a provisional application which was filed in a language other than English, an English language translation of the provisional application, accompanied by a statement that the translation is accurate, must have been filed in either: (1) The provisional application; or (2) each nonprovisional application that claims the benefit of the provisional application. Thus, if the translation and statement were not filed in the provisional application, they could have been filed in each application that claims the benefit of the filing date of the provisional application (to satisfy the requirement of the rule).

A provisional application is open to the public if the benefit of the provisional application is claimed in an application that has either been published or patented. Where the translation and statement were not filed in the provisional application because they were filed in each nonprovisional application(s) claiming the benefit of the provisional application, there was a burden on the public in finding the translation and statement, and on the Office in storing possibly duplicate copies of the documents. Further, when a translation of the provisional application was filed in the nonprovisional application, the Office sometimes confused the translation of the provisional with the specification papers to be used for the nonprovisional application. Because the option was available to file the translation and statement in the nonprovisional application, applicant's counsel may have inadvertently chosen that option in situations where there were many nonprovisional applications claiming the benefit of a single provisional application, and incurred substantial expense for having to file a translation in each nonprovisional application. Having only one copy of the translation (and statement) ''centrally'' filed in the provisional application, regardless of how many nonprovisional applications claim benefit of that provisional application will be beneficial for applicants, the public, and the Office. Accordingly, § 1.78(a)(5)(iv) is amended to delete from the first sentence ''or the later-filed nonprovisional application'' to thereby eliminate the option to file the translation and statement in the nonprovisional application.

Section 1.78(a)(5)(iv) is further revised to add '', in the provisional application,'' after ''a period of time within which to file'' and the former last sentence of § 1.78(a)(5)(iv) is further revised to read: ''If the notice is mailed in a pending nonprovisional application, a timely reply to such a notice must include the filing in the nonprovisional application of either a confirmation that the translation and statement were filed in the provisional application, or an amendment or Supplemental Application Data Sheet withdrawing the benefit claim, or the nonprovisional application will be abandoned.'' Lastly, the following sentence is added to the end of the paragraph: ''The translation and statement may be filed in the provisional application, even if the provisional application has become abandoned.''

Section 1.133: Section 1.133(a)(2) is amended to permit an interview before first Office action in any application if the examiner determines that such an interview would advance prosecution of the application. The Office conducted a pilot program permitting an interview before the first Office action in applications that were classified in class 705, subclasses 35 through 45, and assigned to Technology Center Art Units 3624 or 3628. *See Notice of Pilot Program to Permit Pre-First Office Action Interview for Applications Assigned to Art Units 3624 and 3628 and Request for Comments on Pilot Programs*, 1281 *Off. Gaz. Pat. Office* 148 (Apr. 27, 2004). The Office received few requests for such interviews, but when such interviews were conducted, the feedback from examiners was that such interviews were usually beneficial and often assisted in focusing the issues for examination. Therefore, the Office sees no justification for maintaining the current prohibition in § 1.133 on interviews before first Office action in non-continuing applications. Nevertheless, an interview before the first Office action in a non-continuing application will not be permitted unless the examiner determines that such an interview would advance prosecution of the application. Thus, the examiner may require that an applicant requesting an interview before first Office action provide a paper that includes a general statement of the state of the art at the time of the invention, and an identification of no more than three (3) references believed to be the ''closest'' prior art and an explanation as to how the broadest claim distinguishes over such references. *See Notice of Pilot Program to Permit Pre-First Office Action Interview for Applications Assigned to Art Units 3624 and 3628 and Request for Comments on Pilot Programs*, 1281 *Off. Gaz. Pat. Office* at 149.

Section 2.208: Section 2.208(c)(4) is amended to change the address for payment to replenish a deposit account submitted by mail with a private delivery service or hand-carrying the payment to: Director of the U.S. Patent and Trademark Office, Attn: Deposit Accounts, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

Section 3.28: Section 3.28 previously directed that ''[o]nly one set of documents and cover sheets to be recorded should be filed'' which discouraged assignees from submitting one set of documents including a patent

cover sheet and the document to be recorded, and another set of documents including a trademark cover sheet and another copy of the document to be recorded. While the Office could process a set of documents that includes a patent cover sheet, trademark cover sheet, and only one copy of the document to be recorded, submitting only one copy of the document could have led to the misconception by the Office that a document submitted for recordation has been omitted, or the document submitted belongs only to the second cover sheet, particularly when the documents are submitted by facsimile and there is a break in the transmission. For example, if a submission included: A trademark sheet on pages 1 and 2, a patent cover sheet on page 3, and a document for recording on pages 4–7, then, if pages 1 and 2 are separated from the remainder of the set of documents, it may not have been clear that the trademark cover sheet was missing because the patent cover sheet and the document to be recorded would have themselves made a complete set of documents. To reduce confusion, § 3.28 is revised to require that a separate copy of the document to be recorded be submitted with each cover sheet. Note that even if the term ''copy of the document to be recorded'' is not used in this discussion, the document submitted for recordation must be a copy, and not the original document, and the term ''document to be recorded'' has been used to emphasize that the document is to be recorded, not to suggest that an original may be submitted.

