

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 22, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 3

[Docket No.: 2003-P-019]

RIN 0651-AB63

#### Clarification of Power of Attorney Practice, and Revisions to Assignment Rules

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

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The United States Patent and Trademark Office (Office) is proposing changes to the rules of practice to allow for more efficient processing of powers of attorney and assignment documents within the Office. For example, the Office proposes to require applicants to use the Office's Customer Number practice if a power of attorney is to be given to more than ten registered patent practitioners. In addition, the Office proposes to discontinue the current Office practice of returning patent and trademark assignment documents submitted by mail for recording in the assignment database, and to dispose of the documents according to a record retention schedule after scanning.

**DATES:** To be ensured of consideration, written comments must be received on or before August 26, 2003. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail over the Internet addressed to:

AB63.comments@uspto.gov. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O.

Box 1450, Alexandria, VA 22313-1450; or by facsimile to (703) 872-9411, marked to the attention of Karin Ferriter. 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 would prefer that the comments be submitted on a DOS formatted 3½-inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, located at Room 3D65 of Crystal Plaza 3/4, 2201 South Clark Place, 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:

Karin Ferriter ((703) 306-3159) (Office of the Deputy Commissioner for Patent Examination Policy, Mary Hannon ((703) 308-8910, ext. 137) (Office of the Commissioner for Trademarks), or Robert J. Spar ((703) 308-5107) (Office of the Deputy Commissioner for Patent Examination Policy), directly by phone, or by facsimile to (703) 872-9411, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**SUPPLEMENTARY INFORMATION:** The rules pertaining to access to assignment documents and other records related to assignments are proposed to be clarified. In addition, the rules pertaining to power of attorney are proposed to be revised to reflect Customer Number practice, a practice wherein an applicant or an assignee of the entire interest in an application can give power of attorney to a list of registered patent practitioners associated with a Customer Number. See *Manual of Patent Examining Procedure* (8th ed. 2001) (Rev. 1, Feb. 2003) (MPEP), Section 403 for a description of Customer Number practice. The rules are also proposed to be revised to explain the requirements of a power of attorney and to limit the number of attorneys who may be given a power of attorney without using Customer Number practice.

Furthermore, the rules are proposed to be amended to discontinue the "associate" power of attorney practice, to clarify the procedures related to

revocation of power of attorney, and to clarify how a registered practitioner may sign a document in a representative capacity.

Documents affecting the title to a patent or trademark property (e.g., assignments, or security interests) are currently recorded in the Office's assignment database, upon submission of the document with the appropriate cover sheet and the fee required by 35 U.S.C. 41(d)(1). In addition, Government Interests are recorded, upon submission of the document, as required by Executive Order 9234 of February 18, 1944 (9 FR 1959, 3 CFR 1943-1948 Comp., p. 303). Since 1995, assignment documents have been recorded in the Office's Assignment database without stamping or otherwise marking the document that was submitted for recordation. The automated system that receives documents for recordation assigns the reel and frame number to the document and places the recordation stampings on the images that are stored in the automated system.

Currently, the Office returns an assignment document only if it was mailed to the Office. The Office does not return assignment documents that are submitted by facsimile or electronically. When the Office returns the document submitted by mail for recordation, the document that is returned is exactly the same as the document that was submitted, except that assignment documents submitted with an application may also contain a bar code for the application number and a mail room date stamp. The Office does not stamp or otherwise indicate the reel and frame number on the actual document that is submitted for recordation. See *Facsimile Submission of Assignment Documents is Now Available to PTO Customers* posted on the Office's Internet Web site at: <http://www.uspto.gov/web/offices/ac/ido/opr/ptasfax.pdf> (Jan. 5, 2000), and *Update on Facsimile Submission of Assignment Documents to the USPTO*, 1237 Off. Gaz. Pat. Office 81 (Aug. 15, 2000). The Office's electronic filing system for patent applications is discussed at *Legal Framework for the Use of the Electronic Filing System*, 1263 Off. Gaz. Pat. Office 60, 61 (Oct. 8, 2002).

As part of an effort to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system, the Office is migrating to electronic files from paper files. See *Changes To Implement Electronic Maintenance of Official Patent Application Record*, 68 FR 14365 (Mar. 25, 2003), 1269 Off. Gaz. Pat. Office 166 (Apr. 22, 2003) (proposed rule). As part

of this migration, all papers received in the Office on paper will be scanned and transmitted electronically within the Office. With this new procedure, the Office will be unable to forward some paper copies of documents to one part of the Office (e.g., assignments to Assignment Services Division) and otherwise store other papers (e.g., retain the paper copies of amendments according to the retention schedule). All documents will need to be processed in the same manner; as a result, the Office cannot accept 8½ by 14-inch paper for assignment documents but only 8½ by 11-inch paper for all other correspondence.

Currently, an assignment document cannot be faxed to the Office unless the patent application number or patent number, trademark serial number or trademark registration number is provided. As a result, on filing a patent application, applicants routinely include a copy of an assignment with the original application papers. Under the proposed new practice, applicants may continue to file a copy of the assignment document with the application papers, but should not anticipate a return of the submitted copy of the assignment document; only a Notice of Recordation will be transmitted to the party requesting recordation by the Office. To assist applicants in matching the Notice of Recordation transmitted by the Office with applications known to have been filed on a certain day, the Notice of Recordation will be revised to indicate the title of invention.

