

regulations to reflect its current agency structure due to recent reorganizations.

**DATES:** Submit comments on or before November 5, 2001.

**ADDRESSES:** Address any comments concerning the proposed rule to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, (312)751-4945, TDD (312)751-4701.

**SUPPLEMENTARY INFORMATION:** Part 200 of the Board's regulations deals with general administration of the Board. The Board proposes to amend § 200.1 dealing with the designation of central and field offices to reflect current agency structure due to recent reorganizations.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

#### List of Subjects in 20 CFR Part 200

Organization and functions (Government agencies), Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend 20 CFR part 200 as follows:

#### PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

**Authority:** 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.1 is amended by revising paragraphs (a)(4), (b)(1), and (b)(2) to read as follows:

##### § 200.1 Designation of central and field organization.

(a) \* \* \*

(4) The headquarters of the Board is in Chicago, Illinois, at 844 North Rush Street. The Board maintains numerous district offices across the country in localities easily accessible to large numbers of railroad workers, in addition to three regional offices located in Atlanta, Georgia; Denver, Colorado; and, Philadelphia, Pennsylvania.

(b) *Internal organization.* (1) Reporting directly to the Board Members is the six member Executive

Committee. The Executive Committee is comprised of the General Counsel, who also serves as the Senior Executive Officer, the Director of Administration, the Director of Programs, the Chief Financial Officer, the Chief Information Officer, and the Chief Actuary.

(2) The Executive Committee is responsible for the day to day operations of the agency. The Senior Executive Officer is responsible for direction and oversight of the Executive Committee. The General Counsel is responsible for advising the Board Members on major issues, interpreting the Acts and regulations administered by the Board, drafting and analyzing legislation, and planning, directing, and coordinating the work of the Office of General Counsel, the Bureau of Hearings and Appeals, and the Office of Legislative Affairs through their respective directors, and the Office of Secretary to the Board. The Director of Programs is responsible for managing, coordinating, and controlling the program operations of the agency which carry out provisions of the Railroad Retirement and Railroad Unemployment Insurance Acts. The Director of Administration is responsible for managing, coordinating, and controlling certain administrative operations of the Board including the Bureau of Supply and Service, the Bureau of Human Resources, the Office of Public Affairs, and the Office of Equal Opportunity. The Chief Financial Officer is responsible for the financial management of the agency, and the Chief Information Officer is responsible for coordinating the agency's information resources management program. The Board's Chief Actuary is responsible for the actuarial program of the Board. The Chief Actuary is a non-voting member of the Executive Committee.

Dated: August 27, 2001.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 01-22271 Filed 9-4-01; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### United States Patent and Trademark Office

##### 37 CFR Part 1

[Docket No.: 010815207-1207-01]

RIN 0651-AB41

##### Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In implementing the provisions of the American Inventors Protection Act of 1999 related to the eighteen-month publication of patent applications, the United States Patent and Trademark Office (Office) revised the rules of practice related to requirements for claiming the benefit of a prior-filed application. The Office is now proposing to revise the time period for claiming the benefit of a prior-filed application in an application filed under the Patent Cooperation Treaty (PCT), revise the time period for filing an English language translation of a non-English language provisional application, and make other technical corrections to the rules of practice related to eighteen-month publication. The Office is also proposing to make permanent a temporary rule that amends the rules of practice to include the current statutory provisions that define when national stage commencement occurs in an application filed under the PCT.

**DATES:** To be ensured of consideration, written comments must be received on or before October 5, 2001. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to AB41comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872-9399, marked to the attention of Robert A. Clarke. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3 1/2 inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in

Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: <http://www.uspto.gov>). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:**

Robert A. Clarke or Joni Y. Chang, Legal Advisors, Office of Patent Legal Administration, by telephone at (703) 308-6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872-9399, marked to the attention of Robert A. Clarke.

