concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. From May 27, 2005 to May 29, 2005 add temporary § 165.T01–033 to read as follows:

§ 165.T01–033 Safety Zone; Jones Beach Air show, Jones Beach, Wantagh, NY.

(a) *Location.* Beginning at a point on land located in Jones Beach State Park at approximate position 40°35′06″ N, 073°32′37″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′49″ N, 073°28′47″ W; then running south to an position in the Atlantic Ocean off of Jones Beach at approximate position 40°34′23″ N, 073°32′23″ W; then running west to approximate position 40°35′05″ N, 073°28′34″ W; then running north to the point of beginning at approximate position 40°35′06″ N, 073°32′37″ W. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* This rule will be enforced from 1 p.m. to 3:30 p.m. on Friday May 27, 2005 and 9 a.m. to 3:30 p.m. each day on May 28, 2005 and May 29, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

Dated: May 20, 2005.

J.J. Plunkett,

Commander, U.S. Coast Guard, , Acting Captain of the Port, Long Island Sound.

[FR Doc. 05–10592 Filed 5–23–05; 3:44 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–018]

RIN 1625–AA87

Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Captain of the Port Puget Sound will begin enforcing the Budd Inlet security zone in West Bay, Olympia, Washington on Wednesday, May 25, 2005, at 8 a.m. Pacific daylight time. The security zone provides for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. The security zone will be enforced until Friday, May 27, 2005, at 11:59 p.m. Pacific daylight time.

DATES: The Budd Inlet security zone set forth in 33 CFR 165.1321 will be enforced from Wednesday, May 25, 2005, at 8 a.m. to Friday, May 27, 2005, at 11:59 p.m. Pacific daylight time, at which time enforcement will be suspended.

FOR FURTHER INFORMATION CONTACT: LTJG J.L. Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On August 27, 2004, the Coast Guard published a final rule (69 FR 52603) establishing regulations, in 33 CFR 165.1321, for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. On December 10, 2004, the Coast Guard published a final rule (69 FR 71709), which amended 33 CFR 165.1321 by adding Budd Inlet, Olympia, WA as a permanent security zone. These security zones provide for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States. These security zones also exclude persons and vessels from the immediate vicinity of these facilities during military cargo loading and unloading operations. In addition, the regulation establishes requirements for all vessels to obtain permission of the COTP or the COTP's designated representative, including the Vessel Traffic Service (VTS) aspect of Sector Seattle to enter, move within, or exit these security zones when they are enforced. Entry into these zones is prohibited unless otherwise exempted or excluded under 33 CFR 165.1321 or unless authorized by the Captain of the Port or his designee. The Captain of the Port Puget Sound will begin enforcing the Budd Inlet security zone established by 33 CFR 165.1321 on Wednesday, May 25, 2005, at 8 a.m. Pacific daylight time. The security zone will be enforced until Friday, May 27, 2005 at 11:59 p.m. Pacific daylight time. All persons and vessels are authorized to enter, move within, and exit the security zone on or after Friday, May 27, 2005, at 11:59 p.m. Pacific daylight time unless a new notice of enforcement is issued before then.

Dated: May 20, 2005.

Danny Ellis,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–10593 Filed 5–23–05; 3:44 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2005–P–055]

RIN 0651–AB87

Changes to the Practice for Handling Patent Applications Filed Without the Appropriate Fees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: Among other changes to patent and trademark fees, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), splits the former patent application basic filing fee into a separate basic filing (or basic national) fee, search fee and examination fee, and requires an

additional fee (application size fee) for applications whose specification and drawings exceed 100 sheets of paper, during fiscal years 2005 and 2006. The United States Patent and Trademark Office is changing its practice for handling patent applications filed without the appropriate basic filing (or basic national) fee, search fee and examination fee.

DATES: *Effective Date:* July 1, 2005.