Section 3.28 is amended to state that each document to be recorded must be accompanied by a single cover sheet (and not multiple cover sheets), to put parentheses around ''as specified in § 3.31,'' and to delete the statement that at least one cover sheet must be included with each document submitted for recording. Section 3.28 is also revised to delete the sentence which states that only one set of documents and cover sheets to be recorded must be filed, and to make it clear that if an assignment includes interests in, or transactions involving, both patents and trademarks, then two copies of each document (each document with its own cover sheet) must be submitted. Thus, a patent cover sheet and a copy of the document, and a trademark cover sheet and a copy of the document, must be submitted.

Section 3.31: Section 3.31(a)(7) is amended to delete ''submission'' before ''(*e.g.* /Thomas O'Malley III/)'' to correct an obvious error.

Section 3.73: Section 3.73(b)(1)(i) is amended to require, for patent matters, that the document(s) submitted to establish ownership under § 3.73(b) be recorded pursuant to § 3.11 in the assignment records.

In order to take action in a patent application or a patent, a party must comply with § 3.73 to establish ownership of the rights to a patent application or a patent (*i.e.*, a patent property) by submitting to the Office a signed statement identifying the assignee. In the prior version of the rule, the signed statement must have been accompanied by either: (1) Documentary evidence of a chain of title from the original owner to the assignee; or (2) a statement specifying where such documentary evidence is recorded in the Office's assignment records. Previously, where the first option was chosen, there was no requirement that the document(s) submitted to establish ownership also be recorded pursuant to § 3.11 in the assignment records unless the Office explicitly required such recordation on a case-by-case basis. Such a requirement was made only in the rare situation where a question arose as to ownership of the property. It is desirable, however, that the Office's patent assignment records should, as a rule, reflect the assignment of any assignee seeking to take action in a patent application or patent.

The previous system, which permitted an assignee to take action by submitting a copy of the assignment in a patent application or patent, but did not require the assignment to be recorded in the Office's patent assignment records, made a search of the Office's patent assignment records unreliable. Permitting an assignee to take action in an application or patent without also recording the assignment (in the Office's assignment records) also encourages the late filing of assignment document(s) and defeats the benefits of timely recordation. *See* 35 U.S.C. 261. (''An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.'')

Section 3.73(b)(1)(i) is amended to require that, for patent matters only, the submission of the documentary evidence to establish ownership must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is, submitted for recordation pursuant to § 3.11. Thus, when filing a § 3.73(b) statement to establish ownership, an applicant or patent owner must also submit the assignment document(s) to the Office for recordation, if such a submission has not been previously made. If the § 3.73(b) statement is not accompanied by a statement affirming that the documentary evidence was, or concurrently is, submitted for recordation pursuant to § 3.11, then the § 3.73(b) statement will not be accepted, and the assignee(s) will not have established the right to take action in the patent application or the patent for which the § 3.73(b) statement was submitted. For trademark matters, there would continue to be no requirement that the submission of the documentary evidence be accompanied by a statement affirming that the documentary evidence was submitted for recordation. Rather, paragraph (b)(1)(i) would continue to set forth that the Office may require (as deemed appropriate in any individual case) the documents (submitted to establish ownership) to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a trademark matter pending before the Office.

Section 5.11: Section 5.11 is amended to correct cross references. Section 5.11(b) is amended to change ''15 CFR part 779'' to ''15 CFR part 734'' and ''Office of Export Administration, International Trade Administration'' to ''Bureau of Industry and Security.'' Section 5.11(c) is amended to change ''data * * * is'' to ''data * * * are,'' ''15 CFR parts 768–799'' to ''15 CFR parts 730–774,'' ''Export Administration'' to ''Bureau of Industry and Security,'' and ''15 CFR part 779'' to ''15 CFR part 734.''

Section 5.19: Section 5.19 is amended to correct two cross references, and to update a reference to the Office. Section 5.19(a) is amended to change ''15 CFR 770.10(j)'' to ''15 CFR 734.3(b)(1)(v)'' and to add ''U.S.'' before ''Patent.'' Section 5.19(b) is amended to change ''15 CFR 779A.3(e)'' to ''15 CFR 734.10(a).''

Section 10.112: Section 10.112 is amended to correct the cross reference, changing ''10.6(c)'' to ''11.6(c).''