### Discussion of Specific Rules

**Section 1.1:** The Office proposes to revise § 1.1(a)(4) to delete “or under § 3.81 of this chapter.” Under the proposed rule, the Office will no longer permit the submission of an assignment document together with the issue fee payment or a request to issue a patent to an assignee. Instead, the assignment documents (with cover sheets) should be faxed to (703) 306–5995, submitted through one of the electronic filing systems, or submitted in a separate envelope and be sent to Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450. This will permit the assignment document to be recorded more quickly as it will be directly routed to the appropriate area of the Office for recording.

**Section 1.12:** The Office proposes to amend § 1.12(b) to replace “has not been published under 35 U.S.C. 122(b) are not available to the public” with “is open to the public pursuant to § 1.11 or

for which copies or access may be supplied pursuant to § 1.14 are available to the public” in order to clarify the assignment records that are available to the public. Paragraph (b) of § 1.12 is further proposed to be amended to provide that copies of any such assignment records and related information that are not available to the public shall be obtainable only upon written authority of the applicant or applicant’s assignee, patent attorney, or patent agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided in part 1.

As proposed to be revised, § 1.12(b) more clearly provides, for example, for an application that is relied upon under 35 U.S.C. 120 in an application that has issued as a patent, any assignment records relating to the parent application could be considered to relate to the patent. Without the amendment to § 1.12(b), the rule suggests that the assignment records for the parent application are not available to the public. This was not the intended construction, and it is inconsistent with MPEP § 301.01. Under proposed § 1.12(b), the assignment records for the parent application of a patent, or an application that has published under 35 U.S.C. 122(b), would be open to public inspection.

**Section 1.31:** The Office proposes to revise the title to refer to “registered patent attorney or patent agent” and to revise § 1.31 to introduce the term “power of attorney.”

**Section 1.32:** The Office proposes a new § 1.32 to define “power of attorney” and “Customer Number,” among other things, and to set forth the requirements for a power of attorney. “Power of attorney” is defined in paragraph (a)(1) of § 1.32 as a written document by which a principal designates an agent to act on his or her behalf. A power of attorney includes an authorization of an agent. “Principal” is defined in paragraph (a)(2) of § 1.32 as either the applicant for patent (§ 1.41(b)) or the assignee of the entire interest, and the entity who executes a power of attorney designating one or more agents to act on his or her behalf. “Revocation” is defined in paragraph (a)(3) of § 1.32 as the cancellation by a principal of the authority previously given by the principal to an agent. “Customer Number” is defined in paragraph (a)(4) of § 1.32 to be a number that may be used to: (i) Designate the correspondence address of a patent

application such that the correspondence address for the patent application would be the address associated with the Customer Number; (ii) designate the fee address (37 CFR 1.363) of a patent by a Customer Number such that the fee address for the patent would be the address associated with the Customer Number; and (iii) specify, in a power of attorney, that each of the practitioners associated with a Customer Number have a power of attorney.

Paragraph (b) of proposed § 1.32 sets forth the requirements for a power of attorney, other than a power of attorney in an international application (see § 1.455 for the power of attorney in an international application and note that Customer Number practice cannot be used in an international application). To be valid, the power of attorney, in an application other than an international application, must: (1) Be in writing; (2) name as agent either: (i) One or more joint inventor (see § 1.45), (ii) up to ten registered patent attorneys, registered patent agents, or other individuals authorized to practice before the United States Patent and Trademark Office in patent cases (see § 10.6 and § 10.9(a) and (b) of this subchapter), or (iii) those registered patent practitioners associated with a Customer Number; (3) give the agent power to act on behalf of the principal; and (4) be executed by the principal.

The new § 1.32 is proposed to set a limit on the number of patent practitioners who can be given a power of attorney without using Customer Number practice because it is extremely burdensome for the Office to manually enter a long list of patent practitioners, particularly where the same list of patent practitioners is to be entered for a large number of applications. Applicants desiring to appoint a large number of patent practitioners may continue to do so, but to appoint more than ten, use of Customer Number practice will be required. If a power of attorney is submitted listing more than ten patent practitioners, and the rules are revised as proposed, no patent practitioners will be entered into the Office’s computer systems because the power of attorney would not comply with the rules. Furthermore, the power of attorney would not be “partially accepted” so as to only accept, for example, the first ten patent practitioners. This policy is consistent with the Office practice of not entering just a part of a paper that complies with the rules. As a result, if the power of attorney lists more than ten patent practitioners and does not give power of attorney to a Customer Number, then

applicant will be sent a notice to either submit a power of attorney with ten or fewer patent practitioners or to use Customer Number practice. For example, if more than ten patent practitioners have been named in a combined declaration and power of attorney (*e.g.*, from an earlier filed application (see § 1.63(d)(1)(iv))), then the Office of Initial Patent Examination will mail a notice requiring a new power of attorney. If the application has been assigned, the new power of attorney should be signed by the assignee of the entire interest.

Although any power of attorney listing more than ten patent practitioners would be given a paper number and physically entered into the patent application file, the patent practitioners so listed would not be of record (entered into the Office computer system or permitted to sign an express abandonment). Customer Number practice allows the Office to enter a single five or six digit number into the power of attorney field instead of a large number of patent practitioners and is a more appropriate use of Office resources. *See* MPEP § 403.