Applicability Dates: The change to 37 CFR 1.78 applies to any application that claims benefit of an application under 35 U.S.C. 111(a) in which the processing and retention fee in now former 37 CFR 1.21(l) was not paid before July 1, 2005. The change to 37 CFR 1.16(f) applies to any application under 35 U.S.C. 111(a) filed on or after July 1, 2005. The change to 37 CFR 1.492(h) applies to any international application in which the basic national fee was not paid before July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Among other changes, the Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. The Consolidated Appropriations Act also provides that the provisions of 35 U.S.C. 111(a) for payment of the fee for filing the application apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an application filed under 35 U.S.C. 111(a), and that the provisions of 35 U.S.C. 371(d) for the payment of the national fee apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an international application filed under the Patent Cooperation Treaty (PCT) and entering the national stage under 35 U.S.C. 371. *See* 35 U.S.C. 41(a)(3) and 41(d)(1)(C). Thus, the examination fee and search fee are due on filing in an application filed under 35 U.S.C. 111(a) or on commencement of the national stage in a PCT international application, but may be paid at a later time if paid within such period and under such conditions (including payment of a surcharge) as may be prescribed by the Director. *See* H.R. Rep. 108–241, at 16 (2003) (H.R. Rep. 108–241 contains an analysis and discussion of an identical provision in H.R. 1561, 108th Cong. (2004)).

In view of the revised patent fee structure during fiscal years 2005 and 2006 set forth in the Consolidated Appropriations Act, the Office is adopting the following changes in Office practice for handling patent applications filed without the appropriate fees: That is, the basic filing (or basic national) fee, search fee, and examination fee.

The Office is adopting changes to: (1) Require the surcharge under § 1.16(f) in any application filed under 35 U.S.C. 111(a) in which any of the basic filing fee, the search fee, or the examination fee are paid on a date later than the filing date of the application; and (2) require the surcharge under § 1.492(h) in any application filed under the PCT in which either of the search fee or the examination fee are paid after the date of the commencement of the national stage (§ 1.491(a)). This change is because the Consolidated Appropriations Act splits the former patent application basic filing (or basic national) fee into a separate basic filing (or basic national) fee, search fee and examination fee during fiscal years 2005 and 2006. The filing of an application which lacks either the search fee or the examination fee requires the Office to issue a notice to file the missing parts (or requirements) of the application.

The Office is also eliminating the processing and retention fee (§ 1.21(l)) practice. The processing and retention fee practice permitted an applicant to file an application without the basic filing fee (which formerly covered the cost of the initial processing of an application and part of the cost of the search and examination of an application) and pay only the processing and retention fee set forth in former § 1.21(l) in order for the application to be used as a basis for foreign filing and benefit claims under 35 U.S.C. 120 and § 1.78(a). Under the revised patent fee structure set forth in the Consolidated Appropriations Act, the basic filing fee covers only the cost of the initial processing of an application. Thus, the Office is requiring payment of the basic filing fee (rather than just the processing and retention fee set forth in former § 1.21(l)) to retain the application.

Since the Office must retain an application to permit benefit of the application to be claimed under 35 U.S.C. 120 and § 1.78 in a subsequent nonprovisional or international application, the Office is also requiring payment of the basic filing fee (rather than just the processing and retention fee set forth in former § 1.21(l)) to permit benefit of the application to be claimed under 35 U.S.C. 120 and § 1.78 in a subsequent nonprovisional or international application.

The Office is also implementing the provision in 35 U.S.C. 41(a)(1)(G) to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s) and § 1.492(j)). A 21.6 cm by 27.9 cm (8½ by 11 inches) sheet of paper with a top margin of 2.0 cm (¾ inch), a left side margin of 2.5 cm (1 inch), a right side margin of 2.0 cm (¾ inch), and a bottom margin of 2.0 cm (¾ inch), will contain about 30 lines of text with double line spacing, with each line having about 50 to 65 characters. An ASCII text (the only format permitted by § 1.52(e)) document containing 30 lines of text, each line having about 50 to 65 characters, will be slightly less than two kilobytes in size. Since the Office permits text with a line spacing of 1½ (notwithstanding that ASCII does not permit 1½ line spacing), the Office is providing that each three kilobytes (rounding up) of content submitted on an electronic medium shall be counted as a sheet of paper for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s) and § 1.492(j)).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.16: Section 1.16(f) is amended to require a surcharge if any of the basic filing fee, the search fee, the examination fee, or the oath or declaration is filed in a nonprovisional application on a date later than the filing date of the application. Section 1.16(s) is amended to include a cross-reference to § 1.52(f).

Section 1.21: Section 1.21 is amended to remove and reserve paragraph (l), which set forth the fee for processing and retaining an application in which the basic filing fee has not been paid.