Response to comments: The Office published a notice proposing changes to the rules of practice to: Allow a person acting with limited recognition to be given a power of attorney and authorization to sign amendments and other patent-related correspondence; require a copy of the English translation of a foreign-language provisional application be filed in the provisional application if a nonprovisional application claims the benefit of the provisional application; and require a copy of documentary evidence

supporting a claim of ownership be recorded in the Office's assignment records when an assignee takes action in a patent matter. *See Provisions for Persons Granted Limited Recognition To Prosecute Patent Applications and Other Miscellaneous Matters*, 70 FR 17629 (April 7, 2005), 1294 *Off. Gaz. Pat. Office* 22 (May 3, 2005) (proposed rule). The Office received 11 written comments in response to this notice. Comments generally in support of a change are not discussed. Comments regarding limited recognition, other than comment 2, are not discussed. The other comments and the Office's responses to those comments follow:

Comment 1: One comment addressed the proposed changes to § 1.11, noting that the change ''solidified a position held by the Patent Office in recent years that the act of publication at 18 months constitutes an inherent power to inspect.'' The comment raised a concern that having the inventor's signature available on the internet could assist someone in identity theft, and also questioned the Office's authority to make the file wrapper public.

Response: In requiring publication of patent applications, Congress gave the Office the authority to determine how to publish patent applications. The Office has exercised this authority by publishing the specification, including the claims, in a searchable database, and by making the published application file available to the public, either on the internet, or through the Office of Public Records, or the File Information Unit, depending upon whether the file is available in image or paper form, and depending upon the status of the application (pending or abandoned). As to identity theft, the Office does not require Social Security Numbers, and takes steps to ensure that credit card information is not made part of a patent application file. Where an applicant elects to file a Petition to Make Special because of the age of the applicant, if the applicant uses a copy of his or her driver's license to support the petition, the Office will expunge the document from the images available to the public, if a petition under § 1.59 is filed. The signature of the inventor on the oath or declaration for the patent application is required by 35 U.S.C. 116. The Office has always provided full access to the public to patented files so that the public can evaluate whether the statutory requirements (such as an oath or declaration required by 35 U.S.C. 116) were met, and to understand the prosecution history.

Comment 2: One comment asked whether the proposed amendments would make private PAIR available to patent practitioners with limited recognition, *i.e.*, whether someone with a limited recognition could be associated with a Customer Number.

Response: Assignment of a limited recognition number would permit someone accorded limited recognition to have his or her limited recognition number associated with a Customer Number, and obtain a Public Key Infrastructure (PKI) certificate so as to obtain access to private PAIR. For further information on private PAIR, contact the Electronic Business Center by telephone at 866–217–9197 (toll free) or by e-mail to *EBC@uspto.gov*. The Office has decided not to go forward with the proposed amendments regarding limited recognition at this time.

Comment 3: One comment questions the statutory basis for the Office to require a translation of a foreign-language provisional application before the provisional application can be relied upon in a benefit claim. The comment suggests adding the following sentence to the beginning of § 1.78(a)(5)(iv): ''Benefit to a provisional application may not be granted in any nonprovisional application or any international application designating the United States of America unless the provisional application is in English or an English-language translation is provided with a certification of the accuracy of the translation.''

Response: The Office's authority to require an English translation is provided in 35 U.S.C. 2(b)(2)(A) (35 U.S.C. 6(a) at the time an English translation of a provisional application was originally added to the rules of practice). An English translation is a procedural requirement. As to the proposed insertion, the suggestion has not been adopted.

Comment 4: One comment suggested that there not be a requirement for an applicant to file a statement in each nonprovisional application that an English language translation was filed in the provisional application, and suggested that a notice be mailed in a nonprovisional application near 14 months from the provisional application's filing date, if the English translation has not been filed in the provisional application.

Response: The statement is required to be filed only when a notice has been mailed in the nonprovisional application requiring an English translation of the provisional application so that the examiner can evaluate the benefit claim. If a provisional application is filed in a language other than English, and an English language translation is later filed in the provisional application at the same time a nonprovisional application is filed that claims the benefit of the provisional application, then no statement that an English language translation was filed will be necessary. At the time the examiner evaluates the benefit claim, the English language translation will be in the provisional application and available to the examiner. Furthermore, if a provisional application was filed in a language other than English, an applicant filing a nonprovisional application claiming the benefit of the filing date of the provisional application could have filed the translation of the provisional application in the nonprovisional application or the provisional application according to § 1.78(a)(5) before the effective date of the revision to § 1.78(a)(5).

If the translation was elected to be filed in the nonprovisional application, according to prior § 1.78(a)(5), a continuation, continuation-in-part or divisional application of the nonprovisional application would either need a new English translation of the provisional application to be filed in the continuation, continuation-in-part or divisional application, or the translation to be filed in the provisional application. As revised, the translation of the non-English specification must always be filed in the provisional application, and a notice will be mailed in the nonprovisional application only where the translation and the statement that the translation is accurate were not filed in the provisional application.

As to the suggestion that the notice requiring the English language translation be mailed in the nonprovisional application 14 months after the provisional application was filed, the Office is seeking to continually improve processing of patent applications, and generally seeks to send out notices in a timely manner, with as many issues addressed at one time as possible. Applicants should be alert to the language of the provisional application and may be well advised to docket provisional applications in such a manner so that any necessary translation can be filed without a reminder from the Office.