**Section 1.33:** Section 1.33 is proposed to be revised to reflect Customer Number practice. If applicant provides, in a single document, both a complete typed address and a Customer number and requests that both be used for the correspondence address, the address associated with the Customer Number will be used. Section 1.33(a) is proposed to be revised to include the following sentence: "If more than one correspondence address is specified in a single document, the Office will establish one as the correspondence address and will use the address associated with a Customer Number, if the address associated with a Customer Number is one of the addresses given." Applicants will often specify the correspondence address in more than one paper that is filed with an application, and the address given in the different places sometimes conflicts. Where the applicant specifically directs the Office to use a correspondence address in more than one paper, priority will be accorded to the correspondence address specified in the following order: (1) Application data sheet (ADS); (2) Application transmittal; (3) Oath or declaration (unless power of attorney is more current); and (4) Power of attorney. Accordingly, if the ADS includes a typed correspondence address, and the declaration gives a different address (*i.e.*, the address associated with a Customer Number) as the correspondence address, the Office will use the typed correspondence

address as included on the ADS. In the experience of the Office, the ADS is the most recently created document and tends to have the most current address. After the correspondence address has been entered according to the above procedure, it will only be changed pursuant to § 1.33(a)(1).

Paragraph (b)(1) of § 1.33 is proposed to be revised to change the reference from § 1.34(b) to proposed new § 1.32.

Paragraph (b)(2) of § 1.33 is proposed to be revised to change § 1.34(a) to § 1.34 to be consistent with the proposal to revise § 1.34.

Paragraph (c) of § 1.33 is proposed to be revised to change the cross-reference to § 1.32(b) instead of § 1.34(b) and to change the reference to § 1.34(a) to § 1.34 to be consistent with the proposed revision to § 1.34.

**Section 1.34:** The Office proposes to revise title to "Acting in a Representative Capacity." The paragraph designation for paragraph (a) is proposed to be deleted and ", pursuant to § 1.31," is proposed to be deleted for clarity. In addition, "a registered patent attorney or patent agent should specify his or her registration number with his or her signature" is proposed to be changed to "a registered patent attorney or patent agent must specify his or her exact name, as registered, and the registration number with his or her signature." When a registered patent attorney or patent agent acts in a representative capacity, it should be clear who is signing the paper. Since signatures are not always legible, it is necessary for the registered patent attorney or agent to specify his or her registration number, and also to include his or her exact name so that the identity of the person who is acting in a representative capacity may be identified.

Paragraph (b) of § 1.34 is proposed to be deleted. With Customer Number practice, the associate power of attorney practice set forth in § 1.34(b) is no longer necessary because once power of attorney is given to the patent practitioners associated with a Customer Number, each attorney associated with the Customer Number has an equal right to change the list of patent practitioners associated with that Customer Number. Customer number practice is also preferable to having an associate power of attorney practice because when a principal attorney gives an associate power of attorney, and the principal attorney subsequently dies or withdraws as attorney, the associate power of attorney is terminated. The termination of the authority of the associate attorney is difficult for the Office to enforce. When Customer Number practice is

used, the death or withdrawal of an attorney originally associated with the Customer Number has no impact upon practitioners who later become associated with the Customer Number, and as a result, Customer Number practice is more efficient for the Office to administer than the associate power of attorney practice. Furthermore, an applicant or assignee who gives power of attorney to a limited number of patent practitioners has expressed a desire to be represented by only those patent practitioners. As § 1.34 is proposed to be revised, if Customer Number practice is not used, an applicant or assignee will be required to sign a new power of attorney in order for an associate practitioner to be "of record" instead of the specifically identified principal patent practitioner. Of course, a registered patent practitioner may still act in a representative capacity pursuant to § 1.34 (by providing his or her exact name and a registration number with his or her signature), and the proposed rule changes do not propose to change this flexibility.

**Section 1.36:** The Office proposes to delete "or authorization" from the title and to revise § 1.36 to include new paragraphs (a) and (b) to address revocation of power of attorney in one paragraph and withdrawal in another paragraph. In addition, "or authorization of agent" is proposed to be deleted since the term "power of attorney" has been defined to include an authorization of an agent. The cross-reference to § 1.31 is proposed to be changed to § 1.32(b).

Paragraph (a), as proposed to be revised, addresses revocation of a power of attorney. A registered patent attorney or patent agent will be notified of the revocation, except that where the power of attorney is to the patent practitioners associated with a Customer Number, the notice is only given when the power of attorney to the practitioners associated with the Customer Number is revoked. When the power of attorney is revoked, a single notice is mailed to the correspondence address in effect before the power of attorney was revoked. An associate registered patent attorney or patent agent whose address is the same as that of the principal registered patent attorney or patent agent is not separately informed of a revocation. As a result, the Office has proposed to delete the suggestion in the rule that such an associate practitioner would be notified of the revocation of power of attorney.

When power of attorney is given to the registered patent attorneys and patent agents associated with a Customer Number, for example with PTO/SB/81, the list of patent

practitioners associated with the Customer Number is changed by changing the data associated with the Customer Number (using, for example PTO/SB/124 (2 pages 124A & 124B), Request for Customer Number Data Change). No notice is given to the patent practitioners who are added or removed from the Customer Number when they are added or removed.