Section 1.52: Section 1.52(f)(1) is amended to provide that for purposes of determining the application size fee required by § 1.16(s) or § 1.492(j), for an application the specification (including claims) and drawings of which (excluding any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing filed in an

electronic medium in compliance with §§ 1.52(e) and 1.96), are submitted in whole or in part on an electronic medium other than the Office electronic filing system, each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper.

Section 1.53(f)(2) is amended to provide for purposes of determining the application size fee required by § 1.16(s), the paper size equivalent of an application submitted via the Office electronic filing system will be considered to be equal to seventy-five percent of the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system.

Section 1.53: Section 1.53(d)(3) is amended to correct the references to the design application basic filing fee (set forth in § 1.16(b)), and add references to the design application search fee (set forth in § 1.16(l)) and examination fee (set forth in § 1.16(p)). Section 1.53(f)(5) is amended to provide that if the applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

Section 1.78: Section 1.78(a)(1) is amended to provide that to claim the benefit of a prior-filed nonprovisional application under 35 U.S.C. 120 and § 1.78(a) in a subsequent nonprovisional or international application, the prior-filed nonprovisional application must be entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

Section 1.492: Section 1.492(h) is amended to require a surcharge if any of the search fee, the examination fee, or the oath or declaration is filed after the date of the commencement of the national stage (§ 1.491(a)). Section 1.492(j) is amended to include a cross-reference to § 1.52(f).

Section 1.495: Section 1.495(c)(1)(i) is amended to reinsert the language concerning the publication of the international application previously submitted under 35 U.S.C. 154(d) under § 1.417. This language was inadvertently deleted in the final rule to implement the Consolidated Appropriations Act. *See Changes to Implement the Patent Fee Related Provisions of the Consolidated Appropriations Act, 2005,* 70 FR 3880 (Jan. 27, 2005), 1291 *Off. Gaz. Pat. Office* 133 (Feb. 22, 2005) (final rule). Section 1.495(c)(1)(i) is amended to replace ''the oath or declaration'' with ''any of the search fee, the examination fee, or the oath or declaration'' for consistency with the change to § 1.492.

Response to comments: The Office published a notice proposing changes to the Office's practice for handling patent applications filed without the appropriate fees. *See Changes to the Practice for Handling Patent Applications Filed Without the Appropriate Fees,* 70 FR 9570 (Feb. 28, 2005), 1292 *Off. Gaz. Pat. Office* 143 (Mar. 22, 2005) (proposed rule). The Office received seven written comments (from intellectual property organizations, patent practitioners, and the general public) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: Several comments suggested that the elimination of the processing and retention fee practice is effectively a fee increase, and as such is not simply an interpretative or procedural rule change. Several comments also suggested that the elimination of the processing and retention fee practice is effectively a fee increase that should not be adopted without sufficient justification.

Response: The processing and retention fee practice was adopted in April of 1984. *See Revision of Patent Practice,* 49 FR 548 (Jan. 4, 1984) (final rule), and *Proposed Revision of Patent Practice,* 48 FR 39016 (Aug. 26, 1983) (proposed rule). This fee ($100.00 in 1984, or one-third of the $300.00 basic filing (non-small entity) in effect in April of 1984) was designed to cover the costs of initial processing and retention of an application that was abandoned prior to payment (or due to non-payment) of the basic filing fee. The Office proposed eliminating the processing and retention fee practice during the implementation of the provisional application practice provided for in the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809 (1994), but ultimately decided to retain the processing and retention fee practice. *See Changes to Implement 20-Year Patent Term and Provisional Applications,* 60 FR 20195, 20197 (Apr. 25, 1995) (final rule), and *Changes to Implement 20-Year Patent Term and Provisional Applications,* 59 FR 63951, 63952 (Dec. 12, 1994) (proposed rule). The Office has determined that it is now appropriate to eliminate the processing and retention fee practice in view of provisional application practice and the changes to the patent fee structure in the Consolidated Appropriations Act.