Comment 5: Another comment suggested that the need for a translation to be filed in a provisional application is an undue burden on the applicant, and suggested a public hearing before this change is made.

Response: A translation is already required to be filed whenever an applicant claims the benefit of an application that was not filed in English and the applicant is notified of the need

for the translation by the Office. The change made in the amendment to § 1.78 merely requires that the translation be filed in the provisional application, rather than in either the provisional or each nonprovisional application claiming the benefit of the provisional application. The Office has found that the translation of the provisional application has been confused with the specification for the application to be examined and minimizing this confusion should be beneficial for both applicants and the Office. In more than one instance, the Office has published the translation of the provisional patent application instead of a nonprovisional application for patent, and has been required to publish a corrected patent application publication to correct this error. Accordingly, requiring the translation of the provisional application to be filed in the provisional application is not an undue burden.

Comment 6: Another comment stated that § 1.78(a)(5)(iv) did not clearly confirm that the translation and statement could be filed in the provisional application both before and after abandonment of that application. A related comment argued that allowing papers to be filed in an abandoned provisional application was inconsistent with § 1.137(g), which provides for abandonment of provisional applications in limited situations.

Response: The translation and statement can be filed in a provisional application after the provisional application becomes abandoned. Nothing in prior § 1.78 precluded the translation from being filed in an abandoned provisional application. Many papers are filed in abandoned applications: Changes of address, powers of attorney, and powers to inspect. A sentence has been added to the rule to clarify this point. In permitting a paper to be placed in the file of an abandoned application, nothing suggests that the application has been revived. As to correcting a defective translation in an abandoned application, an applicant should simply file the corrected translation in the abandoned application.

Comment 7: One comment suggested that applicants be required to file a translation of a provisional application in the corresponding nonprovisional application after the filing date of the nonprovisional application to avoid confusing the specification to be examined with the translation.

Response: The option of having the translation filed after the filing date of the nonprovisional application does not avoid the likelihood of the translation being confused with a substitute specification, and has not been adopted.

Comment 8: One comment suggested that the notice requiring the translation and statement that the is accurate be mailed in the provisional application about fourteen months after the provisional application was filed, instead of being mailed in the nonprovisional application.

Response: The suggestion has not been adopted because, if the notice were to be mailed in the abandoned provisional application, the only consequence of a failure to comply would be waiver of right to make a claim of the benefit of the provisional application. More than one application may claim the benefit of the provisional application, and a translation may have already been filed in some of the nonprovisional applications. If the notice is mailed when a new application is filed that claims the benefit of the provisional application, and applicant failed to comply, having the benefit claim waived only as to the new application would be overly complicated. See also the discussion of comment 9.

Comment 9: Two comments suggested that the rule should provide that the benefit claim be waived if the translation has not been filed in response to a notice requiring the translation to be filed in the provisional application, and confirmation in the nonprovisional application. Alternatively, the comments suggested that applicant be allowed to withdraw the claim of the benefit of the provisional application.

Response: The suggestion that the benefit claim be considered waived if no response is filed to the notice has not been adopted. The analogy to a priority or benefit claim being waived when not made in a timely manner is not persuasive because, with a late benefit claim, no mention is made of the earlier application until the right to make a benefit claim has been waived. With the failure to file a translation, the right exists, but would be extinguished by the failure to timely file the translation if the suggestion were to be adopted. The sudden extinguishing of a right to make a benefit claim could have an impact upon the prior art applied by the examiner, and is better addressed as part of the standard procedures for failure to comply with the requirement of the Office. The Office also considered treating the benefit claim as waived if the translation is not filed by the time of publication or patenting of the application, which would be more analogous to the late benefit claims treatment, but the Office generally prefers to warn applicants of an impending loss of rights when feasible. If applicant desires to eliminate the benefit claim, an amendment to the first sentence of the specification or a supplemental application data sheet to remove the benefit claim should be filed promptly in response to the notice. If the Office were to wait for applicant's reply, the Office would be delaying prosecution unnecessarily, and the impact on patent term adjustment would be unclear.

As to the suggestion that the rule provide for the express withdrawal of a benefit claim instead of filing a translation, this suggestion has been adopted by adding ''or an amendment or Supplemental Application Data Sheet withdrawing the benefit claim'' to § 1.78(a)(5)(iv).

Comment 10: One comment requested clarification of the result of the Office failing to mail a notice requiring an English translation of a provisional application, and to comment on the position taken in a prior rule making that the applicant should file an English translation and statement that the translation is accurate before an application claiming the benefit of the nonprovisional application is published.