**SUPPLEMENTARY INFORMATION:** The American Inventors Protection Act of 1999 was enacted into law on November 29, 1999. See Public Law 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999). The American Inventors Protection Act of 1999 contained a number of changes to title 35, United States Code, including provisions for the publication of pending applications for patent, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code ("eighteen-month publication"). The Office implemented the eighteen-month publication provisions of the American Inventors Protection Act of 1999 in a final rule published in September of 2000. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR 57023 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63 (Oct. 10, 2000) (final rule).

Section 4503(b) of the American Inventors Protection Act of 1999 amended 35 U.S.C. 119(e) and 120 to provide that no application shall be entitled to the benefit of a prior-filed application unless an amendment containing the specific reference to the prior-filed application is submitted at such time during the pendency of the application as required by the Office. Section 4503(b) of the American Inventors Protection Act of 1999 also amended 35 U.S.C. 119(e) and 120 to permit the Office to establish procedures for accepting an unintentionally delayed claim for the benefit of a prior-filed application. This notice proposes to amend 37 CFR 1.78 to: (1) Clarify the requirements for claiming the benefit of a prior-filed application in an application filed under the PCT; and (2) revise the time period and requirements for filing an English language translation of a non-

English language provisional application.

35 U.S.C. 371(b) currently sets forth the time period for commencement of the national stage in an application filed under the PCT. Due to a possible statutory revision of 35 U.S.C. 371(b) to provide that the time period for commencement of the national stage will be set forth in the regulations, the Office is amending § 1.491 such that the regulations set forth the current language of 35 U.S.C. 371(b) (as amended by Pub. L. 99-616, section 7(b), 100 Stat. 3485, 3485 (1986)) that defines when national stage commencement occurs. Certain U.S. statutes and regulations provide for requirements that are tied to the date of national stage "commencement" (e.g., the date of national stage commencement is relevant to the due date for the national fee, an oath or declaration, and any required translation of the international application or amendments under PCT Article 19 (35 U.S.C. 371(d)), and in determining whether patentees are entitled to a patent term adjustment pursuant to 35 U.S.C. 154(b)(1)(B) (37 CFR 1.702(b))). Therefore, it is important that the regulations provide for a date of commencement of the national stage as to the United States in advance of any statutory revision to 35 U.S.C. 371(b).

**Discussion of Specific Rules**

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

*Section 1.78*

Section 1.78(a)(1) is proposed to be amended to make its provisions applicable to international applications designating the United States of America. The phrase "nonprovisional application" as used in the rules of practice means either an application filed under 35 U.S.C. 111(a) or an international application filed under 35 U.S.C. 363 that entered the national stage after compliance with 35 U.S.C. 371. See § 1.9(a)(3). Thus, provisions which apply only to a nonprovisional application (e.g., the requirement in § 1.78(a)(2)(iii) for a specific reference in an application data sheet (§ 1.76) or the specification) do not apply to any international application that does not enter national stage processing under 35 U.S.C. 371. The specific reference requirements of 35 U.S.C. 119(e) and 120 are met in such an international application by a specific reference to the prior-filed application in the international application papers (e.g., in the Request (PCT Rule 4.10 and

§ 1.434(d)(2)), or a correction or addition in accordance with PCT Rule 26bis).

Section 1.78(a)(2) is proposed to be amended to place its provisions in separate paragraphs (a)(2)(i) through (a)(2)(iv) for clarity. Sections 1.78(a)(2) is also proposed to be amended to also make its provisions applicable to international applications designating the United States of America, and to set forth the time period for making a claim (providing the specific reference required by § 1.78(a)(2)(i)) for both an application filed under 35 U.S.C. 111(a) and an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371.

Specifically, if the later-filed application is an application filed under 35 U.S.C. 111(a), the specific reference required by § 1.78(a)(2)(i) must be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior application. If, however, the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, the specific reference required by § 1.78(a)(2)(i) must be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. This reference must, in any event, be submitted during the pendency of the later-filed application. The provisions relating to an application filed under 35 U.S.C. 111(a) do not change the time period for submitting a specific reference in such applications. The provisions relating to an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371, however, do change the time period for submitting a specific reference in such applications in that the four-month period is measured from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) rather than the actual filing date of the international application under 35 U.S.C. 363.