The Consolidated Appropriations Act provides that (during fiscal years 2005 and 2006) 35 U.S.C. 41(a)(1) shall be administered as though that provision reads: ''[t]he Director shall charge * * * [o]n filing each application for an original patent, except for design, plant, or provisional applications, $300.'' *See* 35 U.S.C. 41(a)(1)(A). 35 U.S.C. 111(a) provides (in part) that: [t]he application must be accompanied by the fee required by law.'' *See* 35 U.S.C. 111(a)(3). Thus, 35 U.S.C. 41(a)(1) and 111 require the Office to charge and the applicant to pay (*inter alia*) the basic filing fee in a nonprovisional application. While a processing and retention fee practice may have been appropriate under a fee structure in which the filing fee was designed to cover the initial processing, the search, and the examination of an application, it is not consistent with the patent fee structure provided in the Consolidated Appropriations Act to maintain an ''alternative'' processing and retention fee practice when the patent fee structure provided in the Consolidated Appropriations Act sets forth a filing fee that is separate from a search fee and an examination fee and is designed to cover the initial processing of an application.

Further, the elimination of the processing and retention fee practice does not constitute a substantive change requiring notice-and-comment rule making under the Administrative Procedure Act. The change does not ''encode a substantive value judgment,'' but simply discontinues the purely procedural practice of retaining a copy of an application for which the statutory filing fee had not been paid. *See Pub. Citizen* v. *Dep't of State,* 276 F.3d 634, 640 (D.C. Cir. 2002) (the focus in determining whether a rule falls under the procedural exemption of 5 U.S.C. 553(b)(A) is on asking whether the rule encodes a substantive value judgment). As a result of the change, applicants will not be able to require the Office to retain a copy of an application unless they resort to another existing procedure (*e.g.*, filing a provisional application instead of a nonprovisional application, or just paying the filing fee pay in the nonprovisional application). While the use of such an alternative procedure may result in a higher cost to the applicant, ''an otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties.'' *James V. Hurson Associates* v. *Glickman,* 222 F.3d. 277, 281 (D.C. Cir. 2000).

Finally, notwithstanding that the Office maintains that these rule changes involve interpretative rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), it should be noted that

the elimination of the processing and retention fee practice was first published for public comment as provided for in 5 U.S.C. 553(b) prior to adoption of the rule changes to eliminate the processing and retention fee practice.

Comment 2: One comment suggested that whether to retain or eliminate the processing and retention fee practice is a decision for Congress and not the Office.

Response: As discussed, 35 U.S.C. 41(a)(1) and 111 require the Office to charge and the applicant to pay (*inter alia*) the basic filing fee in a nonprovisional application. The patent statute does not provide either for a processing and retention fee as an alternative to the basic filing fee or for a processing and retention fee practice.

Comment 3: One comment suggested that applicants may file a patent application without a fee and if a continuation application is filed within a short period of time, there is a statutory right to claim the benefit of the prior-filed application.

Response: As discussed, 35 U.S.C. 41(a)(1) and 111 require the Office to charge and the applicant to pay (*inter alia*) the basic filing fee in a nonprovisional application. There is no ''statutory right'' to file an application without paying the basic filing fee, regardless of whether a continuation application that claims the benefit of the prior-filed application is ever filed.

Comment 4: One comment suggested that the Office should not ''burn'' an application file wrapper simply because the applicant has not paid the basic filing fee, and further suggested that an electronic copy of an application will continue to exist even if the Office ''burns'' a paper copy of the application file wrapper.

Response: The Office did not indicate that it would ''burn'' or necessarily remove from its paper or electronic records those applications in which the basic filing fee has not been paid. The Office is simply providing that if the applicant does not pay the basic filing fee during the pendency of a nonprovisional application, the Office may dispose of the application. Put simply, the Office is not obligating itself to retain an abandoned nonprovisional application among its records (paper or electronic) if the applicant does not pay at least the basic filing fee during the pendency of the application.

Comment 5: One comment suggested that language of § 1.16 and § 1.492(h) was not consistent with the discussion of those sections in the preamble, and requested clarification of the proposed changes to § 1.16 and § 1.492(h).

Response: Section 1.16(f) requires a surcharge in any application filed under 35 U.S.C. 111(a) in which any of the basic filing fee, the search fee, or the examination fee is paid on a date later than the filing date of the application. Section 1.492(h) requires a surcharge in any application filed under the PCT in which either of the search fee or the examination fee is paid after the date of the commencement of the national stage (§ 1.491(a)).

Comment 6: Several comments suggested that the proposed provision that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper is too low. One comment gave an example of a 21,496 kilobyte table that prints as 5,081 pages, which if submitted on a compact disc would be treated as 10,748 pages.

