

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 41

[Docket No. PTO-C-2006-0015]

RIN 0651-AB81

#### Revision of Patent Fees for Fiscal Year 2007

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

**ACTION:** Proposed rule.

**SUMMARY:** The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this document) is proposing to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

We are proposing to adjust the patent fees under the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), which revised certain patent fees, and provided for a search fee and examination fee that are separate from the filing fee, during fiscal years 2005 and 2006. Legislation has been introduced in the Congress that would extend the fee revisions in the Consolidated Appropriations Act. If, for any period during fiscal year 2007, the fee revisions in the Consolidated Appropriations Act are not in effect, then the fee adjustment would apply to the former fee amounts that were in place on October 1, 2004, to December 7, 2004, prior to the enactment of the Consolidated Appropriations Act.

**DATES:** Comments must be submitted on or before July 5, 2006.

**ADDRESSES:** You may submit comments, identified by RIN number 0651-AB81, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [Tamara.McClure@uspto.gov](mailto:Tamara.McClure@uspto.gov). Include RIN number 0651-AB81 in the subject line of the message.

- Fax: (571) 273-6500, marked to the attention of Tamara McClure.

- Mail: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Tamara McClure.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this rule making. For additional information on the rule making process, see the heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Tamara McClure by e-mail at [Tamara.McClure@uspto.gov](mailto:Tamara.McClure@uspto.gov), by telephone at (571) 272-6345, or by fax at (571) 273-6500.

**SUPPLEMENTARY INFORMATION:** This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act) (Pub. L. 108-447). This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (f), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

We are proposing to adjust the patent fees under the Consolidated Appropriations Act, which revised certain patent fees, and provided for a search fee and examination fee that are separate from the filing fee, during fiscal years 2005 and 2006. Legislation has been introduced in the Congress that would extend the fee revisions in the Consolidated Appropriations Act. If any legislation is enacted that extends the fee revisions in the Consolidated Appropriations Act, then Option 1 of this proposed rule notice would apply.

If, for any period during fiscal year 2007, the fee revisions in the Consolidated Appropriations Act are not in effect, then Option 2 of this proposed rule notice would apply and the fee adjustment would apply to the former fee amounts that were in place on October 1, 2004, to December 7, 2004, prior to the enactment of the Consolidated Appropriations Act.

Customers may wish to refer to our official Web site at <http://www.uspto.gov> for the most current fee amounts.

### Background

#### Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

#### Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted on October 1, 2006, to reflect fluctuations occurring during the twelve-month period from October 1, 2005, through September 30, 2006, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2006, which is 3.5 percent. Based on this projected CPI-U, patent statutory fees are proposed to be adjusted by 3.5 percent. Before the final fee amounts are published, the fee

amounts may be adjusted based on actual fluctuations in the CPI—U published by the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) are proposed to be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

*Procedures for Determining the Correct Fee Amount Owed*

The following subsections detail the procedures for determining the fees owed during the transition to the new fee schedule. Fees owed may be affected by proper use of a Certificate of Mailing or Transmission under § 1.8(a)(1), or use of “Express Mail Post Office to Addressee” under § 1.10(a).

Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

**a. The Post Issuance Fee for Patents Under 35 U.S.C. 41(b)**

Section 41(b) of title 35, United States Code, provides for maintenance fees. Any maintenance fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect.

If a Certificate of Mailing or Transmission was used, and was proper under § 1.8(a)(1), the fee required would be the lower of:

(1) The fee in effect on the date the USPTO receives the fee; or

(2) The fee in effect on the date of mailing indicated on a proper Certificate

of Mailing or Transmission under § 1.8(a)(1).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the USPS is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

**b. The Filing Fee for Patent Applications Filed Under 35 U.S.C. 111 and 37 CFR 1.53**

Section 111 of title 35, United States Code, provides for the filing of a patent application with the USPTO. If the filing fee for an application filed under 35 U.S.C. 111 is received when the application is filed, the filing fee required would be the filing fee in effect on the filing date assigned to the application. If the USPTO receives the filing fee on a date later than the filing date assigned to the application, the filing fee required would be the higher of:

(1) The filing fee in effect on the filing date assigned to the application; or

(2) The filing fee in effect on the date the USPTO receives the filing fee.

The filing fee includes the basic fee, excess claims fees (if any), and the multiple dependent claim fee (if any), for claims present on filing (unless the excess or multiple dependent claims are canceled before the filing fee is paid). Of course, if the basic filing fee is received on a date later than the filing date assigned to the application filed under 35 U.S.C. 111, a surcharge as set forth in § 1.16(e) would also be required.

A Certificate of Mailing or Transmission under § 1.8(a)(1) cannot be used for national (including a continued prosecution application (CPA) under § 1.53(d)) and international patent applications. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the USPS is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

**c. The Fees for International Patent Applications Entering the National Stage Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495**

Section 371 of title 35, United States Code, provides for the national stage filing of a patent application under the

Patent Cooperation Treaty. The basic national fee for an international application entering the national stage is due not later than the expiration of 20 months from the priority date in the international application (or 30 months from the priority date if the United States was elected prior to the expiration of 19 months from the priority date). The amount of the basic national fee that is required to be paid would be the basic national fee in effect on the date the full fee is received.

A Certificate of Mailing or Transmission under § 1.8(a)(1) cannot be used for international patent applications. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the USPS is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

**Discussion of Specific Rules**

*Option 1*

Legislation has been introduced in the Congress that would extend the fee revisions in the Consolidated Appropriations Act. If any legislation is enacted that extends the fee revisions in the Consolidated Appropriations Act, then Option 1 of this proposed rule notice would apply. To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

**37 CFR 1.16 National Application Filing, Search, and Examination Fees**

Section 1.16, paragraphs (a) through (e), (h) through (j), (o), and (q) through (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

**37 CFR 1.17 Patent Application and Reexamination Processing Fees**

Section 1.17, paragraphs (a)(2) through (a)(5), (e), (l), (m), (r), and (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI. In addition, we are proposing to adjust paragraph (t) to track the statutory fee under paragraph (m).

**37 CFR 1.18 Patent Post Allowance (Including Issue) Fees**

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (c)(3), (c)(4), and (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (c)(2), (d) through (f), and (j), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 41.20 Fees

Section 41.20, paragraphs (b)(1) through (b)(3), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*Option 2*

Legislation has been introduced in the Congress that would extend the fee revisions in the Consolidated Appropriations Act. If, for any period during fiscal year 2007, the fee revisions in the Consolidated Appropriations Act are not in effect, then Option 2 of this proposed rule notice would apply. To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

## 37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), (f) through (i), and (k), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b) and (d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

## 37 CFR 41.20 Fees

Section 41.20, paragraphs (b)(1) through (b)(3), if revised as proposed,

would adjust fees established therein to reflect fluctuations in the CPI.

**Other Considerations**

*Paperwork Reduction Act:* This rule 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 proposed rule have been reviewed and previously approved by the OMB under the following control numbers: 0651-0016, 0651-0021, 0651-0031, 0651-0032, and 0651-0033. The Office is not resubmitting information collection requests to the OMB for its review and approval because the changes in this rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

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.

*Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

By statute, the USPTO's Director is expressly authorized to adjust fees annually to reflect fluctuations in the Consumer Price Index (CPI). See 35 U.S.C. 41(f) (certain fees "may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index as determined by the Secretary of Labor"). The proposed rule increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Legislation has been introduced in the Congress that would extend the fee revisions in the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act) (Pub. L. 108-447). If the legislation is enacted, Option 1 of the proposed rule would apply. If this legislation is not enacted, the fee adjustment would apply to the former fee amounts that were in place on October 1, 2004, to December 7, 2004, prior to the enactment of the

Consolidated Appropriations Act. If this legislation is not enacted, Option 2 of this proposed rule would apply.

The fee increases would range from a minimum of \$2 to a maximum of \$130 under Option 1 of the proposed rule, and a minimum of \$4 to a maximum of \$120 under Option 2 of the proposed rule.

Under 35 U.S.C. 41(h)(1) small entities are accorded a fifty-percent reduction in most patent fees. Consequently, the small entity fee increases would range from a minimum of \$1 to a maximum of \$65 under Option 1 of the proposed rule, and a minimum of \$2 to a maximum of \$60 under Option 2 of the proposed rule. The sole exception under this proposed rule package is the fee set forth under 37 CFR 1.17(t), which does not qualify for a small entity fee reduction. The fee increase for 37 CFR 1.17(t) would be \$180 under Option 1 of the proposed rule, or \$50 under Option 2 of the proposed rule.

Accordingly, the proposed rule does not have a significant economic impact on a substantial number of small entities.

**List of Subjects***37 CFR Part 1*

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

*37 CFR Part 41*

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, parts 1 and 41 as set forth below.

*Option 1*

The amendments in Option 1 would be used if legislation is enacted to extend the fee revisions in the Consolidated Appropriations Act.

**PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a) through (e), (h) through (j), (o), and (q) through (s) to read as follows:

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

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2)) .....	\$75.00
By a small entity (§ 1.27(a)) .....	155.00
By other than a small entity .....	310.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$410.00
By other than a small entity .....	820.00

(b) Basic fee for filing each application for an original design patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$105.00
By other than a small entity .....	210.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$180.00
By other than a small entity .....	360.00

(c) Basic fee for filing each application for an original plant patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$105.00
By other than a small entity .....	210.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$285.00
By other than a small entity .....	570.00

(d) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a)) .....	\$105.00
By other than a small entity .....	210.00

(e) Basic fee for filing each application for the reissue of a patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$155.00
By other than a small entity .....	310.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) .....	\$410.00
By other than a small entity .....	820.00

\* \* \* \* \*

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a)) .....	\$105.00
By other than a small entity .....	210.00

(i) In addition to the basic filing fee in an application, other than a

provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) .....	\$26.00
By other than a small entity .....	52.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a)) .....	\$185.00
By other than a small entity .....	370.00

\* \* \* \* \*

(o) Examination fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a)) .....	\$105.00
By other than a small entity .....	210.00

(q) Examination fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a)) .....	\$85.00
By other than a small entity .....	170.00

(r) Examination fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a)) .....	\$310.00
By other than a small entity .....	620.00

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

By a small entity (§ 1.27(a)) .....	\$130.00
By other than a small entity .....	260.00

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(2) through (a)(5), (e), (l), (m), and (r) through (t) to read as follows:

**§ 1.17 Patent application and reexamination processing fees.**

(a) \* \* \*

(2) For reply within second month:

By a small entity (§ 1.27(a)) .....	\$230.00
By other than a small entity .....	460.00

(3) For reply within third month:

By a small entity (§ 1.27(a)) .....	\$525.00
By other than a small entity .....	1,050.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a)) .....	\$820.00
By other than a small entity .....	1,640.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a)) .....	\$1,115.00
By other than a small entity .....	2,230.00

\* \* \* \* \*

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a)) .....	\$410.00
By other than a small entity .....	820.00

\* \* \* \* \*

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a)) .....	\$260.00
By other than a small entity .....	520.00

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a)) .....	\$775.00
By other than a small entity .....	1,550.00

\* \* \* \* \*

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a)) .....	\$410.00
By other than a small entity .....	820.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a)) .....	\$410.00
By other than a small entity .....	820.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78) .....

	\$1,550.00
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4. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

**§ 1.18 Patent post allowance (including issue) fees.**

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a small entity (§ 1.27(a)) .....	\$725.00
By other than a small entity .....	1,450.00

(b) Issue fee for issuing an original design patent:

By a small entity (§ 1.27(a)) .....	\$415.00
By other than a small entity .....	830.00

(c) Issue fee for issuing an original plant patent:

By a small entity (§ 1.27(a)) .....	\$570.00
By other than a small entity .....	1,140.00

\* \* \* \* \*

5. Section 1.20 is proposed to be amended by revising paragraphs (c)(3), (c)(4), and (e) through (g) to read as follows:

**§ 1.20 Post issuance fees.**

(c) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:  
 By a small entity (§ 1.27(a)) ..... \$105.00  
 By other than a small entity ..... 210.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):  
 By a small entity (§ 1.27(a)) ..... \$26.00  
 By other than a small entity ..... 52.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:  
 By a small entity (§ 1.27(a)) ..... \$465.00  
 By other than a small entity ..... 930.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:  
 By a small entity (§ 1.27(a)) ..... \$1,190.00  
 By other than a small entity ..... 2,380.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:  
 By a small entity (§ 1.27(a)) ..... \$1,965.00  
 By other than a small entity ..... 3,930.00

6. Section 1.492 is proposed to be amended by revising paragraphs (a), (c)(2), (d) through (f), and (j) to read as follows:

**§ 1.492 National stage fees.**

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:  
 By a small entity (§ 1.27(a)) ..... \$155.00

By other than a small entity ..... 310.00  
 (c) In all situations not provided for in paragraph (c)(1) of this section:  
 By a small entity (§ 1.27(a)) ..... \$105.00  
 By other than a small entity ..... 210.00

(d) In addition to the basic national fee, for filing or on a later presentation at any other time of each claim in independent form in excess of 3:  
 By a small entity (§ 1.27(a)) ..... \$105.00  
 By other than a small entity ..... 210.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):  
 By a small entity (§ 1.27(a)) ..... \$26.00  
 By other than a small entity ..... 52.00

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:  
 By a small entity (§ 1.27(a)) ..... \$185.00  
 By other than a small entity ..... 370.00

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):  
 By a small entity (§ 1.27(a)) ..... \$130.00  
 By other than a small entity ..... 260.00

**PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

1. The authority citation for 37 CFR part 41 would continue to read as follows:  
**Authority:** 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, unless otherwise noted.

2. Section 41.20 is proposed to be amended by revising paragraphs (b)(1) through (b)(3) to read as follows:

**§ 41.20 Fees.**

(b) For filing a notice of appeal from the examiner to the Board:  
 By a small entity (§ 1.27(a) of this title) ..... \$260.00  
 By other than a small entity ..... 520.00

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:  
 By a small entity (§ 1.27(a) of this title) ..... \$260.00

By other than a small entity ..... 520.00  
 (3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:  
 By a small entity (§ 1.27(a) of this title) ..... \$520.00  
 By other than a small entity ..... 1,040.00

**Option 2**

The amendments in Option 2 would be used if legislation is not enacted and the fee adjustments would apply to the former fee amounts that were in place prior to the enactment of the Consolidated Appropriations Act.

**PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 2, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), (f) through (i), and (k) to read as follows:

**§ 1.16 National application filing fees.**

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:  
 By a small entity (§ 1.27(a)) ..... \$410.00  
 By other than a small entity ..... 820.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:  
 By a small entity (§ 1.27(a)) ..... \$46.00  
 By other than a small entity ..... 92.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:  
 By a small entity (§ 1.27(a)) ..... \$155.00  
 By other than a small entity ..... 310.00

(f) Basic fee for filing each design application:  
 By a small entity (§ 1.27(a)) ..... \$180.00  
 By other than a small entity ..... 360.00

(g) Basic fee for filing each plant application, except provisional applications:  
 By a small entity (§ 1.27(a)) ..... \$285.00  
 By other than a small entity ..... 570.00

(h) Basic fee for filing each reissue application:  
 By a small entity (§ 1.27(a)) ..... \$410.00  
 By other than a small entity ..... 820.00

(i) In addition to the basic filing fee in a reissue application, for filing or

later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$46.00 and 'By other than a small entity' at 92.00.

(k) Basic fee for filing each provisional application:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$85.00 and 'By other than a small entity' at 170.00.

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) \* \* \*

(2) For reply within second month:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$220.00 and 'By other than a small entity' at 440.00.

(3) For reply within third month:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$505.00 and 'By other than a small entity' at 1,010.00.

(4) For reply within fourth month:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$790.00 and 'By other than a small entity' at 1,580.00.

(5) For reply within fifth month:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$1,075.00 and 'By other than a small entity' at 2,150.00.

\* \* \* \* \*

(e) To request continued examination pursuant to § 1.114:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$410.00 and 'By other than a small entity' at 820.00.

\* \* \* \* \*

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$710.00 and 'By other than a small entity' at 1,420.00.

\* \* \* \* \*

(r) For entry of a submission after final rejection under § 1.129(a):

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$410.00 and 'By other than a small entity' at 820.00.

(s) For each additional invention requested to be examined under § 1.129(b):

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$410.00 and 'By other than a small entity' at 820.00.

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c):

Table with 2 columns: Description and Amount. Row includes '(\$§ 1.55 and 1.78)' at \$1,420.00.

4. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$710.00 and 'By other than a small entity' at 1,420.00.

(b) Issue fee for issuing a design patent:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$255.00 and 'By other than a small entity' at 510.00.

(c) Issue fee for issuing a plant patent:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$340.00 and 'By other than a small entity' at 680.00.

\* \* \* \* \*

5. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

\* \* \* \* \*

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$485.00 and 'By other than a small entity' at 970.00.

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$1,115.00 and 'By other than a small entity' at 2,230.00.

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$1,720.00 and 'By other than a small entity' at 3,440.00.

\* \* \* \* \*

6. Section 1.492 is amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b) and (d) to read as follows:

§ 1.492 National stage fees.

\* \* \* \* \*

(a) \* \* \*

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$390.00 and 'By other than a small entity' at 780.00.

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$410.00 and 'By other than a small entity' at 820.00.

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$575.00 and 'By other than a small entity' at 1,150.00.

(4) \* \* \*

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$490.00 and 'By other than a small entity' at 980.00.

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$46.00 and 'By other than a small entity' at 92.00.

\* \* \* \* \*

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a))' at \$155.00 and 'By other than a small entity' at 310.00.

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

1. The authority citation for 37 CFR part 41 would continue to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, unless otherwise noted.

2. Section 41.20 is proposed to be amended by revising paragraphs (b)(1) through (b)(3) to read as follows:

§ 41.20 Fees.

\* \* \* \* \*

(b) Appeal Fees.

(1) For filing a notice of appeal from the examiner to the Board:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a) of this title)' at \$175.00 and 'By other than a small entity' at 350.00.

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

Table with 2 columns: Description and Amount. Rows include 'By a small entity (\$ 1.27(a) of this title)' at \$175.00 and 'By other than a small entity' at 350.00.

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a) of this title) .....	\$155.00
By other than a small entity .....	310.00

Dated: May 30, 2006.

**Jon W. Dudas,**

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

[FR Doc. E6-8682 Filed 6-2-06; 8:45 am]

**BILLING CODE 3510-16-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2006-0467; FRL-8179-8]

#### Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Proposed rule.

**SUMMARY:** On November 3, 2005, Missouri submitted a plan to control emissions of nitrogen oxides (NO<sub>x</sub>) for the eastern one-third of the state. The plan consists of three rules, a budget demonstration, and supporting documentation. The plan will contribute to attainment and maintenance of the 8-hour ozone standard in several downwind areas. Missouri's plan, which focuses on large electric generating units, large industrial boilers, large stationary internal combustion engines, and large cement kilns, was developed to meet the requirements of EPA's April 21, 2004, Phase II NO<sub>x</sub> State Implementation Plan (SIP) Call. EPA is proposing to approve the plan as a SIP revision fulfilling the NO<sub>x</sub> SIP Call requirements. The initial period for compliance under the plan will begin in 2007, and the emission monitoring and reporting requirements for sources holding allowances under the plan began on May 1, 2006.

**DATES:** Comments must be received on or before July 5, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0467, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: [jay.michael@epa.gov](mailto:jay.michael@epa.gov).
3. Mail: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to Docket ID No. EPA-R07-OAR-2006-0467. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket.** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an

appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Michael Jay at (913) 551-7460 or by e-mail at [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

- I. Background
  - A. What Is EPA's NO<sub>x</sub> SIP Call?
  - B. What Was Our Response to Court Decisions on the NO<sub>x</sub> SIP Call That Affected Missouri?
  - C. What Requirements Must Missouri Meet?
  - D. What Is EPA's NO<sub>x</sub> Budget Trading Program?
  - E. How Does the NO<sub>x</sub> SIP Call Rule Relate to the Existing Statewide NO<sub>x</sub> Rule?
  - F. How Does the NO<sub>x</sub> SIP Call Rule Relate to the Clean Air Interstate Rule?
- II. Summary of State Submittal
  - A. When Did Missouri Develop and Submit the NO<sub>x</sub> Emission Control Plan to EPA?
  - B. What Are the Basic Components of the State's Plan?
  - C. What Do the Rules Require?
    1. What Are the Requirements of the EGU and Non-EGU Rule?
    2. What Are the Requirements of the Cement Kiln Rule?
    3. What Are the Requirements of the Large Stationary Internal Combustion Engine Rule?
  - D. How Does Missouri Address Its NO<sub>x</sub> SIP Call Budget?
    1. What NO<sub>x</sub> Budget Did EPA Determine for the State?
    2. What Changes Did the State Request to the NO<sub>x</sub> Budget and Are Those Changes Approvable?
    3. How Does Missouri Demonstrate That It Is Meeting the Budget?
  - E. What Guidance Did EPA Use To Evaluate Missouri's NO<sub>x</sub> Control Program?
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

#### I. Background

##### A. What Is EPA's NO<sub>x</sub> SIP Call?

By notice dated October 27, 1998 (63 FR 57356), we took final action to prohibit specified amounts of emissions of one of the main precursors of groundlevel ozone, NO<sub>x</sub>, in order to reduce ozone transport across state boundaries in the eastern half of the United States. Based on extensive air quality modeling and analyses, we found that sources in 22 states and the District of Columbia (DC) emit NO<sub>x</sub> in amounts that significantly contribute to nonattainment of the 1-hour and 8-hour ozone national ambient air quality standards (NAAQS) in downwind states. We set forth requirements for each of the affected upwind states to submit SIP revisions prohibiting those amounts of NO<sub>x</sub> emissions during the