As to proposed paragraph (b) of § 1.36, the paragraph is proposed to be revised to state that when the power of attorney for an application is given to a Customer Number, all of the patent practitioners associated with the Customer Number may not be permitted to withdraw if an application with the power of attorney to the patent practitioners associated with the Customer Number has an Office action to which a reply is due and insufficient time remains in a period for reply for applicant to prepare a reply. See MPEP Section 402.06.

**Section 3.1:** The Office proposes to revise § 3.1 to identify which trademark applications are covered by 37 CFR part 3, and to delete “or a transfer of its entire right, title and interest in a” so that the definition of an assignment includes a transfer of part of the right, title and interest in a registered mark or a mark for which an application to register has been filed. The Office also proposes to revise § 3.1 to add “United States” before “Patent and Trademark Office” in the definition of “Office” to properly reflect the current name of the Office in the rule. See 35 U.S.C. 1(a).

**Section 3.12:** The Office proposes to add § 3.12 to identify those trademark applications or registrations that are not covered by 37 CFR part 3. In paragraph (a) of § 3.12, with regard to trademark applications or registrations that are not covered by 37 CFR part 3, the documents related to a holder's right to dispose of an international trademark registration are required to be recorded by the International Bureau of the World Intellectual Property Organization. New paragraph (b) of § 3.12 provides that when the Office is notified by the International Bureau of an assignment or restriction of a holder's right of disposal of an international registration with an extension of protection to the United States, the Office will take note of the assignment or restriction in its records.

**Section 3.24:** The Office proposes to revise § 3.24 to include two paragraphs, namely, paragraphs (a) and (b).

Proposed new paragraph (a) addresses documents and cover sheets for electronic submissions, and requires all documents to be submitted electronically to be submitted as

digitized images in Tagged Image File Format (TIFF). In addition, when printed to a paper size of 8½ by 11 inches (21.6 by 27.9 cm) (“letter size”) or DIN size A4 (21.0 by 29.7 cm), the document must be legible and a one-inch (2.5 cm) margin must be present on all sides.

Proposed new paragraph (b) addresses documents and cover sheets for paper and facsimile submissions. Section 3.24(b) is proposed to provide that for paper submissions (e.g., documents that are mailed to the Office) the original document may no longer be submitted.

Proposed new paragraph (b) provides that “Either a legible true copy of the original document or a legible extract of the original document” may be submitted for recordation. Paragraph (b) also includes an explanation to explain why original documents should not be submitted for recording: “The Office will not return recorded documents, so original documents must not be submitted for recording.” As explained above, the Office is moving to uniform processing of incoming papers, with incoming papers being scanned upon receipt, electronically routed within the Office, and an appropriate reply being mailed. With this uniform procedure, the Office will not return assignment documents submitted for recordation. As a result, the Office is not permitting the submission of originals of assignment documents, and instead is requiring that a legible true copy or a legible extract of an original document be submitted. The term “an extract of the original document” is being added to reflect the current practice of submitting redacted copies of assignment documents, where part of an assignment discusses matters other than assignment of interests related to a patent or a trademark.

The Office further proposes to revise § 3.24 to provide, in paragraph (b), that documents (copies) submitted for recording must be on sheets of paper having a size of 8½ by 11 inches (21.6 by 27.9 cm) (“letter size”) or DIN size A4 (21.0 by 29.7 cm). That is, “legal-size” (8½ by 14 inch or 21.64 by 33.1 cm) sheets of paper are no longer permissible. If the original assignment document is on “legal size” sheets of paper, the assignment document should be reduced to 8½ by 11-inch or DIN size A4 paper for submission to the Office (e.g., by photocopying it onto letter-size paper). Sheets of paper that are either 8½ by 11 inches (21.6 by 27.9 cm) or DIN size A4 (21.0 by 29.7 cm) are required for scanning purposes.

**Section 3.25:** The Office proposes to amend § 3.25 to delete paragraph (a)(1) and renumber paragraphs (a)(2) through

(4) as (a)(1) through (3), respectively. Paragraph (a)(1) is being deleted to prohibit applicants from submitting the original assignment document (because applicants should retain the original of the assignment document). The Office also proposes to insert “original” before “document” in paragraph (a)(1), as renumbered, in order to make it clear that only a copy of an original assignment document may be submitted for recording.

The Office further proposes to revise paragraph (c) to add paragraph (1) to state that electronic submissions must be attached as a digitized image in Tagged Image File Format (TIFF), to move the existing requirements for paper submissions into paragraph (2), and specify that the document (copy) submitted for recording must have a one-inch margin when printed on 8½ by 11 inch (21.6 by 27.9 cm) or DIN size A4 (21.0 cm by 29.7 cm) paper. Legal-size paper is no longer permitted. See the discussion of this change above for patents (§ 3.24).

**Section 3.27:** The Office proposes to revise § 3.27 to change “to be recorded” to “submitted for recordation by mail” because documents and cover sheets submitted for recording may be faxed or electronically submitted to the Office and need not be mailed. The proposed language clarifies that only documents submitted by mail need to be addressed as set forth in the rule. The Office also proposes to revise § 3.27 to delete “or with a request under § 3.81”. As explained with respect to § 3.81, when an applicant requests a patent to issue to an assignee, the assignment document should be separately submitted for recordation because inclusion of the assignment document with the request to issue the patent to the assignee slows down the recordation process.

**Section 3.31:** The Office proposes to revise § 3.31(a)(7) to set forth the requirements for signature of patent and trademark cover sheets filed electronically. These requirements correspond to the requirements set forth in §§ 1.4(d)(1)(iii) and 2.33(d) of this chapter for electronically transmitted trademark filings.

Trademark assignments may be submitted electronically with the Electronic Trademark Assignment System, which is available on the USPTO Internet site. See <http://etas.uspto.gov/>. Patent assignments should soon be able to be similarly electronically submitted. When submitting a copy of a trademark assignment using ETAS, the cover sheet is completed and signed electronically. As with electronic submission of a

trademark application, a signature may be applied to an Assignment document in one of the following ways:

(1) The applicant enters a "symbol" that the applicant has adopted as a signature on the electronic assignment document. The Office will accept any combination of letters, numbers, spaces and/or punctuation marks as a valid signature if it is placed between forward slash symbols (e.g., "/qwert!@#/'") and is in a signature block. The document is saved as a TIFF image; or

(2) The signatory signs paper copies of the assignment document in the traditional pen-and-ink manner. The attorney scans the document to create a TIFF image file for electronic submission of the document.

*See Trademark Manual of Examining Procedure (TMPEP) § 804.05, Signature of Electronically Transmitted Applications (May 2003).* Although when filing an assignment electronically, the cover sheet may be "signed" as explained in TMPEP § 804.05, the assignment document that is included therewith is an attached TIFF image.

The Office further proposes to revise paragraph (c)(1) of § 3.31 to simplify the requirements for the cover sheet to only require identification of whether the document to be recorded relates to a governmental interest.

The Office further proposes to add paragraph (f) of § 3.31, stating that a trademark cover sheet should include the citizenship of the parties conveying and receiving the interest, and that if the party receiving the interest is a partnership or joint venture, the cover sheet should set forth the names, legal entities, and national citizenship (or the state or country of organization) of all general partners or active members. This information is required for purposes of examination of the application or registration file. Providing this information when the assignment is recorded may avoid a subsequent Office action by an examiner.

*Section 3.34:* The Office proposes to revise § 3.34(b) to delete "the originally recorded document or" to thereby provide that it is "a copy of the document originally submitted for recording" that must be submitted. As explained above, the Office is revising the procedure for handling assignment documents and will no longer be returning the document that is submitted for recording.

*Section 3.41:* The Office proposes to revise § 3.41(b)(2) to include electronic and facsimile submission as a means in which a statement of Government interest could be submitted for recordation without incurring a fee. Section 3.41(b)(2) is also proposed to be

revised to change the cross-reference to § 3.27 since § 3.27 was previously revised to delete § 3.27(b).

*Section 3.81:* The Office proposes to revise § 3.81(a) to change "name(s)" to "name" and "assignee(s)" to "assignee" because under rules of statutory and regulatory construction, the singular includes the plural unless the context indicates otherwise. Furthermore, the Office proposes to revise § 3.81(a) to change "should be accompanied by the assignment and either a direction to record the assignment in the Office pursuant to § 3.28, or a statement under § 3.73(b)" to "must state that the document has been filed for recordation as set forth in § 3.11." When an assignment document is submitted for recording, the preferred submission is by facsimile to (703) 306-5995, or through an electronic filing system (e.g., ETAS for trademark assignment documents or EFS for patent assignment documents), and not by mail. Accordingly, the Office proposes to revise the rules to enable patent applicants to state that the assignment documents have been filed for recordation, rather than including the assignment documents for recordation with the request.

Furthermore, the Office proposes to amend § 3.81(a) and (b) to delete the reference to a statement under § 3.73(b). If the application has been assigned, the assignment document should be submitted for recording as set forth in § 3.11 for the patent to issue showing the name of the assignee. Although during prosecution a statement under § 3.73(b) can be relied upon to establish that an assignee is of record, pursuant to § 3.73(b)(1)(i), "the documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records as a condition to permitting the assignee to take action." By the time that a patent issues, any assignment should be submitted for recording, and reliance upon § 3.73(b) should not be necessary. Furthermore, although during prosecution of an application the Office will have an opportunity to require recordation, at issuance, prosecution has come to a close and there is no other practical opportunity for the Office to require recordation before the patent is issued.

The Office proposes to revise § 3.81(b) to read "[a]fter payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request that a patent be corrected to state the name of the assignee, must state that the assignment was submitted for

recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter." This would modify the practice relating to issuance of a patent to an assignee by requiring that after payment of an issue fee, a request for a certificate of correction must be filed in order to obtain issuance of the patent to an assignee. Thus, the patent document would not set forth such assignment information, but the assignment information would be set forth in a Certificate of Correction. Furthermore, this would discontinue the current practice of allowing a patent to issue to an assignee when an assignment has not been recorded but a § 3.73(b) statement has been filed. Instead of allowing submission of a § 3.73(b) statement, correction would be permitted via a certificate of correction where the assignment has been recorded, or submitted for recording before issuance of the patent. *See MPEP § 1481.*

Section 3.81(c)(1) is proposed to be amended to change "assignee(s)" to "assignee" and "inventor(s)" to "inventor" because under rules of statutory and regulatory construction, the singular includes the plural unless the context indicates otherwise.