Response: In view of the four kilobytes per page ratio of the table provided as an example, it appears that the lines of the table are single spaced. The rules of practice provide for either 1½ or double line spacing, but not for single line spacing. See § 1.52(b)(2)(i). However, since the rules of practice provide for 1½ line spacing, the Office is revising this provision to indicate that each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper (notwithstanding that ASCII does not provide for 1½ line spacing).

Comment 7: Several comments suggested that the proposed provision that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper, being based solely on ASCII text content, fails to appreciate that Tagg(ed) Image File Format (TIFF) drawings sheets are usually far larger than two kilobytes per page. Another comment suggested that a typical electronic drawing will measure at least 50 kilobytes, and often will range from 100 to 200 kilobytes.

Response: The rules of practice do not provide for the submission of either drawings sheets or any TIFF application documents on a compact disc. *See* §§ 1.52(e)(1) and (e)(3). Applicants may submit TIFF drawings sheets in an application submitted via the Office electronic filing system; however, the provisions of § 1.52(f)(1) that each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper does not apply to an application submitted via the Office electronic filing system.

Comment 8: One comment questioned whether the provisions of § 1.52(f)(1) were limited to tables, since sequence and computer program listings are excluded. The comment further suggested that, if the provisions of § 1.52(f)(1) have broader applicability, then it has discriminatory effect based on subject matter of the patent application because chemical patent applications and, in particular, pharmaceutical patent applications are treated unfavorably under the provisions of § 1.52(f)(1). The comment indicated that these applications tend to have an extensive number of embedded chemical structures, and the electronic size of images such as ChemDraw structures, PDF tables and the like, which have significantly higher byte totals when compared to the ASCII text used for the calculations. The comment gave an example of an application having a total of 68 pages but an electronic size of 640 kilobytes (which would be treated as 340 pages if each two kilobytes were treated as equal to one page).

Response: Section 1.52(e) currently limits the application documents that may be submitted on compact disc to computer program listings, sequence listings, and tables. *See* § 1.52(e)(1). Therefore, for an application submitted in compliance with the rules of practice (§ 1.52(e)), the provisions of § 1.52(f)(1) that each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper would apply only to tables. If an applicant submitted other application documents on a compact disc in violation of § 1.52(e)(1), and/or in a format not permitted by § 1.52(e)(3) (*i.e.*, in a format other than ASCII), any unfavorable treatment would be due to the applicant's failure to follow the rules of practice and not due to any action on the part of the Office.

Comment 9: One comment suggested that the Office should consider a flat processing fee for electronic medium submissions that would compensate the Office for any additional work. Another comment suggested that there be an upper limit to the fees similar to that provided for by Part 8 of the Administration Instructions (AI) under the Patent Cooperation Treaty.

Response: The Office does not consider a ''flat processing fee'' or an ''upper limit'' to be appropriate. 35 U.S.C. 41(a)(1)(G) authorizes the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G), not to create a new application size fee regime for applications filed in whole or in part in an electronic medium.

Comment 10: Several comments suggested that the Office should

reconsider the provisions of proposed § 1.52(f)(1) (that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper) in light of the Office's stated goal to increase the number of electronic submissions.

Response: The Office has a goal of increasing usage of its electronic filing system. The Office is revising § 1.52(f)(2) to provide that the paper size equivalent of the specification (including claims) and drawings of an application submitted via the Office electronic filing system will be considered to be seventy-five percent of the number of sheets of paper present in the specification (including claims) and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system for purposes of determining the application size fee required by § 1.16(s). This change is being made to ensure that number of sheets of paper present in the specification (including claims) and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system does not exceed the number of pages in the application when printed out by the applicant. The filing of application documents on compact disc as permitted by § 1.52(e), however, is not germane to the Office's goal of increasing usage of its electronic filing system.