Response: The consequence of an applicant who has filed a provisional application in a language other than English, failed to file a translation of the provisional application and a statement that the translation is accurate, and then filed an application claiming the benefit of the provisional application is that the applicant has engaged in conduct that leads the Office to expend resources mailing the applicant a letter requiring the translation. If the examiner of a nonprovisional application needed the translation to determine whether the application was entitled to the benefit of the provisional application, then another consequence would be a delay in the prosecution of the nonprovisional application. Applicants are encouraged to file any necessary translations in a timely manner so as to avoid the need for the Office to expend resources reminding applicant to file papers and fees that were previously omitted, preferably before publication of the nonprovisional application so that the appropriate date under 35 U.S.C. 102(e) can be determined without an independent translation of the provisional application.

Comment 11: One comment alleged that the text ''given a period of time within which to file'' was vague and indefinite, and requested that a fixed period be set in the rule. The comment stated that sometimes an insufficient

period of time may be set for an applicant to obtain the translation.

Response: The suggestion has not been adopted. When an applicant elects to claim the benefit of a non-English provisional application in a nonprovisional application (or by entry into the national stage), applicant should initiate the translation of the provisional application because § 1.78(a)(5)(iv) requires a translation (and a statement that the translation is accurate) when the benefit claim of a provisional is claimed. Applicants should not wait until reminded by the Office of this requirement, and should obtain and file the translation without being required by the Office to do so. If the requirement is made before examination, a period of no less than thirty days will be set. If the requirement is made by the examiner, as part of an Office action, the period of time will be the time dictated by the other issues addressed in the Office action (*i.e.*, an *Ex parte Quayle* action would be two months and a non-final Office action would be three months). The broad language used in the rule is desirable to maximize the Office's flexibility in setting the period for reply.

Comment 12: One comment requested that the proposed revision to § 1.78 apply only to provisional applications filed on or after the effective date of the rule change.

Response: Applicants have been required to file a translation of a non-English provisional application since provisional applications were first accepted. The change in § 1.78 is merely to indicate the application in which a translation is required. When the rule becomes effective, if a nonprovisional application claims the benefit of a non-English provisional and a copy of the translation is not already in the nonprovisional application or the provisional application, then the translation will be required to be filed in the provisional application.

Comment 13: One comment suggested that the rules be amended to provide for paralegals to prepare and file Information Disclosure Statements and responses to Notices To File Missing Parts.

Response: The rules of practice provide that only a patent practitioner, the applicant or the assignee of the entire interest of the applicant may sign correspondence in a patent application. Requests for corrected filing receipts, Information Disclosure Statements and responses to Notices To File Missing Parts are examples of correspondence that must comply with the signature rules. No change is being considered at this time.

Furthermore, paralegals or other non-registered personnel employed by the registered patent practitioner should not contact the Office to ask legal questions or other questions regarding the merits of a patent application. As paralegals and other personnel are not registered practitioners, only general information about Office procedures can be provided. Only registered practitioners are permitted to prosecute patent applications in accordance with § 11.10. Thus, Office personnel have been instructed to discuss the merits of a patent application with only the patent practitioner of record, the applicant, or the assignee of the entire interest of the applicant. *See* MPEP §§ 101 and 102.

Comment 14: Another comment suggested that the proposed amendment to § 3.73(b)(1)(i) be rephrased to clearly provide that the documentary evidence of assignment may be submitted concurrently with, as well as prior to, submission of a statement under § 3.73(b).

Response: This suggestion is adopted.

Rule Making Considerations

Administrative Procedure Act: The notable changes in this final rule concern: (1) Providing the proper S-signature by someone acting with limited recognition pursuant to § 11.9(a) and § 11.9(b); (2) providing that the petition fee for a split power of attorney resulting from revocation of the power of attorney by fewer than all of the applicants, or assignees of the applicants, be the same as the petition fee to waive the rules to appoint a split power of attorney initially; (3) requiring that the translation of a non-English language provisional application and statement that the translation is accurate be filed in a provisional application, rather than in either the nonprovisional application claiming the benefit of the provisional application or the provisional application; and (4) requiring that the evidentiary evidence of ownership be recorded under 37 CFR part 3 when an assignee takes action in a patent application. Therefore, these rule changes (except for the change to the petition fee for revocation of a power of attorney by fewer than all of the applicants) involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Commc'n Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and are exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc.* v. *Kessler,* 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules to which the notice and comment requirements of the Administrative Procedure Act apply), and *Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act,* 38 Trademark Rep. 149, 153 (1948)).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes proposed in this notice (except for the change to the petition fee for revocation of a power of attorney by fewer than all of the applicants), an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes proposed in this notice (with the sole exception of the change to the petition fee for revocation of a power of attorney by fewer than all of the applicants). *See* 5 U.S.C. 603.

With respect to the petition fee change, the factual basis supporting the certification under the Regulatory Flexibility Act follows: This notice proposes to change the petition fee (from the $130.00 fee specified in § 1.17(h) to the $400.00 fee specified in § 1.17(f)) for a split power of attorney resulting from revocation of the power of attorney by fewer than all of the applicants or assignees of the applicants to be in line with the actual cost of treating such petitions (in view of the special handling required for the split power of attorney resulting from revocation of the power of attorney). This petition fee is established pursuant to the Office's authority under 35 U.S.C. 41(d) to establish fees for all processing, services, or materials relating to patents not otherwise specified in 35 U.S.C. 41 to recover the estimated average cost to the Office of such processing, services, or materials.

The Office received over 376,000 nonprovisional patent applications and over 102,000 provisional patent applications in fiscal year 2004. The Office receives fewer than five petitions for revocation of the power of attorney by fewer than all of the applicants or assignees of the applicants each year. While the Office does not track the entity status of such petitions, the small entity patent application filing rate is

about 31.0%. Thus, even if all of the affected patents were by a small entity, the proposed change would impact relatively few patent applications (0.0013% of all nonprovisional patent applications).

Accordingly, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control numbers 0651–0012, 0651–0031, 0651–0032, 0651–0034, and 0651–0035. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers. The principal impacts of the changes proposed in this notice are: (1) Providing that the fee for a split power of attorney resulting from revocation of the power of attorney by fewer than all of the applicants or assignees of the applicants be the same as the fee to waive the rules to appoint a split power of attorney initially; (2) requiring that the translation of a non-English language provisional application and statement that the translation is accurate be filed in a provisional application, rather than in either the nonprovisional application claiming the benefit of the provisional application or the provisional application; and (3) requiring that the evidentiary evidence of ownership be recorded under 37 CFR part 3 when an assignee takes action in a patent application.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 37 CFR Parts 1, 2, 3, 5, and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.4 is amended by revising paragraph (d)(2) introductory text and paragraph (d)(2)(ii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) * * *

(2) *S-signature.* An S-signature is a signature inserted between forward slash marks, but not a handwritten signature as defined by § 1.4(d)(1). An S-signature includes any signature made by electronic or mechanical means, and any other mode of making or applying a signature not covered by either a handwritten signature of § 1.4(d)(1) or an Office Electronic Filing System (EFS) character coded signature of § 1.4(d)(3). Correspondence being filed in the Office in paper, by facsimile transmission as provided in § 1.6(d), or via the Office Electronic Filing System as an EFS Tag(ged) Image File Format (TIFF) attachment, for a patent application, patent, or a reexamination proceeding may be S-signature signed instead of being personally signed (*i.e.*, with a handwritten signature) as provided for in paragraph (d)(1) of this section. The requirements for an S-signature under this paragraph (d)(2) are as follows:

* * * * *

(ii) A patent practitioner (§ 1.32(a)(1)), signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2), must supply his/her registration number either as part of the S-signature, or immediately below or adjacent to the S-signature. The number (#) character may be used only as part of the S-signature when appearing before a practitioner's registration number; otherwise the number character may not be used in an S-signature.

* * * * *

■ 3. Section 1.11 is amended by revising paragraph (a) to read as follows:

§ 1.11 Files open to the public.

(a) The specification, drawings, and all papers relating to the file of: A published application; a patent; or a statutory invention registration are open to inspection by the public, and copies may be obtained upon the payment of the fee set forth in § 1.19(b)(2). If an application was published in redacted form pursuant to § 1.217, the complete file wrapper and contents of the patent application will not be available if: The requirements of paragraphs (d)(1), (d)(2), and (d)(3) of § 1.217 have been met in the application; and the application is still pending. See § 2.27 of this title for trademark files.

* * * * *

■ 4. Section 1.17 is amended by revising paragraph (f) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph: $400.00.

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

* * * * *

■ 5. Section 1.25 is amended by revising paragraph (c)(4) to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(c) * * *

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or by hand-carrying the payment to: Director of the U.S. Patent and Trademark Office, Attn: Deposit Accounts, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

* * * * *

■ 6. Section 1.31 is revised to read as follows:

§ 1.31 Applicant may be represented by one or more patent practitioners or joint inventors.

An applicant for patent may file and prosecute his or her own case, or he or she may give a power of attorney so as to be represented by one or more patent practitioners or joint inventors. The United States Patent and Trademark Office cannot aid in the selection of a patent practitioner.

■ 7. Section 1.32 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 1.32 Power of attorney.

(a) *Definitions.* (1) *Patent practitioner* means a registered patent attorney or registered patent agent under § 11.6.

(2) *Power of attorney* means a written document by which a principal authorizes one or more patent practitioners or joint inventors to act on his or her behalf.

(3) *Principal* means either an applicant for patent (§ 1.41(b)) or an assignee of entire interest of the applicant for patent or in a reexamination proceeding, the assignee of the entirety of ownership of a patent. The principal executes a power of attorney designating one or more patent practitioners or joint inventors to act on his or her behalf.

(4) *Revocation* means the cancellation by the principal of the authority previously given to a patent practitioner or joint inventor to act on his or her behalf.

(5) *Customer Number* means a number that may be used to:

(i) Designate the correspondence address of a patent application or patent such that the correspondence address for the patent application, patent or other patent proceeding would be the address associated with the Customer Number;

(ii) Designate the fee address (§ 1.363) of a patent such that the fee address for the patent would be the address associated with the Customer Number; and

(iii) Submit a list of patent practitioners such that those patent practitioners associated with the Customer Number would have power of attorney.

* * * * *

(c) * * *

(3) Ten or fewer patent practitioners, stating the name and registration number of each patent practitioner. Except as provided in paragraph (c)(1) or (c)(2) of this section, the Office will not recognize more than ten patent practitioners as being of record in an application or patent. If a power of attorney names more than ten patent practitioners, such power of attorney must be accompanied by a separate paper indicating which ten patent practitioners named in the power of attorney are to be recognized by the Office as being of record in the application or patent to which the power of attorney is directed.

■ 8. Section 1.33 is amended by revising paragraphs (a) introductory text, (a)(1), (b)(1) and (b)(2) and by adding paragraph (e) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) *Correspondence address and daytime telephone number.* When filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing. If no correspondence address is specified, the Office may treat the mailing address of the first named inventor (if provided, see §§ 1.76(b)(1) and 1.63(c)(2)) as the correspondence address. The Office will direct all notices, official letters, and other communications relating to the application to the correspondence address. The Office will not engage in double correspondence with an applicant and a patent practitioner, or with more than one patent practitioner except as deemed necessary by the Director. If more than one correspondence address is specified in a single document, the Office will select one of the specified addresses for use as the correspondence address and, if given, will select the address associated with a Customer Number over a typed correspondence address. For the party to whom correspondence is to be addressed, a daytime telephone number should be supplied in a clearly identifiable manner and may be changed by any party who may change the correspondence address. The correspondence address may be changed as follows:

(1) *Prior to filing of § 1.63 oath or declaration by any of the inventors.* If a § 1.63 oath or declaration has not been filed by any of the inventors, the correspondence address may be changed by the party who filed the application. If the application was filed by a patent practitioner, any other patent practitioner named in the transmittal papers may also change the correspondence address. Thus, the inventor(s), any patent practitioner named in the transmittal papers accompanying the original application, or a party that will be the assignee who filed the application, may change the correspondence address in that application under this paragraph.

* * * * *

(b) * * *

(1) A patent practitioner of record appointed in compliance with § 1.32(b);

(2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34;

* * * * *

(e) A change of address filed in a patent application or patent does not change the address for a patent practitioner in the roster of patent attorneys and agents. See § 11.11 of this title.

■ 9. Section 1.34 is revised to read as follows:

§ 1.34 Acting in a representative capacity.

When a patent practitioner acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party on whose behalf he or she acts. In filing such a paper, the patent

practitioner must set forth his or her registration number, his or her name and signature. Further proof of authority to act in a representative capacity may be required.

■ 10. Section 1.36 is amended by revising paragraph (a) to read as follows:

§ 1.36 Revocation of power of attorney; withdrawal of patent attorney or agent.

(a) A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceedings of a case by an applicant for patent (§ 1.41(b)) or an assignee of the entire interest of the applicant, or the owner of the entire interest of a patent. A power of attorney to the patent practitioners associated with a Customer Number will be treated as a request to revoke any powers of attorney previously given. Fewer than all of the applicants (or fewer than all of the assignees of the entire interest of the applicant or, in a reexamination proceeding, fewer than all the owners of the entire interest of a patent) may revoke the power of attorney only upon a showing of sufficient cause, and payment of the petition fee set forth in § 1.17(f). A patent practitioner will be notified of the revocation of the power of attorney. Where power of attorney is given to the patent practitioners associated with a Customer Number (§ 1.32(c)(2)), the practitioners so appointed will also be notified of the revocation of the power of attorney when the power of attorney to all of the practitioners associated with the Customer Number is revoked. The notice of revocation will be mailed to the correspondence address for the application (§ 1.33) in effect before the revocation. An assignment will not of itself operate as a revocation of a power previously given, but the assignee of the entire interest of the applicant may revoke previous powers of attorney and give another power of attorney of the assignee's own selection as provided in § 1.32(b).

* * * * *

§ 1.52 [Amended]

■ 11. Section 1.52 is amended by removing paragraphs (a)(5), (a)(7), and (b)(7), and by redesignating paragraph (a)(6) as paragraph (a)(5).

■ 12. Section 1.78 is amended by revising paragraph (a)(5)(iv) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(5)(i) * * *

(iv) If the prior-filed provisional application was filed in a language other than English and both an English-language translation of the prior-filed provisional application and a statement that the translation is accurate were not previously filed in the prior-filed provisional application, applicant will be notified and given a period of time within which to file, in the prior-filed provisional application, the translation and the statement. If the notice is mailed in a pending nonprovisional application, a timely reply to such a notice must include the filing in the nonprovisional application of either a confirmation that the translation and statement were filed in the provisional application, or an amendment or Supplemental Application Data Sheet withdrawing the benefit claim, or the nonprovisional application will be abandoned. The translation and statement may be filed in the provisional application, even if the provisional application has become abandoned.

* * * * *

■ 13. Section 1.133 is amended by revising paragraph (a)(2) to read as follows:

§ 1.133 Interviews.

(a)(1) * * *

(2) An interview for the discussion of the patentability of a pending application will not occur before the first Office action, unless the application is a continuing or substitute application or the examiner determines that such an interview would advance prosecution of the application.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 14. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

■ 15. Section 2.208 is amended by revising paragraph (c)(4) to read as follows:

§ 2.208 Deposit accounts.

* * * * *

(c) * * *

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the U.S. Patent and Trademark Office, Attn: Deposit Accounts, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

■ 16. The authority citation for 37 CFR part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

■ 17. Section 3.28 is revised to read as follows:

§ 3.28 Requests for recording.

Each document submitted to the Office for recording must include a single cover sheet (as specified in § 3.31) referring either to those patent applications and patents, or to those trademark applications and registrations, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, then separate patent and trademark cover sheets, each accompanied by a copy of the document to be recorded, must be submitted. If a document to be recorded is not accompanied by a completed cover sheet, the document and the incomplete cover sheet will be returned pursuant to § 3.51 for proper completion, in which case the document and a completed cover sheet should be resubmitted.

■ 18. Section 3.31 is amended by revising paragraph (a)(7)(i) to read as follows:

§ 3.31 Cover sheet content.

(a) * * *

(7) * * *

(i) Place a symbol comprised of letters, numbers, and/or punctuation marks between forward slash marks (*e.g.* /Thomas O'Malley III/) in the signature block on the electronic submission; or

* * * * *

■ 19. Section 3.73 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 3.73 Establishing right of assignee to take action.

* * * * *

(b)(1) * * *

(i) Documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment). For trademark matters only, the documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office. For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 20. The authority citation for 37 CFR part 5 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2571 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; the Nuclear Non Proliferation Act of 1978; 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 734.3(b)(1)(v), 22 CFR 125.04, and 10 CFR 810.7), as well as the Export Administration Act of 1979, 50 U.S.C. app. 2401 *et seq.*; the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 21. Section 5.11 is amended by revising paragraphs (b) and (c) to read as follows:

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting international application.

* * * * *

(b) The license from the Commissioner for Patents referred to in paragraph (a) would also authorize the export of technical data abroad for purposes relating to the preparation, filing or possible filing and prosecution of a foreign patent application without separately complying with the regulations contained in 22 CFR parts 121 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730–774 (Regulations of the Bureau of Industry and Security, Department of Commerce) and 10 CFR part 810 (Foreign Atomic Energy Programs of the Department of Energy).

(c) Where technical data in the form of a patent application, or in any form, are being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application, without the license from the Commissioner for Patents referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730–774 (Bureau of Industry and Security Regulations, Department of Commerce) and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term ''exported'' means export as it is defined in 22 CFR part 120, 15 CFR part 734 and activities covered by 10 CFR part 810.

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■ 22. Section 5.19 is revised to read as follows:

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 734.3(b)(1)(v)) established by the Department of Commerce, a license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (§§ 5.11 through 5.25) of the U.S. Patent and Trademark Office.

(b) An export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 734.10(a)).

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

■ 23. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2, 6, 32, 41.

■ 24. Section 10.112 is amended by revising paragraph (a) to read as follows:

§ 10.112 Preserving identity of funds and property of client.

(a) All funds of clients paid to a practitioner or a practitioner's firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the United States or, in the case of a practitioner having an office in a foreign country or registered under § 11.6(c), in the United States or the foreign country.

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Dated: September 19, 2005.

Jon W. Dudas,

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

[FR Doc. 05–19128 Filed 9–23–05; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IN–0004; FRL–7972–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Lake County Sulfur Dioxide Regulations, Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision for the control of sulfur dioxide (SO_2) emissions in Lake County, Indiana. The SIP revision submitted by the Indiana Department of Environmental Management (IDEM) amends 326 Indiana Administrative Code (IAC) Article 7. Indiana's revised SO_2 rule consists of changes to 326 IAC 7–4 which sets forth facility-specific SO_2 emission limitations and recordkeeping requirements for Lake County. The rule revision also reflects updates to company names, updates to emission limits currently in permits, deletion of facilities that are already covered by natural gas limits, and other corrections and updates. Due to changes in section numbers, references to citations in other parts of the rule have also been updated. EPA is also approving a request to redesignate the Lake County nonattainment area to attainment of the SO_2 National Ambient Air Quality Standards (NAAQS). In conjunction with these actions, EPA is also approving the maintenance plan for the Lake County nonattainment area to ensure that attainment of the NAAQS will be maintained. The SIP revision, redesignation request and maintenance plan are approvable because they satisfy the requirements of the Clean Air Act (Act).

DATES: This final rule is effective on October 26, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R05–OAR–2005–IN–0004. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/,* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.