#### Rule Making Considerations

*Administrative Procedure Act:* This notice proposes changes to the rules of practice to simplify the Office procedures involving power of attorney practice and recording assignment documents. The changes proposed in this notice are limited to the format for and the manner of submitting, establishing and changing the power of attorney, for submitting documents to be recorded in the assignment records, and the availability of assignment records to the public. Therefore, these changes involve 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 (DC Cir. 2001). Therefore, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). Nevertheless, the Office is providing this opportunity for public comment on the changes proposed in this notice because the Office desires the benefit of public comment on these proposed changes.

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

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

**Paperwork Reduction Act:** This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control numbers 0651-0027 and 0651-0035. The Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this notice would not affect the information collection requirements associated with the information collection under OMB control numbers 0651-0027 and 0651-0035.

The title, description and respondent description of each of the information collections are shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impacts of the changes in this proposed rule are to: (1) Provide for power of attorney to a Customer Number and to limit the number of attorneys who may be given a power of attorney without using a Customer Number; (2) eliminate associate power of attorney practice; (3) require attorneys acting in a representative capacity to specify their name and registration number; (4) allow access to assignment records except those relating to any pending or abandoned patent application which is preserved in confidence under § 1.14; (5) provide that assignment documents submitted for recording must be on certain sizes of paper; (6) specifically state that the assignment documents that are submitted for recording will not be returned; (7) for assignments that are submitted electronically, provide for an electronic signature; (8) require the citizenship of the parties conveying and receiving the interest on a trademark assignment cover sheet; and (9) provide that a request to issue a patent to an assignee filed after issue fee payment

must be accompanied by a request for a certificate of correction.

**OMB Number:** 0651-0027.

**Title:** Changes in Patent and Trademark Assignment Practices.

**Form Numbers:** PTO-1618 and PTO-1619, PTO/SB/15/41.

**Type of Review:** Approved through June of 2005.

**Affected Public:** Individuals or households and businesses or other for-profit institutions.

**Estimated Number of Respondents:** 311,704.

**Estimated Time Per Response:** 30 minutes.

**Estimated Total Annual Burden Hours:** 155,853 hours.

**Needs and Uses:** The Office records over 300,000 assignments or documents related to ownership of patent and trademark cases each year. The Office requires a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

**OMB Number:** 0651-0035.

**Title:** Representative and Address Provisions.

**Form Numbers:** PTO/SB/81/82/83/121/122/123/124A/124B/125A/125B.

**Type of Review:** Approved through 11/30/2005.

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

**Estimated Number of Respondents:** 338,280.

**Estimated Time Per Response:** 3 minutes (0.05 hours) to 1 hour 45 minutes (1.75 hours).

**Estimated Total Annual Burden Hours:** 31,259 hours.

**Needs and Uses:** Under 35 U.S.C. 2 and 37 CFR 1.31-1.36 and 1.363, this information is used to submit a request to grant or revoke power of attorney in an application or patent, to withdraw as patent attorney or patent agent of record, or to designate or change the correspondence address for one or more applications or patents.

Comments are invited on: (1) Whether the collections of information are 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, Commissioner for Patents, PO Box 1450, Alexandria, VA

22313-1450, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: USPTO Desk Officer).

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

## List of Subjects

### 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

### 37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1 and 3 are 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. Revise § 1.1(a)(4)(i) to read as follows:

### § 1.1 Addresses for correspondence with the United States Patent and Trademark Office.

(a) \* \* \*

(4) *Office of Public Records correspondence*—(i) *Assignments*. All patent-related or trademark-related documents to be recorded by Assignment Services Division, except for documents filed together with a new application, should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450. See § 3.27.

\* \* \* \* \*

3. Revise § 1.12(b) to read as follows:

### § 1.12 Assignment records open to public inspection.

\* \* \* \* \*

(b) Assignment records, digests, and indexes relating to any pending or abandoned patent application, which is open to the public pursuant to § 1.11 or for which copies or access may be supplied pursuant to § 1.14, are

available to the public. Copies of any such assignment records and related information that are not available to the public shall be obtainable only upon written authority of the applicant or applicant's assignee or patent attorney or patent agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided in this part.

\* \* \* \* \*

4. Revise § 1.31 to read as follows:

**§ 1.31 Applicants may be represented by a registered patent attorney or patent agent.**

An applicant for patent may file and prosecute his or her own case, or he or she may give a power of attorney so as to be represented by a registered patent attorney, registered patent agent, or other individual authorized to practice before the United States Patent and Trademark Office in patent cases. See § 10.6 and § 10.9(a) and (b) of this subchapter. The United States Patent and Trademark Office cannot aid in the selection of a registered patent attorney or patent agent.

5. Add new § 1.32 to read as follows:

**§ 1.32 Power of attorney.**

(a) Definitions:

(1) *Power of attorney* means a written document by which a principal designates an agent to act on his or her behalf.

(2) *Principal* means either the applicant for patent (§ 1.41(b)) or the assignee of the entire interest. The principal executes a power of attorney designating one or more agents to act on his or her behalf.

(3) *Revocation* means the cancellation by the principal of the authority previously given by the principal to an agent.

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

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

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

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

(b) A power of attorney, other than a power of attorney in an international application (§ 1.455), must:

- (1) Be in writing;
- (2) Name as agent either:
  - (i) One or more joint inventors (§ 1.45);
  - (ii) Up to ten registered patent attorneys, registered patent agents, or other individuals authorized to practice before the United States Patent and Trademark Office in patent cases (see § 10.6 and § 10.9(a) and (b) of this subchapter); or
  - (iii) Those registered patent practitioners associated with a Customer Number;

(3) Give the agent power to act on behalf of the principal; and

(4) Be signed by the applicant for patent (§ 1.41(b)) or the assignee of the entire interest.

6. Amend § 1.33 to revise paragraphs (a), introductory text, (b)(1), (b)(2) and (c) to read as follows:

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

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

(1) \* \* \*

(b) *Amendments and other papers.* Amendments and other papers, except for written assertions pursuant to

§ 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);

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

\* \* \* \* \*

(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the patent attorney or patent agent of record (see § 1.32(b)) in the patent file at the address listed on the register of patent attorneys and patent agents maintained pursuant to § 10.5 and § 10.11 or, if no patent attorney or patent agent is of record, to the patent owner or owners at the address or addresses of record. Amendments and other papers filed in a reexamination proceeding on behalf of the patent owner must be signed by the patent owner, or if there is more than one owner by all the owners, or by a patent attorney or patent agent of record in the patent file, or by a registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34. Double correspondence with the patent owner or owners and the patent owner's patent attorney or patent agent, or with more than one patent attorney or patent agent, will not be undertaken. If more than one patent attorney or patent agent is of record and a correspondence address has not been specified, correspondence will be held with the last patent attorney or patent agent made of record.

\* \* \* \* \*

7. Revise § 1.34 to read as follows:

**§ 1.34 Acting in a Representative Capacity.**

When a registered patent attorney or patent agent acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the registered patent attorney or patent agent must specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required.

8. Revise § 1.36 to read as follows:



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

(a) A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceedings of a case by the applicant for patent (§ 1.41(b)) or the assignee of the entire interest. A registered patent attorney or patent agent will be notified of the revocation of the power of attorney. Where power of attorney is given to the patent practitioners associated with a Customer Number (§ 1.32(b)(2)(iii)), the practitioners so appointed will also be notified of the revocation of the power of attorney when the power of attorney to the practitioners associated with the Customer Number is revoked. The notice of revocation will be mailed to the correspondence address for the application (§ 1.33) in effect before the revocation. An assignment will not of itself operate as a revocation of a power previously given, but the assignee of the entire interest may revoke previous powers and give another power of attorney as provided in § 1.32(b) of the assignee's own selection.

(b) A registered patent attorney or patent agent who has been given a power of attorney pursuant to § 1.32(b) may withdraw upon application to and approval by the Director. The applicant or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number and insufficient time remains for the applicant to file a reply. See § 1.613(d) for withdrawal in an interference.

**PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE**

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

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

10. Revise § 3.1 to read as follows:

**§ 3.1 Definitions.**

For purposes of this part, the following definitions shall apply:

*Application* means a national application for patent, an international patent application that designates the United States of America, or an application to register a trademark under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051 or 15 U.S.C. 1126, unless otherwise indicated.

*Assignment* means a transfer by a party of all or part of its right, title and interest in a patent, patent application, registered mark or a mark for which an application to register has been filed.

*Document* means a document which a party requests to be recorded in the Office pursuant to § 3.11 and which affects some interest in an application, patent, or registration.

*Office* means the United States Patent and Trademark Office.

*Recorded document* means a document which has been recorded in the Office pursuant to § 3.11.

*Registration* means a trademark registration issued by the Office.

11. Add § 3.12 to read as follows:

**§ 3.12 Documents affecting title to international trademark registration and extension of protection to the United States.**

(a) Assignments or restrictions of a holder's right to dispose of an international trademark registration must be recorded by the International Bureau of the World Intellectual Property Organization.

(b) When the Office is notified by the International Bureau of an assignment or restriction of a holder's right of disposal of an international registration with an extension of protection to the United States, the Office will take note of the assignment or restriction in its records.

12. Revise § 3.24 to read as follows:

**§ 3.24 Requirements for documents and cover sheets relating to patents and patent applications.**

(a) *For electronic submissions:* Either a true copy of the original document or an extract of the original document may be submitted for recording. All documents must be submitted as digitized images in Tagged Image File Format (TIFF) or another form as prescribed by the Director. When printed to a paper size of either 21.6 by 27.9 cm (8½ by 11 inches) or 21.0 by 29.7 cm (DIN size A4), the document must be legible and a 2.5 cm (one-inch) margin must be present on all sides.

(b) *For paper or facsimile submissions:* Either a legible true copy of the original document or a legible extract of the original document may be submitted for recording.

Only one side of each page may be used. The paper size must be either 21.6 by 27.9 cm (8½ by 11 inches) or 21.0 by 29.7 cm (DIN size A4), and in either case, a 2.5 cm (one-inch) margin must be present on all sides. For paper submissions, the paper used should be flexible, strong white, non-shiny, and durable. The Office will not return recorded documents, so original

documents must not be submitted for recording.

13. Revise § 3.25 to read as follows:

**§ 3.25 Recording requirements for trademark applications and registrations.**

(a) *Documents affecting title.* To record documents affecting title to a trademark application or registration, a legible cover sheet (see § 3.31) and one of the following must be submitted:

- (1) A copy of the original document;
  - (2) A copy of an extract from the document evidencing the effect on title;
- or

(3) A statement signed by both the party conveying the interest and the party receiving the interest explaining how the conveyance affects title.

(b) *Name changes.* Only a legible cover sheet is required (See § 3.31).