Section 1.78(a)(2) is also amended to eliminate the requirement that if the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English. The Office is eliminating this requirement because: (1) The Office will not delay publication of the application if this

requirement is not met; and (2) this information can be obtained from other sources (e.g., the language of publication can usually be determined by the country of origin of the international application).

Section 1.78(a)(2) is also amended to change the sentence "(t)he identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number" to "(t)he identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number." This change clarifies that the other provisions of § 1.78(a)(2) (e.g., that the claim be in the application data sheet or the first sentence of the specification) remain applicable when an application under § 1.53(b) claims the benefit under 35 U.S.C. 120 of a continued prosecution application filed under § 1.53(d). See *Changes to Patent Practice and Procedure*, 62 FR 53131, 53144 (Oct. 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 73 (Oct. 21, 1997) (final rule).

Section 1.78(a)(3) is proposed to be amended to change "nonprovisional application" to "application," and change "paragraph (a)(2)" to paragraph "(a)(2)(ii)" for consistency with the changes to § 1.78(a)(2).

Section 1.78(a)(3) provides that if the reference required by 35 U.S.C. 120 and § 1.78(a)(2) of this section is presented in an application after the time period provided by § 1.78(a)(2)(ii), the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States may be accepted if the applicant files a petition to accept the delayed claim that is accompanied by: (1) The surcharge set forth in § 1.17(t); and (2) a statement that the entire delay between the date the claim was due under § 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

If an applicant includes a claim to the benefit of a prior-filed nonprovisional application or international application designating the United States elsewhere in the application but not in the manner specified in § 1.78(a)(2)(i) (e.g., if the claim is included in an unexecuted oath or declaration or the application transmittal letter) within the time period set forth in § 1.78(a)(2)(ii), the Office will not require a petition (and the surcharge under § 1.17(t)) to correct the claim if the information concerning the

claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt. This is because the application will have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application within the time period set forth in § 1.78(a)(2)(ii). If, however, an applicant includes such a claim elsewhere in the application and not in the manner specified in § 1.78(a)(2)(i), and the claim is not recognized by the Office as shown by its absence on a filing receipt (e.g., if the claim is in a part of the application where priority or continuity claims are not conventionally located, such as the body of the specification), the Office will require a petition (and the surcharge under § 1.17(t)) to correct such claim. This is because the application will not have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application.

Section 1.78(a)(4) is proposed to be amended to make its provisions applicable to international applications designating the United States of America.

Section 1.78(a)(5) is proposed to be amended to place its provisions in separate paragraphs (a)(5)(i) through (a)(5)(iv) for clarity. Section 1.78(a)(5) is also proposed to be amended to: (1) Make its provisions applicable to international applications designating the United States of America; (2) set forth the time period for making a claim (providing the specific reference required by § 1.78(a)(5)) for both an application filed under 35 U.S.C. 111(a) and an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371; and (3) change the time period and requirements for filing an English language translation of a non-English language provisional application.

Specifically, if the later-filed application is an application filed under 35 U.S.C. 111(a), the specific reference required by § 1.78(a)(5)(i) must be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior application. If, however, the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, the specific reference required by § 1.78(a)(5)(i) must be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen

months from the filing date of the prior application. This reference must, in any event, be submitted during the pendency of the later-filed application. The provisions relating to an application filed under 35 U.S.C. 111(a) do not change the time period for submitting a specific reference in such applications. The provisions relating to an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371, however, do change the time period for submitting a specific reference in such applications in that the four-month period is measured from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) rather than the actual filing date of the international application under 35 U.S.C. 363.