Rule Making Considerations

Administrative Procedure Act: The changes in this final rule relate solely to the procedures to be followed in prosecuting a patent application, *i.e.*, the procedures for paying the fees due upon filing an application for patent. This final rule does not change the amount of fees charged by the Office. Specifically, the changes in this final rule concern the procedures for payment of the filing fee, search fee, and examination fee, and setting forth which fees must be paid in order for a nonprovisional application to be processed and retained by the Office such that it may be used as the basis for foreign filing and for benefit claims under 35 U.S.C. 120 and § 1.78(a). Therefore, these rule changes involve interpretative rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications 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) and *JEM Broadcasting Co.* v. *FCC,* 22 F.3d 320, 327 (D.C. Cir. 1994) (rule under which any flawed application is summarily dismissed without allowing the applicant to correct its error is merely procedural despite its sometimes harsh effects on applicants); *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 doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretative 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)).

Under the Office's pre-existing ''missing parts'' practice, an applicant was required to pay a surcharge if the basic filing fee was not present on filing in an application. The Consolidated Appropriations Act splits the patent application basic filing (or basic national) fee into a separate basic filing (or basic national) fee, search fee and examination fee. Therefore, the replacement of the basic filing fee with the basic filing fee, the search fee, or the examination fee is simply a procedural change that is necessary to maintain (or restore) the *status quo ante* with respect to the Office's pre-existing ''missing parts'' practice.

The processing and retention fee practice allows applicants to file an application without the filing fee and to pay only a processing and retention fee in order for the application to be used as a basis for foreign filing and for priority under 35 U.S.C. 120. Under the revised patent fee structure set forth in the Consolidated Appropriations Act (which splits the filing fee into a separate filing, search fee and examination fee), the filing fee covers the cost of the initial processing and retention of an application. Thus, requiring payment of the basic filing fee under the Consolidated Appropriations Act in order for the Office to process and retain an application such that the application may be used as a basis for foreign filing and for priority under 35 U.S.C. 120 is more consistent with the filing fee scheme set forth in the Consolidated Appropriations Act than is continuing the processing and retention fee practice.

The Consolidated Appropriations Act provides for the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of calculating the application size fee specified in 35 U.S.C. 41(a)(1)(G). Thus, setting a paper size equivalent based upon the number of kilobytes of content that can fit onto a sheet of paper (given the current requirements for applications filed in part on a compact disc and for paper size and margins) simply sets forth the procedures for determining the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of calculating the application size fee.

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

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 collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0031, and 0651–0032. 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 changes in this notice concern the procedures for payment of the filing fee, search fee, examination fee, and the application size fee, including setting forth which fees must be paid in order for an application to be processed and retained by the Office such that it may be used as the basis for foreign filing and for benefit claims under 35 U.S.C. 120 and 1.78(a).

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 in 37 CFR Part 1

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

■ For the reasons set forth in the preamble, 37 CFR part 1 is 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 1.16 is amended by revising paragraphs (f) and (s) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(f) Surcharge for filing any of the basic filing fee, the search fee, the examination fee, or the oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.27(a))—$65.00

By other than a small entity—$130.00

* * * * *

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))—$125.00

By other than a small entity—$250.00

* * * * *

§ 1.21 [Amended]

■ 3. Section 1.21 is amended by removing and reserving paragraph (l).

■ 4. Section 1.52 is amended by revising paragraph (f) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(f)(1) Any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j). For purposes of determining the application size fee required by § 1.16(s) or § 1.492(j), for an application the specification and drawings of which, excluding any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, are submitted in whole or in part on an electronic medium other than the Office electronic filing system, each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper.

(2) Except as otherwise provided in this paragraph, the paper size equivalent of the specification and drawings of an application submitted via the Office electronic filing system will be considered to be seventy-five percent of the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system for purposes of determining the application size fee required by § 1.16(s). Any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing in compliance with § 1.96, submitted via the Office electronic filing system will be excluded when determining the application size fee required by § 1.16(s) if the listing is submitted in ASCII text as part of an associated file.

* * * * *

■ 5. Section 1.53 is amended by revising paragraphs (d)(3) and (f)(5) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(d) * * *

(3) The filing fee, search fee, and examination fee for a continued prosecution application filed under this paragraph are the basic filing fee as set forth in § 1.16(b), the search fee as set forth in § 1.16(l), and the examination fee as set forth in § 1.16(p).

* * * * *

(f) * * *

(5) If applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

* * * * *

■ 6. Section 1.78 is amended by removing paragraph (a)(1)(iii) and revising paragraph (a)(1)(ii) to read as follows:

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

(a)(1) * * *

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

* * * * *

■ 7. Section 1.492 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1.492 National stage fees.