(c) *All documents.*

(1) *For electronic submissions:* All documents must be submitted as digitized images in Tagged Image File Format (TIFF) or another form as prescribed by the Director. When printed to a paper size of either 21.6 by 27.9 cm (8½ by 11 inches) or 21.0 by 29.7 cm (DIN size A4), a 2.5 cm (one-inch) margin must be present on all sides.

(2) *For paper or facsimile submissions:* All documents should be submitted on white and non-shiny paper that is either 8½ by 11 inches (21.6 by 27.9 cm) or DIN size A4 (21.0 by 29.7 cm) with a one-inch (2.5 cm) margin on all sides in either case. Only one side of each page may be used. The Office will not return recorded documents, so original documents should not be submitted for recording.

14. Revise § 3.27 to read as follows:

**§ 3.27 Mailing address for submitting documents to be recorded.**

Documents and cover sheets submitted by mail for recordation should be addressed to Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313-1450, unless they are filed together with new applications.

15. Amend § 3.31 to revise paragraphs (a)(7) and (c)(1) and to add a paragraph (f) to read as follows:

**§ 3.31 Cover sheet content.**

(a) \* \* \*

(7) The signature of the party submitting the document. For an assignment document or name change filed electronically, the person who signs the cover sheet must either:

(i) Place a symbol comprised of numbers and/or letters between forward



slash marks in the signature block on the electronic submission; or

(ii) Sign the cover sheet using some other form of electronic signature specified by the Director.

\* \* \* \* \*

(c) \* \* \*

(1) Indicate that the document relates to a Government interest; and

\* \* \* \* \*

(f) Each trademark cover sheet should include the citizenship of the party conveying the interest and the citizenship of the party receiving the interest. In addition, if the party receiving the interest is a partnership or joint venture, the cover sheet should set forth the names, legal entities, and national citizenship (or the state or country of organization) of all general partners or active members that compose the partnership or joint venture.

16. Revise § 3.34 to read as follows:

#### **§ 3.34 Correction of cover sheet errors.**

(a) An error in a cover sheet recorded pursuant to § 3.11 will be corrected only if:

(1) The error is apparent when the cover sheet is compared with the recorded document to which it pertains, and

(2) A corrected cover sheet is filed for recordation.

(b) The corrected cover sheet must be accompanied by a copy of the document originally submitted for recording and by the recording fee as set forth in § 3.41.

17. Revise § 3.41(b)(2) to read as follows:

#### **§ 3.41 Recording fees.**

\* \* \* \* \*

(b) \* \* \*

(2) The document and cover sheet are either: faxed or electronically submitted as prescribed by the Director, or mailed to the Office in compliance with § 3.27.

18. Revise § 3.81 to read as follows:

#### **§ 3.81 Issue of patent to assignee.**

(a) *With payment of the issue fee:* An application may issue in the name of the assignee consistent with the application's assignment where a request for such issuance is submitted with payment of the issue fee, provided the assignment has been previously recorded in the Office. If the assignment has not been previously recorded, the request must state that the document has been filed for recordation as set forth in § 3.11.

(b) *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and

any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

(c) *Partial assignees.*

(1) If one or more assignee, together with one or more inventor, holds the entire right, title, and interest in the application, the patent may issue in the names of the assignee and the inventor.

(2) If multiple assignees hold the entire right, title, and interest to the exclusion of all the inventors, the patent may issue in the names of the multiple assignees.

Dated: June 20, 2003.

**Jon W. Dudas,**

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

[FR Doc. 03-16262 Filed 6-26-03; 8:45 am]

**BILLING CODE 3510-16-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[PA 207-4211; FRL-7518-9]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Inspection and Maintenance Program—Revised Final Standards for the Acceleration Simulation Mode Exhaust Emissions Test**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision amends the Commonwealth's SIP-approved Enhanced Vehicle Emission Inspection Program (or I/M program) to implement final tailpipe test standards for the Acceleration Simulation Mode (ASM) tailpipe emissions test. This is being done through the substitution of revised ASM test standards in place of the previously SIP-approved final standards. Since this change affects only testing performed using the ASM tailpipe test method, only that portion of the I/M-subject vehicles in the five-county Philadelphia area that receive

ASM tailpipe testing are affected by this action. This action is being taken under the Clean Air Act.

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

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. Follow the detailed instructions of the Supplementary Information section. 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 at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

#### **FOR FURTHER INFORMATION CONTACT:**

Brian Rehn, (215) 814-2176, or by e-mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On June 5, 2003, the Pennsylvania Department of Environmental Protection submitted a request that EPA parallel process the approval of a revision to its State Implementation Plan (SIP) to amend its SIP-approved enhanced inspection and maintenance (I/M) program. The revision consists of a change of the Commonwealth's I/M program regulation to implement a revised set of final pass/fail testing standards for those vehicles that undergo Acceleration Simulation Mode (ASM) tailpipe test method. The Commonwealth is replacing final ASM test standards previously adopted and SIP-approved with a set of revised final standards issued by EPA that are being adopted by Pennsylvania as a compliance alternative to the previous final ASM standards.

The ASM test is a test method used to measure tailpipe emissions from cars. In Pennsylvania, the test is performed only in five counties in the Philadelphia severe ozone nonattainment area (Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties), and therefore only on a portion of the I/M-subject fleet. The ASM tailpipe