Section 1.78(a)(5) is also proposed to be amended to provide that if a provisional application was filed in a language other than English and an English-language translation of the provisional application and a statement that the translation is accurate were not previously filed in the provisional application or the nonprovisional application, applicant will be notified and given a period of time within which to file an English-language translation of the non-English-language provisional application and a statement that the translation is accurate to avoid abandonment of the nonprovisional application. Thus, § 1.78(a)(5) will no longer provide that if a provisional application was filed in a language other than English, a claim to the benefit of such provisional application is waived if an English language translation of a non-English language provisional application is not submitted within the later of four months from the actual filing date of the nonprovisional application or sixteen months from the filing date of the prior provisional application. In the event that the Office schedules for publication an application that claims the benefit of a provisional application filed in a language other than English without issuing a notice requiring the applicant to file English-language translation of the non-English-language provisional application, the applicant should file the English-language translation of the non-English-language provisional application and a statement that the translation is accurate before the scheduled publication date. This change to § 1.78(a)(5) will also allow applicant to file an English-language translation of the non-English language provisional application either in the provisional application or in each nonprovisional application that claims

the benefit of the provisional application.

Section 1.78(a)(5) is also proposed to be amended to delete the term "copending," as 35 U.S.C. 119(e) no longer requires copendency between a nonprovisional application and a provisional application for the nonprovisional application to claim the benefit of the filing date of the provisional application under 35 U.S.C. 119(e). 35 U.S.C. 119(e)(1) continues to require that any nonprovisional application claiming the benefit of a provisional application be filed within twelve months after the filing date of the provisional application (or the next succeeding business day if the date that is twelve months after the filing date of the provisional application falls on a Saturday, Sunday, or Federal holiday). *See Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR 50092, 50098 (Aug. 16, 2000), 1238 *Off. Gaz. Pat. Office* 13, 18–19 (Sept. 5, 2000) (final rule) (comment 2 and response).

Section 1.78(a)(6) provides that if the reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in an application after the time period provided by § 1.78(a)(5)(ii), the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted if the applicant files a petition to accept the delayed claim that is accompanied by: (1) The surcharge set forth in § 1.17(t); and (2) a statement that the entire delay between the date the claim was due under § 1.78(a)(5)(ii) and the date the claim was filed was unintentional.

If an applicant includes a claim to the benefit of a prior-filed provisional application elsewhere in the application but not in the manner specified in § 1.78(a)(5)(i) (e.g., if the claim is included in an unexecuted oath or declaration or the application transmittal letter) within the time period set forth in § 1.78(a)(5)(ii), the Office will not require a petition (and the surcharge under § 1.17(t)) to correct the claim if the information concerning the claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt. This is because the application will have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application within the time period set forth in § 1.78(a)(5)(ii). If, however, an applicant includes such a claim elsewhere in the application and not in the manner specified in § 1.78(a)(5)(i), and the claim is not recognized by the Office as shown by its absence on a filing receipt (e.g.,

if the claim is in a part of the application where priority or continuity claims are not conventionally located, such as the body of the specification), the Office will require a petition (and the surcharge under § 1.17(t)) to correct such claim. This is because the application will not have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application.

#### Section 1.311

Section 1.311(a) is proposed to be amended to correct the parenthetical reference to " (§ 1.211(f))" to " (§ 1.211(e))."

#### Section 1.434

Section 1.434(d)(2) is proposed to be amended by deleting the term "copending," as the prior national application may be a provisional application and 35 U.S.C. 119(e) no longer requires copendency for a nonprovisional application to claim the benefit of the filing date of a provisional application under 35 U.S.C. 119(e).