* * * * *

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§ 1.491(a)) pursuant to § 1.495(c):

By a small entity (§ 1.27(a))—$65.00

By other than a small entity—$130.00

* * * * *

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))—$125.00

By other than a small entity—$250.00

■ 8. Section 1.495 is amended by revising paragraphs (c)(1)(i) and (c)(3) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c)(1) * * *

(i) A translation of the international application, as filed, into the English language, if it was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2));

* * * * *

(3) The payment of the processing fee set forth in § 1.492(i) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(h) is required for acceptance of any of the search fee, the examination fee, or the oath or declaration of the inventor after the date of the commencement of the national stage (§ 1.491(a)).

* * * * *

Dated: May 19, 2005.

Jon W. Dudas,

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

[FR Doc. 05–10585 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–4]

Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is amending its rules to require cable operators, satellite carriers, and manufacturers and importers of digital audio recording technology and media to file with the Licensing Division of the Copyright Office a copy of their statement of account together with the original statement of account.

DATE: This rule shall take effect on July 1, 2005.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Associate General Counsel, Copyright GC/R&I, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, requires cable operators and satellite carriers making secondary transmissions of broadcast signals under a statutory license to file with the Copyright Office statements of account every six months together with the royalty fees required for use of the licenses. 17 U.S.C. 111(d)(2) and 119(b)(1). Similarly, entities that manufacture and distribute and/or import and distribute digital audio recording devices or digital audio recording media in the United States must file with the Licensing Division quarterly and annual statements of account. 17 U.S.C. 1003.

Currently, a licensee operating under any of these three statutory licenses need file only the original statement of account with the Copyright Office at the appropriate time. In the case of cable filings, this form is then copied by the staff in the Licensing Division before examination, a process which may take four to six months to complete. In the meantime, statements of account are not available for routine public viewing. Such a process is inefficient and inhibits the timely processing of the statements. For this reason, the copyright owners who are the beneficiaries of the royalty fees paid to the Copyright Office have requested that the Office amend its rules to require the licensees to file both an original statement of account and a copy of the statement at the time of payment of the royalty fees.

Their suggestion offers a practical and inexpensive solution to the problems noted above. Filing an original and one copy of the statement of account will have a two–fold benefit. The submission of a second copy will eliminate one time–consuming step in the processing of the statements, thereby increasing the efficiency associated with handling the statements at the initial stage. Certainly, it is far easier and less expensive for the licensee to make a single copy of its statement of account than to have the staff of the Licensing Division assume this burden on behalf of the thousands of licensees who file quarterly, semi–annual, and annual statements of account. Moreover, the ready availability of a copy of the cable and satellite statements of account will expedite the creation of the public file for review by copyright owners and other interested parties.

For these reasons, the Copyright Office is amending its rules to require each licensee to file a copy of its statement of account with the Licensing Division of the Copyright Office along with the original statement of account.

The Office is also revising the section heading for § 201.11 by removing the phrase ''for private home viewing'' to reflect the fact that the section 119 statutory license is no longer limited to private home viewing. Under the Satellite Home Viewer Extension and Reauthorization Act (''SHVERA''), Public Law 108–447, which was signed into law on December 8, 2004, satellite carriers can now provide secondary retransmissions to private homes and to commercial establishments.

This final rule is being published without opportunity for notice and comment because it is a rule of agency practice and procedure. Moreover, the Office finds that there is good cause to conclude that providing the opportunity for notice and comment would be impracticable, unnecessary and contrary to the public interest because this rule simply requires a licensee to make and submit a single copy of its statements of account, a trivial burden compared to the administrative burden to the Office of making copies of all statements of account. *See* 5 U.S.C. 553(b)(A) and (B).

Regulatory Flexibility Act Statement

Although the Copyright Office, as a department of the Library of Congress and part of the Legislative Branch, is not an ''agency'' subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendments would not have a significant economic impact on a substantial number of small business entities that would require a provision of special relief for them. The amendments are designed to minimize any significant economic impact on small business entities.

List of Subjects in 37 CFR 201

Copyright.

Final Regulations

■ In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.11 is amended as follows:

■ a. by revising the section heading,

■ b. by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and

■ c. by adding a new paragraph (g).

The revisions and additions to § 201.11 reads as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(g) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.

* * * * *

■ 3. Section 201.17 is amended as follows: