this subchapter. Any person granted limited recognition who has been administratively suspended pursuant to paragraph (b) of this section may have their recognition reactivated provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, demonstrated compliance with the provisions of §§ 11.7(a)(2)(i) and (iii), and paid the fees set forth in §§ 1.21(a)(8)(i), (a)(9)(i) and (a)(9)(ii) of this subchapter. A practitioner who has resigned or was administratively suspended for two or more years before the date the Office receives a completed application from the person who resigned or was administratively suspended must also pass the registration examination under § 11.7(b)(1)(ii). Any reinstated practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her administrative suspension or resignation.

(2) Any registered practitioner whose registration has been administratively inactivated pursuant to paragraph (c) of this section may be reinstated to the register as may be appropriate provided within two years after his or her employment with the Office ceases or within two years after his or her employment in a judicial capacity ceases the following is filed with the OED Director: a request for reinstatement, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, and the fee set forth in § 1.21(a)(9)(ii) of this subchapter. Any registered practitioner inactivated or reinstated is subject to investigation and discipline for his or her conduct before, during, or after the period of his or her inactivation.

Dated: November 10, 2008.

Jon W. Dudas,

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

[FR Doc. E8–27208 Filed 11–14–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2, 3, 6 and 7

[Docket No. PTO–T–2005–0018]

RIN 0651–AB89

Miscellaneous Changes to Trademark Rules of Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''Office'') is amending the Trademark Rules of Practice to clarify certain requirements for applications, intent to use documents, amendments to classification, requests to divide, and Post Registration practice; to modernize the language of the rules; and to make other miscellaneous changes. For the most part, the rule changes are intended to codify existing practice, as set forth in the *Trademark Manual of Examining Procedure* (''TMEP'').

DATES: This rule is effective January 16, 2009.

FOR FURTHER INFORMATION: Contact Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (571) 272–9569.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on June 12, 2008 at *73 FR 33356*, and in the Official Gazette on July 8, 2008. The Office received comments from one law firm and one organization. These comments are posted on the Office's Web site at *http://www.uspto.gov/web/offices/pac/dapp/opla/comments/tm_comments2008aug20/index.htm*, and are addressed below.

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended. References to ''TMEP'' or ''*Trademark Manual of Examining Procedure*'' refer to the 5th edition, September 2007. References to the ''TBMP'' or ''*Trademark Trial and Appeal Board Manual of Procedure*'' refer to the 2nd edition, Rev. 1, March 12, 2004.

Where appropriate, the Office has reworded or reorganized the rules for clarity, and added headings to facilitate navigation through the rules.

On August 14, 2008, the Office published a final rule that, *inter alia,* removed §§ 10.14 and 10.18 of this chapter and replaced them with new §§ 11.14 and 11.18; added a definition of ''attorney'' to § 11.1 of this chapter; and changed cross-references in several of the rules in parts 2 and 7 of this chapter. The rule change was effective September 15, 2008. *See* notice at *73 FR 47650* (Aug. 14, 2008). The cross-references in this notice have been changed accordingly.

Applications for Registration

The Office is amending § 2.21(a) to require that an application under section 1 or section 44 of the Trademark Act must be in the English language to receive a filing date.

Comment: One comment requested clarification as to whether the rule applies to applications under section 66(a) of the Trademark Act.

Response: The preamble of § 2.21 explicitly states that the rule applies only to ''an application under section 1 or section 44 of the Act.'' In a section 66(a) application (*i.e.*, a request for extension of protection of an international registration to the United States pursuant to the Madrid Protocol), the minimum filing requirements are set forth in section 66(b) of the Act, and compliance with these requirements is determined by the International Bureau of the World Intellectual Property Organization (''IB'') prior to sending to the Office the request for extension of protection to the United States. *See* TMEP section 1904.01(b) for further information about the filing date of a section 66(a) application.

The Office is removing § 2.21(c) because it is unnecessary. While it remains true that applicants who file on paper may resubmit the application documents and receive a new filing date as of the date of resubmission, it is unnecessary to say so in a rule.

The Office is amending § 2.23(a)(2), which requires that a TEAS Plus applicant continue to receive communications from the Office by electronic mail during the pendency of the application, to add a requirement that a TEAS Plus applicant maintain a valid e-mail correspondence address in order to maintain TEAS Plus status. If the e-mail address changes, the applicant must notify the Office of the new e-mail address. If an applicant chooses to receive correspondence on paper, the applicant will have to pay the processing fee required by §§ 2.6(a)(1)(iv) and 2.23(b).

The Office is amending § 2.32(a)(3)(iii) to indicate that the requirement for inclusion of the names and citizenship of the general partners in an application by a partnership applies only to domestic partnerships. Similarly, the Office is adding § 2.32(a)(3)(iv) to provide that if the applicant is a domestic joint venture,

the application must include the names and citizenship of all active members of the joint venture. These requirements are consistent with TMEP section 803.03(b). Because the Office does not track the varying legal effects of partnership and joint venturer status in foreign countries, and the relevance of this additional information has not been established, this requirement does not apply to foreign partnerships or foreign joint ventures.

Comment: Though noting that these requirements are consistent with the long-standing past practice of the Office, one commenter asserted that the requirements to set forth the names and citizenship of general partners and joint venturers impose an unfair burden of disclosure on domestic applicants because it does not apply to foreign partnerships.

Response: The Office is considering whether current practice regarding the requirement for the names and citizenship of general partners and active members of joint venturers should be changed, and will issue a new proposed rule if necessary. However, the Office believes it appropriate to incorporate its long-standing practice into the rules at this time.

The Office is amending § 2.32(a)(6) to delete the word ''and.'' The Office is amending § 2.32(a)(8) to change a period to a semicolon.

New § 2.32(a)(9) provides that if a mark includes non-English wording, the applicant must submit an English translation of that wording. New § 2.32(a)(10) provides that if the mark includes non-Latin characters, the applicant must submit a transliteration of those characters and either a translation of the corresponding non-English word(s) or a statement that the transliterated term has no meaning in English. This is consistent with the long-standing practice of the Office. TMEP section 809 *et seq*.

Comment: One commenter noted ''inconsistent treatment requiring translations between non-English wording and non-Latin characters,'' and asked the Office to ''consider whether the rules should also require an applicant to state whether non-English wording has no direct English meaning (*e.g.*, idiomatic expressions).''

Response: Section 2.32(a)(9) as written requires applicants to set forth both the direct literal translation of foreign wording and the meaning of foreign idiomatic expressions, and thus there is no inconsistency on this point. The requirement for translation of ''non-English wording'' encompasses only terms that have meaning in a foreign language, and does not apply to coined terms. In cases where a term has no meaning in a foreign language, it is often unnecessary to submit any statement regarding the significance of the term. However, in marks that include non-Latin characters, a transliteration is always necessary. Where a transliteration must be provided, the Office requires that the applicant also indicate whether the transliterated term has meaning in a foreign language.

The Office is amending § 2.33(b)(1) to remove the requirement that an application include a verified statement that the applicant ''has adopted and is using the mark shown in the accompanying drawing.'' This language is not required by statute and is deemed unnecessary. The rule as amended requires an allegation that ''the mark is in use in commerce.''

The Office is amending §§ 2.34(a)(1)(i), (a)(2), (a)(3)(i), and (a)(4)(ii) to change ''must allege'' to ''must also allege.'' This clarifies that the requirement for an allegation of current use or bona fide intention to use the mark in commerce applies to verifications filed after the application filing date.

The Office is adding § 2.34(a)(1)(v) to provide that if more than one item of goods or services is specified in a section 1(a) application, the dates of use need be for only one of the items specified in each class, provided that the particular item to which the dates apply is designated. This requirement for section 1(a) applications previously appeared in § 2.33(a)(2), but was inadvertently removed effective October 30, 1999, by the final rule published at 64 FR 48900 (Sept. 8, 1999). This requirement is consistent with the current requirements for allegations of use under §§ 2.76(c) and 2.88(c).

Comment: The Trademark Electronic Application System (''TEAS'') forms for filing applications and allegations of use do not provide for disclosure of the goods/services to which the date of first use applies, and should be updated accordingly.

Response: It is possible to designate the goods or services to which the dates of use apply in the current TEAS forms. In a TEAS Plus application, or a regular TEAS application in which the applicant enters the goods/services using the Office's on-line *Acceptable Identification of Goods and Services Manual* (''USPTO ID Manual''), different dates of use can be provided for any particular item (after assigning a section 1(a) filing basis to the item and clicking on the ''1(a)'' link for that item and entering the relevant information). If the applicant uses the free-text entry approach to identify the goods/services in a regular TEAS application, the on-line instructions advise the applicant to parenthetically indicate the item to which the dates apply (*e.g.*, ''pants, shirts (02/02/2000), shoes''). Alternatively, the applicant can use the Miscellaneous Statement field of the Additional Statement section of the application form to enter the information. In the Allegation of Use form, the applicant may enter the information in the existing free-text field for describing the submitted specimen (*e.g.*, ''The specimen consists of a label. The stated dates of first use apply specifically to shirts.'').

The Office is amending §§ 2.44(b) and 2.45(b), which pertain to collective and certification marks, to add a reference to section 66(a) applications. This corrects an oversight.

The Office is amending § 2.47(a) to remove the requirement for a specific allegation that a mark has been in ''lawful'' use in commerce in an application for registration on the Supplemental Register. Because the definition of ''commerce'' in section 45 of the Trademark Act is ''all commerce which may lawfully be regulated by Congress,'' the Office presumes that an applicant who alleges that ''the mark is in use in commerce'' is claiming lawful use. The Office generally questions the lawfulness of the alleged use in commerce only where the record shows a clear violation of law, such as the sale or transportation of a controlled substance. TMEP section 907.

The Office is also removing the requirement in § 2.47(a) that the applicant specify the type of commerce in which the mark is used. Because the definition of ''commerce'' in section 45 of the Act is ''all commerce which may lawfully be regulated by Congress,'' the Office presumes that a registrant who alleges that the mark is in use in commerce is alleging that the mark is in use in a type of commerce that Congress may regulate. The Office amended the Trademark Rules of Practice to remove the requirement for a specification of the type of commerce in applications for registration under section 1(a) of the Act, allegations of use in applications under section 1(b) of the Act, and affidavits under sections 8 and 15 of the Act, effective October 30, 1999 (*see* notice at *64 FR 48900* (Sept. 8, 1999)), but inadvertently overlooked §§ 2.47(a) and 2.153.

The Office is adding § 2.48, providing that the Office does not issue duplicate registrations. If two applications on the same register would result in registrations that are exact duplicates, the Office will permit only one application to mature into registration,

and will refuse registration in the other application. This codifies the long-standing practice of the Office. TMEP section 703. The Office will normally refuse registration in the later-filed application. The applicant may overcome the refusal by abandoning one of the applications or surrendering the registration.

The Office is amending § 2.52(b) to provide that special form drawings of marks that do not include color ''should'' show the mark in black on a white background, rather than that the drawing ''must'' show the mark in black on a white background. This gives examining attorneys discretion to accept a drawing that shows the mark in white on a black background, if this will more accurately depict the mark.

The Office is amending § 2.52(b)(1) to change the heading ''Color marks'' to ''Marks that include color.'' This corrects an error. ''Color marks'' are marks that consist *solely* of one or more colors used on particular objects, and § 2.52(b)(1) applies to all marks that include color.

The Office is amending § 2.53(a) to remove the reference to submission of a digitized image of a standard character mark as a drawing in a TEAS application. This option no longer exists. An applicant who wants to apply for a standard character mark through TEAS must use the default setting within the form, namely, the selected button for ''Standard Characters,'' and type the characters comprising the mark in the appropriate field on the TEAS form. TEAS generates the drawing. The Office is combining §§ 2.53(a)(1) and (2), because the requirements for standard character drawings in TEAS and TEAS Plus applications are now identical.

The Office is amending § 2.56(b)(1) to add a reference to ''displays associated with the goods.'' This conforms the rule with the definition of ''use in commerce'' in section 45 of the Act.

The Office is amending § 2.56(d)(2) to add a provision that where an applicant files a paper specimen that exceeds the size requirements of paragraph (d)(1), and the Office creates a digital facsimile copy of the specimen, the Office may destroy the original bulky specimen. This is consistent with current practice. TMEP section 904.02(b).

The Office is amending § 2.56(d)(4) to provide that specimens filed through TEAS may be in .pdf format. This provides TEAS filers with an additional option for filing specimens, and is consistent with current practice.

The Office is amending § 2.62 and its heading to add a requirement that a response to an Office action be signed by the applicant, someone with legal authority to bind the applicant (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14 (''qualified practitioner''). This is consistent with TMEP section 712.01.

The Office is amending § 2.64(c)(1) to state that the filing of an amendment to allege use does not extend the deadline for filing a response to an outstanding Office action, an appeal to the Trademark Trial and Appeal Board (''TTAB''), or a petition to the Director. This is consistent with current practice. TMEP section 1104.

The Office is amending § 2.65(a) to add a reference to a notice of appeal as a response that avoids abandonment of an application. This is consistent with section 12(b) of the Act.

The Office is revising § 2.73 to provide that only an application that includes section 1(a) of the Trademark Act as a filing basis, or for which an acceptable allegation of use under § 2.76 or § 2.88 has been filed, may be amended to seek concurrent use registration. The rule currently provides that applications under section 44 or section 66(a) of the Act may be amended to recite concurrent use. However, because section 2(d) of the Act requires concurrent lawful use in commerce by the parties to a concurrent use proceeding, the Office deems it inappropriate to allow amendment to seek concurrent use absent allegations and evidence of use in commerce. The Office is also adding a statement to § 2.99(g) that applications based solely on section 44 or section 66(a) are not subject to concurrent use registration proceedings.

The Office is revising § 2.74 to modernize the language and to add a provision that an amendment to an application must be signed by the applicant, someone with legal authority to bind the applicant (*e.g.*, a corporate officer or general partner of a partnership), or a qualified practitioner. This is consistent with TMEP section 605.02.

Intent To Use

The Office is amending § 2.76(d) to provide that an amendment to allege use (''AAU'') should be captioned ''Allegation of Use'' rather than ''amendment to allege use.'' This is consistent with the language on the Office's TEAS form. The term ''allegation of use'' encompasses both AAUs under § 2.76 and statements of use (''SOUs'') under § 2.88. The principal difference between AAUs and SOUs is the time of filing, and the same TEAS form is used for both filings. The rule merely sets forth the preferred title; the Office will still accept documents titled ''amendment to allege use'' or ''statement of use.''

The Office is amending § 2.77 to add a provision that amendments deleting a basis in a multiple-basis application, notices of change of attorney, and notices of change of address may be entered in a section 1(b) application during the period between the issuance of the notice of allowance and the submission of a statement of use. This is consistent with current practice. TMEP section 1107.

The Office is amending § 2.88(b)(1)(ii) to clarify that the dates of use specified in a statement of use must pertain to the goods or services identified in the notice of allowance, and that where an applicant claims section 1(a) for some goods/services in a class and section 1(b) for other goods/services in the same class, the statement of use must include dates for the section 1(b) goods/services.

The Office is amending § 2.88(b)(3) to provide that the applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the statement of use, or the application will be abandoned. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant must specify the class(es) to be abandoned. If the applicant submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining class(es), or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods/services in the remaining class(es) not covered by the fees submitted. This is consistent with current practice.

The Office is amending § 2.88(d) to provide that an SOU should be captioned ''Allegation of Use'' rather than ''statement of use.'' This is consistent with the amendment to § 2.76(d), discussed above.

The Office is amending § 2.88(i)(2) to remove the provision that if any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the SOU, the examining attorney will question the discrepancy and permit the applicant to reinsert the omitted goods/services, and substitute a provision that the Office will delete the omitted goods/services from the application and will

not permit the applicant to reinsert them. Currently, if the applicant omits goods/services identified in the notice of allowance from a paper SOU, but the applicant has not indicated an intention to delete those goods/services from the application or filed a request to divide the application, the examining attorney will contact the applicant to confirm that the applicant intends to delete the omitted goods/services, and will permit the applicant to amend the SOU to claim use on or in connection with the omitted goods/services. However, when an SOU is filed electronically, the TEAS form requires the applicant to expressly indicate an intention to delete any omitted goods/services/class(es), or include them within a separately filed request to divide. Therefore, if any of the goods/services identified in the notice of allowance do not appear in the identification of goods/services in a TEAS SOU, the examining attorney does not question the discrepancy and the applicant may not reinsert the omitted goods/services. TMEP section 1109.13. These inquiries concerning paper SOUs have sometimes caused unnecessary delay in applications after the applicant intentionally omitted goods/services. Therefore, the Office is changing its practice and will discontinue questioning goods/services that are omitted from paper SOUs. Under the new rule, the practice with paper SOUs would conform with the current practice for electronically filed SOUs. Applicants must set forth (or incorporate by reference) the goods/services on or in connection with which the mark is in use. This is consistent with the Office's long-standing practice with respect to requests for extensions of time to file a statement of use, set forth in § 2.89(f).

The Office is revising §§ 2.89(a)(2) and (b)(2) to add a provision that if an applicant timely submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining class(es), or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the remaining goods/services not covered by the fees submitted. This is consistent with current practice. TMEP section 1108.02(c).

Comment: Additional time is ''undefined.'' No time period is set forth in the rule or TMEP.

Response: The Office will amend TMEP section 1108.02(c) to indicate that the applicant will be given thirty days in which to cure the fee deficiency in an extension request that includes a fee sufficient to pay for at least one class, but insufficient to cover all the classes.

Amendments to Classification

The Office is amending § 2.85(a) to add a reference to amendments to adopt international classification.

The Office is combining §§ 2.85(b) and (c), pertaining to the old United States classification system, and adding a reference to amendments to adopt international classification.

The Office is redesignating § 2.85(f), pertaining to certification marks and collective membership marks, as § 2.85(c), and adding a statement that the classes set forth in §§ 6.3 and 6.4 do not apply to applications based on section 66(a) of the Trademark Act and registered extensions of protection. This is consistent with current practice. TMEP section 1904.02(b). Classes A, B, and 200 are from the old United States classification system that the United States still uses to classify certification and collective membership marks, but are not included in the international classes under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (''Nice Agreement''). Therefore, these classes do not apply to section 66(a) applications and registered extensions of protection, in which the IB determines classification. The Office is similarly amending §§ 6.3 and 6.4, indicating that these sections apply only to applications based on sections 1 and 44 of the Trademark Act and registrations resulting from such applications.

Current § 2.85(d), which now provides that renewals filed on registrations issued under a prior classification system are processed on the basis of that system, is redesignated as § 2.183(f), and amended to add an exception for registrations that have been amended to adopt international classification pursuant to § 2.85(e)(3).

New § 2.85(d) provides that in an application under section 66(a) of the Act or registered extension of protection, the classification cannot be changed from the classification that the IB has assigned, classes cannot be added, and goods or services cannot be transferred from one class to another in a multiple-class application. This is consistent with current practice. TMEP sections 1401.03(d) and 1904.02(b).

Comment: One comment requests that the Office clarify and/or reconsider this change. The commenter notes that in some instances ''the applicant is seeking to identify a good/service that was not the subject of classification by the IB.'' For example, if the international registration covered ''nutritional aids'' in Class 30, the applicant could not amend to ''nutritional supplements,'' because the United States classifies nutritional supplements in Class 5. This ''works a complete forfeiture of rights'' as to the goods or services that must be deleted from Class 30 in the section 66(a) application.

Response: Under Article 3(2) of the Madrid Protocol, the IB controls classification in an international registration. Under section 70(a) of the Trademark Act and Articles 6(3) and 6(4) of the Protocol, a section 66(a) application and any resulting registration remains part of and dependent upon the international registration. Since the international registration is limited to those classes that the IB has assigned, no legal basis exists for registration of the mark as to goods/services that fall outside these classes under U.S. standards. Upon notification of the final grant of protection, the IB would ultimately refuse any change in classification made during examination of a section 66(a) application. Therefore, the international classification of goods/services in a section 66(a) application cannot be changed from the classification that the IB has assigned.

While the IB controls *classification,* the same standards of specificity used in examining applications under sections 1 and 44 of the Act govern the propriety of the *identification* of goods/services in a section 66 (a) application. Section 68(a) of the Act; Madrid Protocol Article 5(1). Accordingly, if the initial identification of goods/services in a section 66(a) application is definite but misclassified under U.S. standards, the Office will accept the identification in the IB-assigned class. However, if the initial identification of goods/services is not definite, the classification cannot be changed and the scope of the identification for purposes of permissible amendment is limited by the classification that the IB has assigned. *See* TMEP section 1904.02(b) and Examination Guide 3–08, *Examination Procedures for Identifications of Goods and Services in Applications under Trademark Act Section 66(a) pursuant to the Madrid Protocol* (July 2, 2008), available on the Office's Web site at *http://*

www.uspto.gov/web/offices/tac/notices/examguide3-08.htm.

Thus, in the commenter's example above, if the international registration covered ''nutritional aids'' in Class 30, the applicant could not amend to ''nutritional supplements,'' because ''nutritional aids'' is an indefinite identification that can only be amended within the scope of the IB-designated Class 30. However, if the international registration covered ''nutritional supplements'' in Class 30, the Office would permit registration in Class 30, even though the Office classifies these goods in Class 5. No rights would be forfeited. Thus, international applicants who plan to seek an extension of protection to the United States can avoid forfeiting rights in a particular item by reviewing the USPTO ID Manual before filing the request for extension of protection of an international registration to the United States. The applicant can then include language in the international application, or by entry of a limitation of the goods or services extended to the United States, that will be acceptable in the United States. Alternatively, the applicant can seek registration in the United States under a different basis, such as section 1(b) or section 44. Regarding limitations, *see* TMEP sections 1904.03(g) and 1904.15, and *Examination Guide 3–08,* sections IV *et seq.*

Comment: The Office should consider implementing a pseudo-classification system so that the Office's automated search system would show the classes that the Office considers to be ''correct'' in cases where the classification designated by the IB differs from that of the Office. This would permit all Madrid applicants to amend the classification of goods/services in the same way non-Madrid filers presently do, and retain the full scope of protection afforded by registration. This would also ensure that a product or service that is ''misclassified'' by the IB is discovered in a search of Office records.

Response: The Office is developing such a system, to ensure that relevant marks in section 66(a) applications will be found in a search of Office records, even if the IB and USPTO classifications differ. However, that does not change the fact that no legal basis exists for registration of the mark in the United States as to goods/services that do not fall within the class(es) that the IB has assigned. Thus, even if a pseudo-classification system is implemented for search purposes, amendment of the classification in a section 66(a) application will still be prohibited.

Comment: Since there are already situations where the classification in section 66(a) applications and registered extensions of protection is ''wrong,'' due to the Office's practice of accepting definite identifications that are misclassified under U.S. standards, the Office should also permit amendment of indefinite identifications within the class assigned by the IB, even if that class is incorrect under U.S. standards.

Response: When a particular product or service identified in an international application could be classified in more than one class, but only one of the applicable classes has been indicated, the IB assumes ''that the reference is only to the product or service falling in the identified class.'' *Guide to the International Registration of Marks under the Madrid Agreement and Protocol,* Para. B.II.23.02 (Jan. 2008), available on the IB Web site at *http://www.wipo.int/madrid/en/guide/index.html.* Therefore, the Office believes that the scope of permissible amendment of an indefinite identification must be limited by the IB-assigned class. Furthermore, the practice of accepting identifications that are misclassified under U.S. standards must be limited to the extent possible.

The Office is removing § 2.85(e), which now pertains to appeal and renewal fee deficiencies in multiple-class applications and registrations, and moving the provisions on appeal fees to § 2.141(b). Section 2.183(e) already covers procedures for processing renewal fee deficiencies in multiple-class registrations.

Section 2.85(e) provides for changes in classification pursuant to the Nice Agreement. The international classification changes periodically, and the *International Classification of Goods and Services for the Purposes of the Registration of Marks,* which is published by the World Intellectual Property Organization, lists these changes. The current edition of the Nice Agreement is the 9th edition, 2006, which became effective January 1, 2007.

Section 2.85(e)(1) provides that when international classification changes, the new requirements apply only to applications filed on or after the effective date of the change.

Section 2.85(e)(2) and (3) provide that in section 1 and 44 applications filed before the effective date of a change in classification, and registrations resulting from such applications, the applicant or registrant may reclassify the goods or services in accordance with the current edition, upon payment of the required fees. This is consistent with current practice, set forth in TMEP sections 1401.11 and 1609.04.

The Office is redesignating § 2.85(g), which provides that classification schedules shall not limit or extend the applicant's rights, as § 2.85(f), and amending it to note an exception that in section 66(a) applications, the scope of the identification of goods or services for purposes of permissible amendments is limited by the class, because the classification that the IB has assigned may not be changed. This is consistent with TMEP section 1402.07(a). *See* discussion, *above,* of the scope of permissible amendment of an indefinite identification in a section 66(a) application, in the responses to comments on § 2.85(d).

Requests To Divide

The Office is separating the current § 2.87(c) into subsections 2.87(c)(1) and (c)(2).

The Office is adding § 2.87(c)(3) to provide that in a multiple basis application, a request to divide out goods or services having a particular basis may be filed during the period between the issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under § 2.88. This is consistent with current practice. TMEP section 1107.

The Office is adding § 2.87(e) to provide that any outstanding time period for action by the applicant in the original application at the time of the division will apply to each new separate application that the division creates. This provision appeared in § 2.87(a) when the rule was first enacted in 1989, but was inadvertently removed when the rules were amended to adjust application filing fees on January 19, 2005. *See* notices at 54 FR 37562 (Sept. 11, 1989) and 70 FR 2952 (Jan. 19, 2005). Subsections (e)(1) through (e)(3) set forth certain specified exceptions, consistent with current practice, as set forth in TMEP sections 1110.04 and 1110.05.

The Office is adding § 2.87(f), requiring that a request to divide be signed by the applicant, someone with legal authority to bind the applicant (*e.g.*, a corporate officer or general partner of a partnership), or a qualified practitioner. This is consistent with TMEP section 1110.

The Office is adding § 2.87(g), setting forth the procedures for division of a section 66(a) application after a change in ownership with respect to some, but not all, of the goods or services. This incorporates existing practice, set forth in TMEP section 1110.08.

The Office is adding § 2.171(b)(2), to provide for division of registered extensions of protection upon notification by the IB that ownership of

an international registration has changed with respect to some, but not all, of the goods or services. This reflects current practice. TMEP section 1615.02.

Post Registration

The Office is amending § 2.153 to change ''registrant'' to ''owner,'' to make it clear that an affidavit or declaration under section 12(c) of the Act must be filed by the owner of the registration, and to add a requirement that the affidavit or declaration be signed by a person properly authorized to sign on behalf of the owner. This is consistent with current practice, set forth in TMEP section 1603, and with the requirements of § 2.161 for affidavits or declarations under section 8 of the Act.

The Office is further amending § 2.153 to remove the requirement for specification of the type of commerce in an affidavit claiming the benefits of section 12(c) of the Trademark Act of 1946 for a registration issued under the Trademark Acts of 1881 or 1905. This is consistent with the amendment of § 2.47(a), discussed above.

The Office is amending the center heading immediately after § 2.158 to delete the wording ''DURING SIXTH YEAR,'' to correct an oversight. The heading covers rules pertaining to affidavits or declarations under section 8 of the Act (''section 8 affidavits''). Effective October 30, 1999, such affidavits must be filed every tenth year after registration as well as during the sixth year.

The Office is amending § 2.161(g)(3) to provide that specimens filed through TEAS may be in .pdf format. This offers TEAS filers an additional option for filing specimens, and is consistent with current practice.

The Office is separating the current § 2.163(b) into new §§ (b) and (c). Section 2.163(b) is amended to require that a response to an Office action issued in connection with a section 8 affidavit be signed by the owner, someone with legal authority to bind the owner, or a qualified practitioner. This is consistent with TMEP section 1604.16.

The last sentence of the current § 2.163(b) is moved to new § (c), and revised to indicate that a registration will be cancelled for failure to respond to an Office action issued in connection with a section 8 affidavit only if no time remains in the grace period under section 8(c)(1) of the Act. This corrects an oversight in the current rule. Cancelling a registration under section 8 before expiration of the grace period would be inappropriate. If time remains in the grace period, the owner may file a complete new affidavit.

The Office is amending § 2.167(a) to provide that an affidavit or declaration of incontestability under section 15 of the Trademark Act must be filed in the name of the owner of the registration, and verified by the owner or a person properly authorized to sign on behalf of the owner (§ 2.161(b)). The Office is amending § 2.167(d) to substitute ''owner'' for ''registrant,'' to make it clear that the affidavit or declaration must be filed by the owner of the registration. These changes are consistent with TMEP section 1605.04.

The Office is amending § 2.167(f) for clarity.

The Office is amending § 2.171(a) to remove the requirement that a request for a new certificate of registration upon change of ownership include the original certificate of registration. This is consistent with current practice, and with Office practice in connection with requests to amend or correct registrations under section 7 of the Trademark Act. *See* notice at *69 FR 51362* (Aug. 19, 2004), removing the requirement that a section 7 request include the original certificate.

The Office is amending § 2.171(a) to add a statement that in a registered extension of protection, the assignment must be recorded with the IB before recordation in the Office. This is consistent with current § 7.22.

The Office is redesignating § 2.171(b) as (b)(1), and amending the section to indicate applicability only to registrations resulting from applications based on section 1 or 44 of the Act.

The Office is adding § 2.171(b)(2), providing for division of registered extensions of protection upon notification by the IB that ownership of an international registration has changed with respect to some, but not all, of the goods or services. This reflects current practice. TMEP section 1615.02.

The Office is reorganizing § 2.173, pertaining to amendment of registrations. The current paragraph (a) is separated into new paragraphs (a) through (d).

Section 2.173(a) provides that the owner of a registration may file a written request to amend a registration or to disclaim part of the mark in the registration; and that if the registration is involved in an inter partes proceeding before the TTAB, the request must be filed by appropriate motion to the TTAB. This is consistent with current § 2.173(a) and TMEP section 1609.01(b).

The current paragraph (b) is separated into new paragraphs (e) and (g).

New § 2.173(b) sets forth the requirements for the request for amendment.

Section 2.173(b)(2) requires that the request be filed in the name of the owner and signed by the owner, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a qualified practitioner. The requirement for filing in the name of the owner is consistent with current practice. However, the requirement for signature by someone with legal authority to bind the owner or by a qualified practitioner changes current practice slightly. TMEP section 1609.01(b) now permits signature by a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner, which could include someone without legal authority to bind the owner. The Office believes that the better practice is to require that a request to amend a registration be signed by someone with legal authority to bind the owner or by a qualified practitioner.

Section 2.173(b)(3) requires that an amendment to change the mark include a specimen showing the mark as used on or in connection with the goods or services, an affidavit or a declaration under § 2.20 stating that the specimen was in use in commerce at least as early as the filing date of the amendment, and a new drawing of the amended mark. This is consistent with current § 2.173(a) and TMEP section 1609.02(c).

Section 2.173(c) provides that the registration must still contain registrable matter, and § 2.173(d) provides that the amendment may not materially alter the mark. This is consistent with current § 2.173(a).

Section 2.173(e) provides that no amendment to the identification of goods or services in a registration will be permitted, except to restrict the identification or change it in ways that would not require republication of the mark. This is consistent with current § 2.173(b).

The Office is adding § 2.173(f) to provide that if the registration includes a disclaimer, description of the mark, or miscellaneous statement, any amendment must include a request to make any necessary conforming amendments to the disclaimer, description, or other miscellaneous statements. For example, if the mark is XYZ INC., with a disclaimer of the entity designator ''INC.,'' and the owner of the registration proposes to amend the mark to remove ''INC.,'' the proposed amendment should also request that the disclaimer be deleted. If a proposed amendment does not include all necessary conforming amendment(s), the examiner will issue

an Office action requiring the amendment(s).

New § 2.173(g) provides that an amendment seeking the elimination of a disclaimer will be permitted only if deletion of the disclaimed portion of the mark is also sought. This provides an exception to the general prohibition against amendments to delete disclaimers, currently set forth in § 2.173(b), in the limited situation where the mark is amended to delete the disclaimer.

The Office is amending § 2.175(b)(2) to require that a request to correct the owner's error in a registration be filed in the name of the owner and signed by the owner, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a qualified practitioner. This is consistent with the amendment of § 2.173(b)(2), discussed above. The Office is also amending the heading and paragraph (a) of § 2.175 to substitute ''owner'' for ''registrant,'' for consistency.

The Office is adding § 2.183(f) to provide that applications for renewal of registrations issued under a prior classification system will be processed on the basis of that system, except where the registration has been amended to adopt international classification. The provision that applications for renewal of registrations issued under a prior classification system are processed on the basis of that system is currently set forth in § 2.85(d). The reference to amendment of classification is consistent with § 2.85(e)(3), discussed above.

Section 2.184(b) is redesignated as § 2.184(b)(1), and amended to provide that a registration will expire for failure to respond to an Office action issued in connection with a renewal application only if no time remains in the grace period under section 9(a) of the Act. This corrects an oversight in the current rule. It would be inappropriate to cancel a registration for failure to renew before the renewal grace period has expired. If time remains in the grace period, the registrant may file a complete new renewal application.

The Office is adding § 2.184(b)(2) to require that a response to an Office action issued in connection with a renewal application be signed by the registrant, someone with legal authority to bind the registrant (*e.g.*, a corporate officer or general partner of a partnership), or a qualified practitioner. This is consistent with TMEP section 1606.12.

Madrid Protocol

The Office is amending § 7.11(a)(2) to provide that the applicant's entity in an application for international registration must be identical to the entity listed as owner of the basic application or registration. This is consistent with current practice. TMEP section 1902.02(c). Under section 61(a) of the Trademark Act, only the owner of the basic application or registration may file an international application.

The Office is amending the last sentence of § 7.14(e) to change ''submitted to'' to ''received in,'' for clarity.

The Office is amending § 7.25(a) to remove §§ 2.175 and 2.197 from the list of rules in part 2 that do not apply to an extension of protection of an international registration to the United States. Section 2.175 pertains to correction of mistakes by a registrant. Generally, all requests to record changes to an international registration must be filed at the IB, because an extension of protection of an international registration remains part of the international registration even after registration in the United States. However, in the limited circumstance where the holder of an international registration makes a mistake in a document filed during prosecution in the Office that affects only the extension of protection to the United States, the registrant may request correction of the error pursuant to § 2.175. For example, if there was a minor typographical error in an amendment to the identification of goods in a section 66(a) application, and the mark registered, the owner of the registration could request correction under § 2.175. If the Office grants the request, the Office will notify the IB of the change to the extension of protection to the United States.

Section § 2.197 provides a ''certificate of mailing or transmission'' procedure to avoid lateness due to mail delay. Section 66(a) applicants may currently use this procedure during prosecution of applications. Owners of registered extensions of protection who file affidavits of use or excusable nonuse under section 71 of the Trademark Act may also use this procedure. Therefore, its inclusion in § 7.25(a) was an error. Under §§ 2.197(a)(2)(ii) and 7.4(e), the certificate of mailing or transmission procedure remains inapplicable to international applications under § 7.11, responses to notices of irregularity under § 7.14, subsequent designations under § 7.21, requests to record changes of ownership under § 7.23, requests to record restrictions of the holder's right of disposal (or the release of such restrictions) under § 7.24, and requests for transformation under § 7.31.

Note: On February 29, 2008, the Office published a proposed rule that would prohibit the use of certificates of mailing or transmission for certain specified documents for which an electronic form is available in TEAS. See notice at 73 FR 11079. The Office is still reviewing the comments received in response to this proposal.

See the discussion of amendments to classification in section 66(a) applications in connection with new § 2.85(d), *above.*

Assignment Cover Sheet

The Office is amending § 3.31 to add a new paragraph (a)(8) requiring that a cover sheet submitted with a request to record a change of ownership of a trademark application or registration must include the citizenship or state or country of organization of the party receiving the interest; and that if the party receiving the interest is a domestic partnership or domestic joint venture, the cover sheet must include the names, legal entities, and national citizenship (or state or country of organization) of all general partners or active members that compose the partnership or joint venture. Currently, § 3.31(f) provides that the cover sheet ''should'' include this information, but the new rule makes it mandatory, to allow for more efficient processing of trademark applications and registrations.

The applicant's entity and citizenship or state or country of organization are required in an application for registration under § 2.32(a)(3)(iii) and must be submitted before the Office can issue a registration certificate in the name of the new owner. This information is also required when the new owner of a registration wants to change ownership in the trademark database and/or obtain a new certificate of registration in the name of the new owner. Requiring the information whenever a change of ownership is recorded will eliminate the need for the examining attorney or Post Registration examiner to issue an Office action requiring submission, which can cause substantial delay. Furthermore, in many cases, having complete information about the receiving party will ensure that the trademark database is automatically updated at the time of recordation or shortly thereafter. *See* TMEP sections 504 *et seq.* regarding automatic updating of the trademark database upon recordation of a change of ownership (automatic updating should ensure that the original certificate of registration issues in the name of the new owner).

References to ''Paper''

The Office is amending §§ 2.6(b)(6), 2.21(b), 2.21(c), 2.27(d), 2.87(d), 2.146(e)(1), 2.146(e)(2), and 2.146(i) to delete references to ''papers'' and substitute ''documents'' where appropriate, in order to encompass documents filed or issued electronically.

The Office is amending §§ 2.6(a)(19), 2.6(b)(3), and 2.56(d)(2) to delete references to ''file wrapper'' and substitute ''record'' or ''official record.'' The Office now maintains electronic records of applications and registrations.

The Office is amending §§ 2.62, 2.65(a), 2.66(a)(1), 2.66(d), 2.66(f)(1), 2.81(b), 2.89(a), 2.89(a)(3), 2.89(g), 2.93, 2.99(d)(2), 2.146(d), 2.146(e)(1), 2.146(e)(2), 2.146(j)(1), 2.163(b), 2.165(b), 2.176, 2.184(b), 2.186(b), 7.39(b), and 7.40(b) to change references to ''mailing'' to ''issuance,'' to encompass Office actions and communications issued electronically.

Comment: One commenter asserts that ''issuance'' is ambiguous because it ''could refer to either the date an Office Action is written or is mailed.'' The commenter notes that the Trademark Applications and Registrations Retrieval (''TARR'') database currently lists either ''Non-Final Action Mailed'' or ''Non-Final Action E-Mailed.'' The commenter suggests that the rules be amended to change ''mailing'' to ''mailing and e-mailing,'' or, alternatively, that TARR be changed to list an ''issuance'' date where it formerly listed ''Mailed'' or ''E-Mailed.''

Response: The Office has reviewed the context in which the term ''issuance'' is used in these rules, and believes the term clearly does not refer to the date on which an Office action is written, as opposed to the date on which it is mailed or e-mailed. ''Issuance'' is defined as ''[t]he provision of something by issuing it.'' The verb ''issue'' can be defined as ''[t]o send out officially, as in to issue an order'' (Law); ''[p]repare and issue for public distribution or sale;'' ''[c]irculate or distribute;'' or ''[b]ring out [as] an official document. * * *'' Webster's Online Dictionary, search of ''issuance'' and ''issue,'' *http://www.websters-online-dictionary.org/definition/issue* (Aug. 14, 2008). Therefore, the Office deems it unnecessary to change the rule or the information in TARR. The information in TARR indicates specifically whether the notice was mailed or e-mailed, which could be useful information.

The Office is amending § 2.81(b) to remove the sentence stating that ''The mailing date that appears on the notice of allowance will be the issue date of the notice of allowance,'' because it is unnecessary. The rule already states that the notice of allowance will include the issue date.

The Office is amending §§ 2.84(b), 2.173, 2.174, and 2.175 to delete references to ''printed,'' and substitute ''issued'' where appropriate, to encompass documents issued electronically.

The Office is amending §§ 2.87(d), 2.146(e)(i), and 2.146(i) to delete references to ''paper'' and to substitute ''document,'' to encompass documents filed through TEAS.

Sections 2.173(c), 2.174, and 2.175(c) are amended to remove the statements that printed copies of amendments and corrections under section 7 of the Act are attached to printed copies of the registration.

Comment: One commenter asked for clarification of how amendments and corrections would be communicated when certified copies of the registration are printed.

Response: The Office previously attached an updated registration certificate showing an amendment or correction to the original certificate and returned it to the owner of the registration, but this practice was changed in 2004. *See* notice at *69 FR 51362* (Aug. 19, 2004) (removing the requirement that the owner of a registration send the original certificate of registration or a certified copy thereof with a request for amendment or correction under section 7 of the Act). Currently, when a request for amendment or correction is granted, the Office sends an updated registration certificate showing the amendment or correction to the owner of record, and updates Office records accordingly. TMEP sections 1609.01(b) and 1609.10. A certified copy of the updated registration certificate may be obtained from the Document Services Branch of the Public Records Division for a fee.

Appeal Fees

The Office is reorganizing § 2.141 to move the provisions pertaining to appeal fees, some of which were previously set forth in § 2.85(e), to § 2.141(b). This is consistent with current practice, set forth in TBMP section 1202.04.

Other Changes

The Office is amending § 2.6(a)(13) to replace a section symbol with the word ''section.'' This is consistent with references to the statute in other rules, and with the format recommended in the *Federal Register Document Drafting Handbook,* National Archives and Records Administration, Office of the Federal Register (Oct. 1998). Section symbols are used in rules and **Federal Register** notices only to refer to other sections of the CFR.

The Office is amending § 2.6(a)(8) to delete ''assignee'' and substitute ''registrant.'' This clarifies that any registrant may request a new certificate of registration, upon payment of the required fee.

The Office is revising § 2.25 to provide that documents filed by an applicant or registrant become part of the official record and will not be returned or removed. The rule currently provides only for applications, but the new rule encompasses all documents filed in connection with an application or registration. This is consistent with current practice. *See* TMEP section 404. There is an exception for documents ordered to be filed under seal pursuant to a protective order issued by a court or by the TTAB.

The Office is removing § 2.26, which provides that a drawing from an abandoned application may be transferred to and used in a new application, if the file has not been destroyed. This rule is no longer in use and is deemed unnecessary.

The Office is amending § 2.32(a)(6) to delete the word ''and'' after the semicolon, and is amending § 2.32(a)(7) to change a period to a semicolon.

The Office is amending § 2.41 to add a reference to ''services'' at the end of the last sentence. This corrects an oversight.

The Office is amending § 2.86(a)(2) to delete the period and substitute a semicolon, followed by the word ''and'' (''; and'').

The Office is amending § 2.146(c) to add a provision that a petition to the Director be signed by the petitioner, someone with legal authority to bind the petitioner (*e.g.*, a corporate officer or general partner of a partnership), or a qualified practitioner. The rule further provides that when facts are to be proved on petition, the petitioner must submit proof in the form of affidavits or declarations in accordance with § 2.20, signed by someone with firsthand knowledge of the facts to be proved. This is consistent with TMEP sections 1705.03 and 1705.07.

The Office is amending § 2.195(b) to delete the phrase ''In addition to being mailed,'' because it is unnecessary.

The Office is amending § 2.195(e) to clarify the procedures for filing a petition to the Director to consider correspondence filed on the date of attempted filing by Express Mail during a postal service interruption or

emergency within the meaning of 35 U.S.C. 21(a). New § 2.195(e)(1) provides that a person who attempted to file correspondence by Express Mail, but was unable to deposit the correspondence with the United States Postal Service due to the interruption or emergency, may petition the Director to consider the correspondence to have been filed on the date of attempted filing. New § 2.195(e)(2) sets forth the requirements for the petition. New § 2.195(e)(3) notes that this procedure does not apply to correspondence that is excluded from the Express Mail procedure pursuant to § 2.198(a)(1). This is consistent with current practice.

The Office is amending § 2.208(c)(3) and removing § 2.208(c)(4), to update the mailing address for payments to replenish deposit accounts. This is consistent with § 1.25(c)(4) of this chapter.

Rule Making Requirements

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act: This rule merely involves rules of agency practice and procedure within the meaning of 5 U.S.C. 553(b)(A). Therefore, this rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d). However, the Office has chosen to seek public comment before implementing the rule.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office hereby certifies to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, Miscellaneous Changes to Trademark Rules of Practice (RIN 0651–AB89), will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

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

The new rules clarify certain requirements for trademark applications and other trademark-related documents, modernize the language of the rules, and make some other miscellaneous procedural changes. In large part, the rule changes are intended to codify existing practice. Although the rules may affect any trademark applicant or registrant, because they codify the existing practice of the Office or concern relatively minor procedural matters, the changes will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates: The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments or the private sector.

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

Paperwork Reduction Act: This rule 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 in this rule has been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, and 0651–0056.

The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this rule will not affect the information collection requirements associated with the information collections under the OMB control numbers listed above. The changes in this notice are limited to amending the rules of practice to simplify and clarify the requirements for amendments to applications and registrations, reword and reorganize the rules for clarity, and codify current practices and procedures.

Interested persons are requested to send comments regarding these information collections, including suggestions for reduction of this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451 (Attn: Mary Hannon).

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 2

Administrative practice and procedure, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Trademarks.

37 CFR Part 6

Administrative practice and procedure, Trademarks, Classification.

37 CFR Part 7

Administrative practice and procedure, Trademarks, International Registration.

■ For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office is amending parts 2, 3, 6, and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 2.6(a)(8), (13), and (19), and § 2.6(b)(3) and (6) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(8) For issuing a new certificate of registration upon request of registrant—$100.00

* * * * *

(13) For filing an affidavit under section 15 of the Act, per class—$200.00

* * * * *

(19) Dividing an application, per new application created—$100.00

* * * * *

(b) * * *

(3) Certified or uncertified copy of a trademark-related official record—$50.00

* * * * *

(6) For recording each trademark assignment, agreement or other document relating to the property in a registration or application

* * * * *

■ 3. Amend § 2.21 by revising paragraphs (a) introductory text and (b) to read as follows, and by removing paragraph (c):

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application under section 1 or section 44 of the Act that is in the English language and contains all of the following:

* * * * *

(b) If the applicant does not submit all the elements required in paragraph (a) of this section, the Office will deny a filing date and issue a notice explaining why the filing date was denied.

■ 4. Revise § 2.23(a)(2) to read as follows:

§ 2.23 Additional requirements for TEAS Plus application.

(a) * * *

(2) Maintain a valid e-mail correspondence address, and continue to receive communications from the Office by electronic mail.

* * * * *

■ 5. Revise § 2.25 to read as follows:

§ 2.25 Documents not returnable.

Except as provided in § 2.27(e), documents filed in the Office by the applicant or registrant become part of the official record and will not be returned or removed.

■ 6. Remove § 2.26.

■ 7. Revise § 2.27(d) to read as follows:

§ 2.27 Pending trademark application index; access to applications.

* * * * *

(d) Except as provided in paragraph (e) of this section, the official records of applications and all proceedings relating thereto are available for public inspection and copies of the documents may be furnished upon payment of the fee required by § 2.6.

* * * * *

■ 8. Revise § 2.32(a)(3)(iii), (a)(6), and (a)(8), and add new § 2.32(a)(3)(iv), (a)(9), and (a)(10) to read as follows:

§ 2.32 Requirements for a complete application.

(a) * * *

(3) * * *

(iii) If the applicant is a domestic partnership, the names and citizenship of the general partners;

(iv) If the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;

* * * * *

(6) A list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark. In a United States application filed under section 44 of the Act, the scope of the goods and/or services covered by the section 44 basis may not exceed the scope of the goods and/or services in the foreign application or registration;

(7) * * *

(8) If the mark is not in standard characters, a description of the mark;

(9) If the mark includes non-English wording, an English translation of that wording; and

(10) If the mark includes non-Latin characters, a transliteration of those characters, and either a translation of the transliterated term in English, or a statement that the transliterated term has no meaning in English.

* * * * *

■ 9. Revise § 2.33(b)(1) to read as follows:

§ 2.33 Verified statement.

* * * * *

(b)(1) In an application under section 1(a) of the Act, the verified statement must allege:

That the applicant believes it is the owner of the mark; that the mark is in use in commerce; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; that the specimen shows the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true.

* * * * *

■ 10. Revise § 2.34(a)(1)(i), (a)(2), (a)(3)(i) and (a)(4)(ii), and add new paragraph (a)(1)(v) to read as follows:

§ 2.34 Bases for filing.

(a) * * *

(1) * * *

(i) The trademark owner's verified statement that the mark is in use in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must also allege that the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date;

* * * * *

(v) If more than one item of goods or services is specified in the application, the dates of use required in paragraphs (ii) and (iii) of this section need be for only one of the items specified in each class, provided that the particular item to which the dates apply is designated.

(2) *Intent-to-use under section 1(b) of the Act.* In an application under section 1(b) of the Act, the applicant must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must also allege that the applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.

(3) * * *

(i) The applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must also allege that the applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.

* * * * *

(4) * * *

(i) * * *

(ii) Include the applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must also allege that the applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.

* * * * *

■ 11. Amend § 2.41 by revising paragraph (a) to read as follows:

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods or services set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with § 2.20, depositions, or other appropriate evidence showing duration, extent and nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with § 2.20,

letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods or services.

* * * * *

■ 12. Revise § 2.44(b) to read as follows:

§ 2.44 Collective mark.

(a) * * *

(b) In an application to register a collective mark under section 1(b), section 44 or section 66(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall also specify the class of persons intended to be entitled to use the mark, indicating what their relationship to the applicant will be, and the nature of the control applicant intends to exercise over the use of the mark.

■ 13. Revise § 2.45(b) to read as follows:

§ 2.45 Certification mark.

(a) * * *

(b) In an application to register a certification mark under section 1(b), section 44 or section 66(a) of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is intended to be used; allege that the applicant intends to exercise legitimate control over the use of the mark; and allege that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied. When the applicant files an allegation of use under § 2.76 or § 2.88, the applicant must submit a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

■ 14. Revise § 2.47(a) to read as follows:

§ 2.47 Supplemental Register.

(a) In an application to register on the Supplemental Register under section 23 of the Act, the application shall so indicate and shall specify that the mark has been in use in commerce.

* * * * *

■ 15. Add new § 2.48, to read as follows:

§ 2.48 Office does not issue duplicate registrations.

If two applications on the same register would result in registrations that are exact duplicates, the Office will permit only one application to mature into registration, and will refuse registration in the other application.

■ 16. Revise § 2.52(b) introductory text and (b)(1) to read as follows:

§ 2.52 Types of drawings and format for drawings.

* * * * *

(b) *Special form drawing.* Applicants who seek to register a mark that includes a two or three-dimensional design; color; and/or words, letters, or numbers or the combination thereof in a particular font style or size must submit a special form drawing. The drawing should show the mark in black on a white background, unless the mark includes color.

(1) *Marks that include color.* If the mark includes color, the drawing must show the mark in color, and the applicant must name the color(s), describe where the color(s) appear on the mark, and submit a claim that the color(s) is a feature of the mark.

* * * * *

■ 17. Revise § 2.53(a) to read as follows:

§ 2.53 Requirements for drawings filed through the TEAS.

* * * * *

(a) *Standard character drawings.* If an applicant seeks registration of a standard character mark, the applicant must enter the mark in the appropriate field on the TEAS form, and check the box to claim that the mark consists of standard characters.

* * * * *

■ 18. Revise § 2.56(b)(1), (d)(2), and (d)(4) to read as follows:

§ 2.56 Specimens.

* * * * *

(b)(1) A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is impracticable to place the mark on the goods, packaging for the goods, or displays associated with the goods.

* * * * *

(d)(1) * * *

(2) If the applicant files a specimen exceeding these size requirements (a ''bulky specimen''), the Office will create a digital facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the record. The Office may destroy the original bulky specimen.

* * * * *

(4) For a TEAS submission, the specimen must be a digitized image in .jpg or .pdf format.

■ 19. Revise § 2.62 to read as follows:

§ 2.62 Procedure for filing response.

(a) *Deadline.* The applicant's response to an Office action must be received within six months from the date of issuance.

(b) *Signature.* The applicant, someone with legal authority to bind the applicant (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14 of this chapter must sign the response.

■ 20. Revise § 2.64(c)(1) to read as follows:

§ 2.64 Final action.

* * * * *

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examiner shall examine the amendment. The filing of an amendment to allege use does not extend the deadline for filing a response to an outstanding Office action, appeal to the Trademark Trial and Appeal Board, or petition to the Director.

* * * * *

■ 21. Revise § 2.65(a) to read as follows:

§ 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is issued, the application shall be deemed abandoned unless the refusal or requirement is expressly limited to only certain goods and/or services. If the refusal or requirement is expressly limited to only certain goods and/or services, the application will be abandoned only as to those particular goods and/or services. A timely petition to the Director pursuant to §§ 2.63(b) and 2.146 or notice of appeal to the Trademark Trial and Appeal Board pursuant to § 2.142, if appropriate, is a response that avoids abandonment of an application.

* * * * *

■ 22. Revise § 2.66(a)(1), (d), and (f)(1) to read as follows:

§ 2.66 Revival of abandoned applications.

(a) * * *

(1) Within two months of the date of issuance of the notice of abandonment; or

* * * * *

(d) In an application under section 1(b) of the Act, the Director will not grant the petition if this would permit the filing of a statement of use more than 36 months after the date of issuance of the notice of allowance under section 13(b)(2) of the Act.

* * * * *

(f) * * *

(1) Files the request within two months of the date of issuance of the decision denying the petition; and

* * * * *

■ 23. Revise § 2.73 to read as follows:

§ 2.73 Amendment to recite concurrent use.

An application that includes section 1(a) of the Trademark Act as a filing basis, or for which an acceptable allegation of use under § 2.76 or § 2.88 has been filed, may be amended to an application for concurrent use registration, provided that the application as amended meets the requirements of § 2.42. The trademark examining attorney will determine whether the application, as amended, is acceptable.

■ 24. Revise § 2.74 to read as follows:

§ 2.74 Form and signature of amendment.

(a) *Form of Amendment.* Amendments should be set forth clearly and completely. Applicant should either set forth the entire wording, including the proposed changes, or, if it would be more efficient, indicate which words should be added and which words should be deleted. The examining attorney may require the applicant to rewrite the entire amendment, if necessary for clarification of the record.

(b) *Signature.* The applicant, someone with legal authority to bind the applicant (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14 must sign the request for amendment. If the amendment requires verification, the verification must be sworn to or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (§ 2.33(a)).

■ 25. Revise § 2.76(d) to read as follows:

§ 2.76 Amendment to allege use.

* * * * *

(d) The title ''Allegation of Use'' should appear at the top of the document.

* * * * *

■ 26. Revise § 2.77 to read as follows:

§ 2.77 Amendments between notice of allowance and statement of use.

(a) The only amendments that can be entered in an application between the issuance of the notice of allowance and the submission of a statement of use are:

(1) The deletion of specified goods or services from the identification of goods/services;

(2) The deletion of a basis in a multiple-basis application; and

(3) A change of attorney or change of address.

(b) Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

■ 27. Revise § 2.81(b) to read as follows:

§ 2.81 Post publication.

(a) * * *

(b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. The notice of allowance will state the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods and/or services, and the issue date of the notice of allowance. Thereafter, the applicant must submit a statement of use as provided in § 2.88.

■ 28. Revise § 2.84(b) to read as follows:

§ 2.84 Jurisdiction over published applications.

* * * * *

(b) After publication, but before the certificate of registration is issued in an application under section 1(a), 44, or 66(a) of the Act, or before the notice of allowance is issued in an application under section 1(b) of the Act, an application that is not the subject of an inter partes proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the trademark examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an inter partes proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

■ 29. Revise § 2.85 to read as follows:

§ 2.85 Classification schedules.

(a) *International classification system.* Section 6.1 of this chapter sets forth the international system of classification for goods and services, which applies for all statutory purposes to:

(1) Applications filed in the Office on or after September 1, 1973, and resulting registrations; and

(2) Registrations resulting from applications filed on or before August 31, 1973, that have been amended to adopt international classification pursuant to § 2.85(e)(3).

(b) *Prior United States classification system.* Section 6.2 of this chapter sets forth the prior United States system of classification for goods and services, which applies for all statutory purposes to registrations resulting from applications filed on or before August 31, 1973, unless:

(1) The registration has been amended to adopt international classification pursuant to § 2.85(e)(3); or

(2) The registration was issued under a classification system prior to that set forth in § 6.2.

(c) *Certification marks and collective membership marks.* Sections 6.3 and 6.4 specify the system of classification which applies to certification marks and collective membership marks in applications based on sections 1 and 44 of the Act, and to registrations resulting from applications based on sections 1 and 44. These sections do not apply to applications under section 66(a) or to registered extensions of protection.

(d) *Section 66(a) applications and registered extensions of protection.* In an application under section 66(a) of the Act or registered extension of protection, the classification cannot be changed from the classification assigned by the International Bureau of the World Intellectual Property Organization, unless the International Bureau corrects the classification. Classes cannot be added, and goods or services cannot be transferred from one class to another in a multiple-class application.

(e) *Changes to Nice Agreement.* The international classification system changes periodically, pursuant to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. These changes are listed in the *International Classification of Goods and Services for the Purposes of the Registration of Marks*, which is published by the World Intellectual Property Organization.

(1) If international classification changes pursuant to the Nice Agreement, the new classification applies only to applications filed on or after the effective date of the change.

(2) In a section 1 or section 44 application filed before the effective date of a change to the Nice Agreement, the applicant may amend the application to comply with the requirements of the current edition. The applicant must comply with the current edition for all goods or services identified in the application. The applicant must pay the fees for any added class(es).

(3) In a registration resulting from a section 1 or section 44 application that was filed before the effective date of a

change to the Nice Agreement, the owner may amend the registration to comply with the requirements of the current edition. The owner must reclassify all goods or services identified in the registration to the current edition. The owner must pay the fee required by § 2.6 for amendments under section 7 of the Act. The owner may reclassify registrations from multiple United States classes (§ 2.85(b)) into a single international classification, where appropriate.

(f) Classification schedules shall not limit or extend the applicant's rights, except that in a section 66(a) application, the scope of the identification of goods or services for purposes of permissible amendments (*see* § 2.71(a)) is limited by the class, pursuant to § 2.85(d).

■ 30. Revise § 2.86(a)(2) to read as follows:

§ 2.86 Application may include multiple classes.

(a) * * *

(2) Submit an application filing fee for each class, as set forth in § 2.6(a)(1); and

* * * * *

■ 31. Revise § 2.87 to read as follows:

§ 2.87 Dividing an application.

(a) *Application may be divided.* An application may be divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) *Fee.* In the case of a request to divide out one or more entire classes from an application, only the fee for dividing an application as set forth in § 2.6(a)(19) will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, the applicant must submit the application filing fee as set forth in § 2.6(a)(1) for each new separate application to be created by the division, in addition to the fee for dividing an application.

(c) *Time for filing.* (1) A request to divide an application may be filed at any time between the application filing date and the date on which the trademark examining attorney approves the mark for publication; or during an opposition, concurrent use, or interference proceeding, upon motion granted by the Trademark Trial and Appeal Board.

(2) In an application under section 1(b) of the Act, a request to divide may also be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date on which the trademark examining attorney approves the mark for registration.

(3) In a multiple-basis application, a request to divide out goods or services having a particular basis may also be filed during the period between the issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under § 2.88.

(d) *Form.* A request to divide an application should be made in a separate document from any other amendment or response in the application. The title ''Request to Divide Application'' should appear at the top of the first page of the document.

(e) *Outstanding time periods apply to newly created applications.* Any time period for action by the applicant which is outstanding in the original application at the time of the division will apply to each separate new application created by the division, except as follows:

(1) If an Office action pertaining to less than all the classes in a multiple-class application is outstanding, and the applicant files a request to divide out the goods, services, and/or class(es) to which the Office action does not pertain before the response deadline, a response to the Office action is not due in the new (child) application(s) created by the division of the application;

(2) If an Office action pertaining to less than all the bases in a multiple-basis application is outstanding, and the applicant files a request to divide out the goods/services having the basis or bases to which the Office action does not pertain before the response deadline, a response to the Office action is not due in the new (child) application(s) created by the division of the application; or

(3) In a multiple-basis application in which a notice of allowance has issued, if the applicant files a request to divide out the goods/services having the basis or bases to which the notice of allowance does not pertain before the deadline for filing the statement of use, the new (child) applications created by the division are not affected by the notice of allowance.

(f) *Signature.* The request to divide must be signed by the applicant, someone with legal authority to bind the applicant (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14.

(g) *Section 66(a) applications—change of ownership with respect to some but not all of the goods or services.* (1) When the International Bureau of the World Intellectual Property Organization notifies the Office that an international registration has been divided as the result of a change of ownership with respect to some but not all of the goods or services, the Office will construe the International Bureau's notice as a request to divide. The Office will record the partial change of ownership in the Assignment Services Branch, and divide out the assigned goods/services from the original (parent) application. The Office will create a new (child) application serial number, and enter the information about the new application in its automated records.

(2) To obtain a certificate of registration in the name of the new owner for the goods/services that have been divided out, the new owner must pay the fee(s) for the request to divide, as required by § 2.6 and paragraph (b) of this section. The examining attorney will issue an Office action in the child application requiring the new owner to pay the required fee(s). If the owner of the child application fails to respond, the child application will be abandoned. It is not necessary for the new owner to file a separate request to divide.

(3) The Office will not divide a section 66(a) application based upon a change of ownership unless the International Bureau notifies the Office that the international registration has been divided.

■ 32. Revise § 2.88(b)(1)(ii), (b)(3), (d), and (i)(2) to read as follows:

§ 2.88 Filing statement of use after notice of allowance.

(a) * * *

(b) * * *

(1) * * *

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce on or in connection with the goods or services identified in the notice of allowance, and setting forth or incorporating by reference those goods/services identified in the notice of allowance on or in connection with which the mark is in use in commerce. Where an applicant claims section 1(a) of the Act for some goods/services in a class and section 1(b) of the Act for other goods/services in the same class, the statement of use must include dates for the section 1(b) of the Act goods/services;

* * * * *

(3) The fee per class required by § 2.6. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the statement of use, or the application will be abandoned. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant must specify the classes to be abandoned. If the applicant submits a

fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to be abandoned, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining class(es), or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods/services in the remaining class(es) not covered by the fees submitted.

* * * * *

(d) The title ''Allegation of Use'' should appear at the top of the first page of the document.

* * * * *

(i) * * *

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Office will delete the omitted goods/services from the application. The applicant may not thereafter reinsert these goods/services.

* * * * *

■ 33. Revise § 2.89(a) introductory text, (a)(2), (a)(3), (b)(2), and (g) to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the date of issuance of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) * * *

(2) The fee per class required by § 2.6. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the extension request, or the request will be denied. If the applicant timely submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining classes, or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods/services in the remaining classes not covered by the fees submitted; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the date of issuance of the notice of allowance.

(b) * * *

(2) The fee per class required by § 2.6. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the extension request, or the request will be denied. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant must specify the classes to be abandoned. If the applicant submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining classes, or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees, beginning with the lowest numbered class(es), in ascending order. The Office will delete the remaining goods/services not covered by the fees submitted;

* * * * *

(g) The applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under § 2.88. If, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time. Otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Director in accordance with § 2.66 or § 2.146. A petition from the denial of an extension request must be filed within two months of the date of issuance of the denial of the request. If the petition is granted, the term of the requested six-month extension that was the subject of the petition will run from the date of expiration of the previously existing six-month period for filing a statement of use.

* * * * *

■ 34. Revise § 2.93 to read as follows:

§ 2.93 Institution of interference.

An interference is instituted by the issuance of a notice of interference to the parties. The notice shall be sent to each applicant, in care of the applicant's attorney or other representative of record, if any, and if one of the parties is a registrant, the notice shall be sent to the registrant or the registrant's assignee of record. The notice shall give the name and address of every adverse party and of the adverse party's attorney or other authorized representative, if any, together with the serial number and date of filing and publication of each of the applications, or the registration number and date of issuance of each of the registrations, involved.

■ 35. Revise § 2.99(d)(2) and (g) to read as follows:

§ 2.99 Application to register as concurrent user.

* * * * *

(d)(1) * * *

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement, if desired, may be filed within forty days after the issuance of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the issuance of the notice.

* * * * *

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings. Applications under section 1(b) of the Act of 1946 are subject to concurrent use registration proceedings only after the applicant files an acceptable allegation of use under § 2.76 or § 2.88. Applications based solely on section 44 or section 66(a) of the Act are not subject to concurrent use registration proceedings.

* * * * *

■ 36. Revise § 2.141 to read as follows:

§ 2.141 Ex parte appeals from action of trademark examining attorney.

(a) An applicant may, upon final refusal by the trademark examining attorney, appeal to the Trademark Trial and Appeal Board upon payment of the prescribed fee for each class in the application for which an appeal is

taken, within six months of the date of issuance of the final action. A second refusal on the same grounds may be considered as final by the applicant for purpose of appeal.

(b) The applicant must pay an appeal fee for each class from which the appeal is taken. If the applicant does not pay an appeal fee for at least one class of goods or services before expiration of the six-month statutory filing period, the application will be abandoned. In a multiple-class application, if an appeal fee is submitted for fewer than all classes, the applicant must specify the class(es) in which the appeal is taken. If the applicant timely submits a fee sufficient to pay for an appeal in at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Board will issue a written notice setting a time limit in which the applicant may either pay the additional fees or specify the class(es) being appealed. If the applicant does not submit the required fee or specify the class(es) being appealed within the set time period, the Board will apply the fee(s) to the class(es) in ascending order, beginning with the lowest numbered class.

■ 37. Revise § 2.146(c), (d), (e), (i) introductory text, and (j)(1) to read as follows:

§ 2.146 Petitions to the Director.

* * * * *

(c) Every petition to the Director must include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief requested, and the fee required by § 2.6. Any brief in support of the petition should be embodied in or accompany the petition. The petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14 of this chapter must sign the petition. When facts are to be proved on petition, the petitioner must submit proof in the form of affidavits or declarations in accordance with § 2.20, signed by someone with firsthand knowledge of the facts to be proved, and any exhibits.

(d) A petition must be filed within two months of the date of issuance of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

(e)(1) A petition from the grant or denial of a request for an extension of time to file a notice of opposition must be filed within fifteen days from the date of issuance of the grant or denial of the request. A petition from the grant of a request must be served on the attorney or other authorized representative of the potential opposer, if any, or on the potential opposer. A petition from the denial of a request must be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition must be made as provided by § 2.119. The potential opposer or the applicant, as the case may be, may file a response within fifteen days from the date of service of the petition and must serve a copy of the response on the petitioner, with proof of service as provided by § 2.119. No further document relating to the petition may be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board must be filed within thirty days after the date of issuance of the order from which relief is requested. Any brief in response to the petition must be filed, with any supporting exhibits, within fifteen days from the date of service of the petition. Petitions and responses to petitions, and any documents accompanying a petition or response under this subsection must be served on every adverse party pursuant to § 2.119.

* * * * *

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because documents were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

(1) * * *

* * * * *

(j) * * *

(1) Files the request within two months of the date of issuance of the decision denying the petition; and

* * * * *

■ 38. Revise § 2.153 to read as follows:

§ 2.153 Publication requirements.

The owner of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with § 2.20 setting forth those goods or services in the registration on or in connection with which said mark is in use in commerce, and stating that the owner claims the benefits of the Trademark Act of 1946. The affidavit or declaration must be signed by a person properly authorized to sign on behalf of the owner (§ 2.161(b)).

■ 39. Revise the undesignated center heading immediately preceding § 2.160 to read as follows:

Cancellation for Failure To File Affidavit or Declaration

■ 40. Revise § 2.161(g)(3) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

* * * * *

(g) * * *

(3) Be a digitized image in .jpg or .pdf format, if transmitted through TEAS.

■ 41. Revise § 2.163(b) and add a new paragraph (c) to read as follows:

§ 2.163 Acknowledgment of receipt of affidavit or declaration.

* * * * *

(b) A response to the refusal must be filed within six months of the date of issuance of the Office action, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later. The response must be signed by the owner, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter.

(c) If no response is filed within this time period, the registration will be cancelled, unless time remains in the grace period under section 8(c)(1) of the Act. If time remains in the grace period, the owner may file a complete new affidavit.

■ 42. Revise § 2.165(b) to read as follows:

§ 2.165 Petition to Director to review refusal.

* * * * *

(b) If the examiner maintains the refusal of the affidavit or declaration, the owner may file a petition to the Director to review the action. The petition must be filed within six months of the date of issuance of the action maintaining the refusal, or the Office will cancel the registration and issue a notice of the cancellation.

* * * * *

■ 43. Revise § 2.167(a), (d) and (f) to read as follows:

§ 2.167 Affidavit or declaration under section 15.

* * * * *

(a) Be verified (sworn to) or supported by a declaration under § 2.20, signed by the owner of the registration or a person properly authorized to sign on behalf of the owner (§ 2.161(b));

* * * * *

(d) Specify that there has been no final decision adverse to the owner's claim of ownership of such mark for such goods or services, or to the owner's right to register the same or to keep the same on the register;

* * * * *

(f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c). The Office will issue a notice acknowledging receipt of the affidavit or declaration.

* * * * *

■ 44. Revise § 2.171 to read as follows:

§ 2.171 New certificate on change of ownership.

(a) *Full change of ownership.* If the ownership of a registered mark changes, the new owner may request that a new certificate of registration be issued in the name of the new owner. The assignment or other document changing title must be recorded in the Office. The request for the new certificate must include the fee required by § 2.6(a)(8) and be signed by the owner of the registration, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter. In a registered extension of protection, the assignment must be recorded with the International Bureau of the World Intellectual Property Organization before it can be recorded in the Office (see § 7.22).

(b) *Partial change of ownership.* (1) In a registration resulting from an application based on section 1 or 44 of the Act, if ownership of a registration has changed with respect to some but not all of the goods and/or services, the owner(s) may file a request that the registration be divided into two or more separate registrations. The assignment or other document changing title must be recorded in the Office. The request to divide must include the fee required by § 2.6(a)(8) for each new registration created by the division, and be signed by the owner of the registration, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter.

(2)(i) When the International Bureau of the World Intellectual Property Organization notifies the Office that an international registration has been divided as the result of a change of ownership with respect to some but not all of the goods or services, the Office will construe the International Bureau's notice as a request to divide. The Office will record the partial change of ownership in the Assignment Services Branch, and divide out the assigned goods/services from the registered extension of protection (parent registration), issue an updated certificate for the parent registration, and publish notice of the parent registration in the *Official Gazette.*

(ii) The Office will create a new registration number for the child registration, and enter the information about the new registration in its automated records. The Office will notify the new owner that the new owner must pay the fee required by § 2.6 to obtain a new registration certificate for the child registration. It is not necessary for the new owner to file a separate request to divide.

(iii) The Office will not divide a registered extension of protection unless the International Bureau notifies the Office that the international registration has been divided.

■ 45. Revise § 2.173 to read as follows:

§ 2.173 Amendment of registration.

(a) *Form of amendment.* The owner of a registration may apply to amend a registration or to disclaim part of the mark in the registration. The owner must submit a written request specifying the amendment or disclaimer. If the registration is involved in an inter partes proceeding before the Trademark Trial and Appeal Board, the request must be filed by appropriate motion to the Board.

(b) *Requirements for request.* A request for amendment or disclaimer must:

(1) Include the fee required by § 2.6;

(2) Be signed by the owner of the registration, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14, and verified or supported by a declaration under § 2.20; and

(3) If the amendment involves a change in the mark: a new specimen showing the mark as used on or in connection with the goods or services; an affidavit or declaration under § 2.20 stating that the specimen was in use in commerce at least as early as the filing date of the amendment; and a new drawing of the amended mark.

(c) *Registration must still contain registrable matter.* The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole.

(d) *Amendment may not materially alter the mark.* An amendment or disclaimer must not materially alter the character of the mark.

(e) *Amendment of identification of goods.* No amendment in the identification of goods or services in a registration will be permitted except to restrict the identification or to change it in ways that would not require republication of the mark.

(f) *Conforming amendments may be required.* If the registration includes a disclaimer, description of the mark, or other miscellaneous statement, any request to amend the registration must include a request to make any necessary conforming amendments to the disclaimer, description, or other statement.

(g) *Elimination of disclaimer.* No amendment seeking the elimination of a disclaimer will be permitted, unless deletion of the disclaimed portion of the mark is also sought.

■ 46. Revise § 2.174 to read as follows:

§ 2.174 Correction of Office mistake.

Whenever Office records clearly disclose a material mistake in a registration, incurred through the fault of the Office, the Office will issue a certificate of correction stating the fact and nature of the mistake, signed by the Director or by an employee designated by the Director, without charge. Thereafter, the corrected certificate shall have the same effect as if it had been originally issued in the corrected form. In the discretion of the Director, the Office may issue a new certificate of registration without charge.

■ 47. In § 2.175 revise the section heading and paragraphs (a) and (b)(2) to read as follows, and remove paragraph (c):

§ 2.175 Correction of mistake by owner.

(a) Whenever a mistake has been made in a registration and a showing has been made that the mistake occurred in good faith through the fault of the owner, the Director may issue a certificate of correction. In the discretion of the Director, the Office may issue a new certificate upon payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) * * *

(2) Be signed by the owner of the registration, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14 of this chapter, and verified or include a declaration in accordance with § 2.20; and

* * * * *

■ 48. Revise § 2.176 to read as follows:

§ 2.176 Consideration of above matters.

The matters in §§ 2.171 to 2.175 will be considered in the first instance by the Post Registration examiners, except for requests to amend registrations involved in inter partes proceedings before the Trademark Trial and Appeal Board, as specified in § 2.173(a), which shall be considered by the Board. If an action of the examiner is adverse, the owner of the registration may petition the Director to review the action under § 2.146. If the owner does not respond to an adverse action of the examiner within six months of the date of issuance, the matter will be considered abandoned.

■ 49. Amend § 2.183 by adding a new paragraph (f), to read as follows:

§ 2.183 Requirements for a complete renewal application.

* * * * *

(f) Renewals of registrations issued under a prior classification system will be processed on the basis of that system, unless the registration has been amended to adopt international classification pursuant to § 2.85(e)(3).

■ 50. Revise § 2.184(b) to read as follows:

§ 2.184 Refusal of renewal.

* * * * *

(b)(1) The registrant must file a response to the refusal of renewal within six months of the date of issuance of the Office action, or before the expiration date of the registration, whichever is later. If no response is filed within this time period, the registration will expire, unless time remains in the grace period under section 9(a) of the Act. If time remains in the grace period, the registrant may file a complete new renewal application.

(2) The registrant, someone with legal authority to bind the registrant (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner who meets the requirements of § 11.14 must sign the response.

* * * * *

■ 51. Revise § 2.186(b) to read as follows:

§ 2.186 Petition to Director to review refusal of renewal.

* * * * *

(b) If the examiner maintains the refusal of the renewal application, a petition to the Director to review the refusal may be filed. The petition must be filed within six months of the date of issuance of the Office action maintaining the refusal, or the renewal application will be abandoned and the registration will expire.

* * * * *

■ 52. Revise § 2.195(b) and (e) to read as follows:

§ 2.195 Receipt of trademark correspondence.

* * * * *

(b) *Correspondence delivered by hand.* Correspondence may be delivered by hand during hours the Office is open to receive correspondence.

* * * * *

(e) *Interruptions in U.S. Postal Service.* (1) If the Director designates a postal service interruption or emergency within the meaning of 35 U.S.C. 21(a), any person attempting to file correspondence by ''Express Mail Post Office to Addressee'' service who was unable to deposit the correspondence with the United States Postal Service due to the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office.

(2) The petition must:

(i) Be filed promptly after the ending of the designated interruption or emergency;

(ii) Include the original correspondence or a copy of the original correspondence; and

(iii) Include a statement that the correspondence would have been deposited with the United States Postal Service on the requested filing date but for the designated interruption or emergency in ''Express Mail'' service; and that the correspondence attached to the petition is the original correspondence or a true copy of the correspondence originally attempted to be deposited as Express Mail on the requested filing date.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply to correspondence that is excluded from the Express Mail procedure pursuant to § 2.198(a)(1).

■ 53. Revise § 2.208(c)(3) to read as follows, and remove paragraph (c)(4):

§ 2.208 Deposit accounts.

* * * * *

(c) * * *

(3) A payment to replenish a deposit account may be addressed to: Director of the United States Patent and Trademark Office, Attn: Deposit Accounts, 2051 Jamieson Avenue, Suite 300, Alexandria, Virginia 22314.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

■ 54. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 55. In § 3.31, add paragraph (a)(8) and revise (f) to read as follows:

§ 3.31 Cover sheet content.

(a) * * *

(8) For trademark assignments, the entity and citizenship of the party receiving the interest. In addition, if the party receiving the interest is a domestic partnership or domestic joint venture, the cover sheet must 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.

* * * * *

(f) Each trademark cover sheet should include the citizenship of the party conveying the interest.

* * * * *

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 56. The authority citation for part 6 continues to read as follows:

Authority: 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 57. Revise § 6.3 to read as follows:

§ 6.3 Schedule for certification marks.

In applications for registration of certification marks based on sections 1 and 44 of the Trademark Act and registrations resulting from such applications, goods and services are classified in two classes as follows:

A. Goods.

B. Services.

■ 58. Revise § 6.4 to read as follows:

§ 6.4 Schedule for collective membership marks.

All collective membership marks in applications based on sections 1 and 44 of the Trademark Act and registrations resulting from such applications are classified as follows:

Class	Title
200	Collective Membership.

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 59. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 60. Revise § 7.11(a)(2) to read as follows:

§ 7.11 Requirements for international application originating from the United States.

(a) * * *

(2) The name and entity of the international applicant that is identical to the name and entity of the applicant or registrant in the basic application or basic registration, and the applicant's current address;

* * * * *

■ 61. Revise § 7.14(e) to read as follows:

§ 7.14 Correcting irregularities in international application.

* * * * *

(e) *Procedure for response.* To be considered timely, a response must be received by the International Bureau before the end of the response period set forth in the International Bureau's notice. Receipt in the Office does not fulfill this requirement. Any response submitted through the Office for forwarding to the International Bureau should be submitted as soon as possible, but at least one month before the end of the response period in the International Bureau's notice. The Office will not process any response received in the Office after the International Bureau's response deadline.

■ 62. Revise § 7.25(a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.22–2.23, 2.130–2.131, 2,160–2.166, 2.168, 2.173, and 2.181–2.186, all sections in parts 2, 10, and 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

■ 63. Revise § 7.39(b) to read as follows:

§ 7.39 Acknowledgment of receipt of affidavit or declaration of use in commerce or excusable nonuse.

* * * * *

(b) A response to a refusal under paragraph (a) of this section must be filed within six months of the date of issuance of the Office action, or before the end of the filing period set forth in section 71(a) of the Act, whichever is later. The Office will cancel the extension of protection if no response is filed within this time period.

■ 64. Revise § 7.40(b) to read as follows:

§ 7.40 Petition to Director to review refusal.

* * * * *

(b) If the examiner maintains the refusal of the affidavit or declaration, the holder may file a petition to the Director to review the examiner's action. The petition must be filed within six months of the date of issuance of the action maintaining the refusal, or the Office will cancel the registration.

* * * * *

Dated: November 10, 2008.

Jon W. Dudas,

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

[FR Doc. E8–27222 Filed 11–14–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0453; FRL–8741–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 2002 Base Year Inventory for the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes a 2002 base year inventory for the Pittsburgh-Beaver Valley, Pennsylvania, ozone nonattainment area (the Pittsburgh Area). The intended effect of this action is to approve a 2002 base year inventory for the Pittsburgh Area. This action is being taken under the Clean Air Act.

DATES: *Effective Date:* This final rule is effective on December 17, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0453. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy 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. Copies of the State submittal are available 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: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

I. Background

On July 11, 2007 (72 FR 37683), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania (the July 11, 2007 NPR). The July 11, 2007 NPR proposed approval of a request submitted by the Pennsylvania Department of Environmental Protection (PADEP) that the Pittsburgh Area be redesignated as attainment for the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standard (NAAQS) that was promulgated on July 18, 1997 (62 FR 38856) (the ''1997 8-hour ozone NAAQS'').[1] The July 11, 2007 NPR proposed approval of a SIP revision comprising a maintenance plan for the Pittsburgh Area that provides for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation and the motor vehicle emission budgets (MVEBs) that were identified in this maintenance plan for purposes of transportation conformity. The July 11, 2007 NPR also proposed approval of a 2002 base year inventory for the Pittsburgh Area as a SIP revision.

The PADEP submitted the formal SIP revisions and the request that the Pittsburgh Area be redesignated to attainment of the 1997 8-hour ozone NAAQS (the ''redesignation request'') on April 26, 2007.

On May 29, 2008, the PADEP submitted a letter to formally withdraw the redesignation request and the maintenance plan SIP revision. On August 1, 2008, PADEP affirmed that the Commonwealth was not withdrawing the 2002 base year emissions inventory SIP revision submitted on April 26, 2007, and submitted an amended SIP revision document which struck-out the maintenance plan elements, leaving only the 2002 base year emissions inventory. The Commonwealth of

[1] On March 27, 2008 (73 FR 16436), EPA revised the level of the primary and secondary 8-hour ozone NAAQS to 0.075 ppm, but the Pittsburgh area has not been designated under this revision to the NAAQS.