#### Section 1.491

Section 1.491 is proposed to be amended to define both commencement of the national stage and entry into the national stage. Because these two events (commencement of the national stage and entry into the national stage) may not take place at the same time, the Office is amending § 1.491 to clarify when each of these two events takes place. Section 1.491(a) specifically indicates that, subject to 35 U.S.C. 371(f), the national stage shall commence with the expiration of the applicable time limit under PCT Article 22(1) or (2), or under PCT Article 39(1)(a). Thus, § 1.491(a) merely incorporates the statutory language contained in 35 U.S.C. 371(b) (as amended by Pub. L. 99–616, § 7(b), 100 Stat. 3485, 3485 (1986)). Section 1.491(b) contains the provisions of former § 1.491, and provides that an international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the period set in § 1.494 or § 1.495.

On August 30, 2001, the Office published a temporary rule that amends § 1.491 to define both commencement of the national stage and entry into the national stage in the manner discussed above. This notice proposes to make the amendment to § 1.491 in that temporary rule permanent.

## Classification

### *Administrative Procedure Act*

The changes proposed in this notice concern only the procedures for filing claims for the benefit of a prior-filed application under 35 U.S.C. 119(e) or 120, the procedures for filing an English language translation of a non-English language provisional application, and technical corrections to the provisions of §§ 1.78, 1.311, 1.434, and 1.491. Because all of the changes relate to Office practices and procedures, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). However, because the Office desires the benefit of public comment on this topic, the Office is voluntarily accepting comments.

### *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), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

### *Executive Order 13132*

This rulemaking 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 rulemaking 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 that 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 the following control numbers: 0651–0021, 0651–0031, 0651–0032, and 0651–0033. The Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collections under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

*OMB Number:* 0651-0021.

*Title:* Patent Cooperation Treaty.

*Form Numbers:* PCT/RO/101, ANNEX/134/144, PTO-1382, PCT/IPEA/401, PCT/IB/328.

*Type of Review:* Regular submission (approved through December of 2003).

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

*Estimated Number of Respondents:* 331,288.

*Estimated Time Per Response:* Between 15 minutes and 4 hours.

*Estimated Total Annual Burden Hours:* 401,083.

*Needs and Uses:* The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

*OMB Number:* 0651-0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB/08/21-27/30/31/35/36/42/43/61/62/63/64/67/68/91/92/96/97.

*Type of Review:* Regular submission (approved through October of 2002).

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit institutions and Federal Government.

*Estimated Number of Respondents:* 2,247,389.

*Estimated Time Per Response:* 0.45 hours.

*Estimated Total Annual Burden Hours:* 1,021,941 hours.

*Needs and Uses:* During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments; Petitions and their Transmittal Letters; and Deposit Account Order Forms.

*OMB Number:* 0651-0032.

*Title:* Initial Patent Application.

*Form Number:* PTO/SB/01-07/13PCT/17-19/29/101-110.

*Type of Review:* Regular submission (approved through October of 2002).

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit institutions and Federal Government.

*Estimated Number of Respondents:* 319,350.

*Estimated Time Per Response:* 9.35 hours.

*Estimated Total Annual Burden Hours:* 2,984,360 hours.

*Needs and Uses:* The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in the processing and examination of the application.

*OMB Number:* 0651-0033.

*Title:* Post Allowance and Refiling.

*Form Numbers:* PTO/SB/13/14/44/50-57; PTOL-85b.

*Type of Review:* Regular submission (approved through September of 2000).

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit institutions and Federal Government.

*Estimated Number of Respondents:* 135,250.

*Estimated Time Per Response:* 0.325 hour.

*Estimated Total Annual Burden Hours:* 43,893 hours.

*Needs and Uses:* This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

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, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States 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 record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be 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 1.78 is amended by revising paragraph (a) to read as follows:

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

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or copending international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or copending international application designating the United States of America, each prior application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior application must be:

(i) An international application entitled to a filing date in accordance

with PCT Article 11 and designating the United States of America; or

(ii) Complete as set forth in § 1.51(b); or

(iii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or

(iv) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).

(2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted during the pendency of the later-filed application and within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted during the pendency of the later-filed application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application. The time periods set forth in this paragraph do not apply to an application for a design patent.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph

must be included in an application data sheet (§ 1.76) or the specification must contain or be amended to contain such reference in the first sentence following the title.

(iv) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in an application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The surcharge set forth in § 1.17(t); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

(4) A nonprovisional application other than for a design patent or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed provisional applications, each prior provisional application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(k) must be paid within the time period set forth in § 1.53(g).

(5)(i) Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior provisional application, identifying it by the provisional application number (consisting of series code and serial number).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior provisional application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior provisional application. These time periods are not extendable. Except as provided in paragraph (a)(6) of this section, the failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior provisional application.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76) or the specification must contain or be amended to contain such reference in the first sentence following the title.

(iv) If the provisional application was filed in a language other than English and an English-language translation of the provisional application and a statement that the translation is accurate were not previously filed in the provisional application or the nonprovisional application, applicant will be notified and given a period of time within which to file an English-language translation of the non-English-language provisional application and a statement that the translation is accurate to avoid abandonment of the nonprovisional application.

(6) If the reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in an application after the time period provided by paragraph (a)(5)(ii) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted during the pendency of the later-filed

application if the reference identifying the prior application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

(i) The surcharge set forth in § 1.17(t); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

\* \* \* \* \*

3. Section 1.311 is amended by revising paragraph (a) to read as follows:

**§ 1.311 Notice of allowance.**

(a) If, on examination, it appears that the applicant is entitled to a patent under the law, a notice of allowance will be sent to the applicant at the correspondence address indicated in § 1.33. The notice of allowance shall specify a sum constituting the issue fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. The sum specified in the notice of allowance may also include the publication fee, in which case the issue fee and publication fee (§ 1.211(e)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable.

\* \* \* \* \*

4. Section 1.434 is amended by revising paragraph (d)(2) to read as follows:

**§ 1.434 The request.**

\* \* \* \* \*

(d) \* \* \*

(2) A reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed.

5. Section 1.491 is revised to read as follows:

**§ 1.491 National stage commencement and entry.**

(a) Subject to 35 U.S.C. 371(f), the national stage shall commence with the expiration of the applicable time limit under PCT Article 22(1) or (2), or under PCT Article 39(1)(a).

(b) An international application enters the national stage when the applicant has filed the documents and fees

required by 35 U.S.C. 371(c) within the period set in § 1.494 or § 1.495.

Dated: August 29, 2001.

**Nicholas P. Godici,**

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

[FR Doc. 01-22273 Filed 9-4-01; 8:45 am]

**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[MD078-3078b; FRL 7049-4]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Marine Vessel Coating Operations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Maryland State Implementation Plan (SIP) revision. The revision establishes and imposes reasonably available control technology to reduce volatile organic compound (VOC) emissions from marine vessel coating operations. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 5, 2001.

**ADDRESSES:** Written comments should be addressed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:**

Makeba Morris, (215) 814-2182, at the EPA Region III address above, or by e-mail at makeba.morris@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 28, 2001.

**Thomas C. Voltaggio,**

*Regional Administrator, Region III.*

[FR Doc. 01-22268 Filed 9-4-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[OPP-301166; FRL-6799-6]**

**RIN 2070-AC18**

**Sulfuryl Fluoride; Proposed Pesticide Temporary Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish temporary tolerances for sulfuryl fluoride and inorganic fluoride residues resulting from application of sulfuryl fluoride in or on walnuts and raisins under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This fumigant is being proposed as a methyl bromide alternative in the post-harvest fumigation of stored walnuts and raisins. These temporary tolerances would support a proposed 3-year experimental use permit (EUP) effective between September 24, 2001 and September 24, 2004, conducted by Dow AgroSciences entirely in the state of California. The temporary tolerances will expire April 1, 2006. This will allow approximately 18 months after the end of the EUP, for all the treated commodities to clear commerce.

**DATES:** Comments, identified by docket control number OPP-301166 must be received on or before October 5, 2001.