

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–1102 to read as follows:

**§ 100.501T05–1102 Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD.**

(a) *Regulated area.* The following location is a regulated area: All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N, longitude 076°23′47.93″ W; thence eastward to latitude 39°01′02.08″ N, longitude 076°22′40.24″ W; thence southeastward to eastern shoreline at latitude 38°59′13.70″ N, longitude 076°19′58.40″ W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′17.08″ N, longitude 076°24′28.36″ W; thence southward to latitude 38°59′38.36″ N, longitude 076°23′59.67″ W; thence eastward to latitude 38°59′26.93″ N, longitude 076°23′25.53″ W; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N, longitude 076°20′10.45″ W, located between Sandy Point and Kent Island, MD. All coordinates reference North American Datum 83 (NAD 1983).

(b) *Definitions.* As used in this section:

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on the COTP's behalf.

*Coast Guard Patrol Commander (PATCOM)* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official Patrol* means a vessel assigned or approved by the

Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means a person or vessel registered with the event sponsor as participating in the Bay Bridge Paddle event or otherwise designated by the event sponsor as having a function tied to the event.

*Spectator* means a person or vessel not registered with the event sponsor as a participant or assigned as an official patrol.

(c) *Special local regulations:* (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area must immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator may enter the regulated area or pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at a safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on

Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 1 p.m. on June 1, 2019, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on June 2, 2019.

Dated: February 11, 2019.

**Joseph B. Loring,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

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**BILLING CODE 9110–04–P**

**DEPARTMENT OF COMMERCE****Patent and Trademark Office****37 CFR Parts 2 and 11**

[Docket No. PTO–T–2018–0021]

RIN 0651–AD30

**Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) proposes to amend the Rules of Practice in Trademark Cases and the rules regarding Representation of Others Before the United States Patent and Trademark Office to require applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the United States (U.S.) or its territories (hereafter foreign applicants, registrants, or parties) to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. (including the District of Columbia and any Commonwealth or territory of the U.S.). A requirement that such foreign applicants, registrants, or parties be represented by a qualified U.S. attorney will instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

**DATES:** Comments must be received by March 18, 2019 to ensure consideration.

**ADDRESSES:** The USPTO prefers that comments be submitted via electronic mail message to [TMFRNotices@uspto.gov](mailto:TMFRNotices@uspto.gov). Written comments also may be submitted by mail to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA 22314, attention Catherine Cain; or by electronic mail message via the Federal eRulemaking Portal at <https://www.regulations.gov>. See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2018-0021).

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the internet because the Office may easily share such comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in portable document format or DOC file format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into portable document format.

The comments will be available for public inspection on the USPTO's website at <https://www.uspto.gov>, on the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, VA 22314. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, [TMPolicy@uspto.gov](mailto:TMPolicy@uspto.gov), (571) 272-8946.

**SUPPLEMENTARY INFORMATION:** The USPTO proposes to revise the rules in parts 2 and 11 of title 37 of the Code of Federal Regulations to require foreign applicants, registrants, or parties to a proceeding to be represented by an attorney, as defined in § 11.1, 37 CFR 11.1, that is, an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory (including the District of Columbia and any Commonwealth or

territory) and who is qualified under § 11.14(a), 37 CFR 11.14(a), to represent others before the Office in trademark matters. A requirement that such foreign applicants, registrants, or parties be represented by a qualified U.S. attorney will (1) instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

### **I. Integrity of the U.S. Trademark Register**

The trademark register must accurately reflect marks that are actually in use in commerce in the U.S. for the goods/services identified in the registrations. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to U.S. commerce by allowing businesses to strengthen and safeguard their brands and related investments.

The public relies on the register to determine whether a chosen mark is available for use or registration. When a person's search of the register discloses a potentially confusingly similar mark, that person may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, initiating proceedings to cancel the registration or oppose the application of the disclosed mark, engaging in civil litigation to resolve a dispute over the mark, or choosing a different mark and changing business plans regarding its mark. In addition, such persons may incur costs and burdens unnecessarily if the disclosed registered mark is not actually in use in U.S. commerce, or is not in use in commerce in connection with all the goods/services identified in the registration. An accurate and reliable trademark register helps avoid such needless costs and burdens.

A valid claim of use made as to a registered mark likewise benefits the registrant. Fraudulent or inaccurate claims of use jeopardize the validity of any resulting registration and may render it vulnerable to cancellation. Furthermore, trademark documents submitted in support of registration require statutorily prescribed averments and must be signed in accordance with § 2.193(e)(1), 37 CFR 2.193(e)(1). If signed by a person determined to be an unauthorized signatory, a resulting registration may be invalid.

Therefore, the USPTO anticipates that implementation of the proposed rule would have the benefit of generally reducing costs to applicants, registrants, and other parties and providing greater value to consumers who rely on registered marks.

As discussed below, in the past few years, the USPTO has seen many instances of unauthorized practice of law (UPL) where foreign parties who are not authorized to represent trademark applicants are improperly representing foreign applicants before the USPTO. As a result, increasing numbers of foreign applicants are likely receiving inaccurate or no information about the legal requirements for trademark registration in the U.S., such as the standards for use of a mark in commerce, who can properly aver to matters and sign for the mark owner, or even who the true owner of a mark is under U.S. law. This practice raises legitimate concerns that affected applications and any resulting registrations are potentially invalid, and thus negatively impacts the integrity of the trademark register.

### **II. Enforce Compliance With U.S. Statutory and Regulatory Requirements**

The proposed requirement for representation by a qualified U.S. attorney is also necessary to enforce compliance by all foreign applicants, registrants, and parties with U.S. statutory and regulatory requirements in trademark matters. It will not only aid the USPTO in its efforts to improve and preserve the integrity of the U.S. trademark register, but will also ensure that foreign applicants, registrants, and parties are assisted only by authorized practitioners who are subject to the USPTO's disciplinary rules.

The requirement for representation by a qualified U.S. attorney is being proposed in response to the increasing problem of foreign trademark applicants who purportedly are pro se (*i.e.*, one who does not retain a lawyer and appears for himself or herself) and who are filing inaccurate and possibly fraudulent submissions that violate the Trademark Act (Act) and/or the USPTO's rules. For example, such foreign applicants file applications claiming use of a mark in commerce, but frequently support the use claim with mocked-up or digitally altered specimens that indicate the mark may not actually be in use. Many appear to be doing so on the advice, or with the assistance, of foreign individuals and entities who are not authorized to represent trademark applicants before the USPTO. This practice undermines the accuracy and integrity of the U.S.

trademark register and its utility as a means for the public to reliably determine whether a chosen mark is available for use or registration, and places a significant burden on the trademark examining operation.

*Current Mechanisms and Sanctions are Inadequate*

(1) Show-Cause Authority: Under 35 U.S.C. 3(b)(2)(A), the Commissioner for Trademarks (Commissioner) possesses the authority to manage and direct all aspects of the activities of the USPTO that affect the administration of trademark operations. The Commissioner may use that authority to investigate and issue an order requiring an applicant to show cause why the applicant’s representative, or the applicant itself, should not be sanctioned under § 11.18(c), 37 CFR 11.18(c), for presenting a paper to the USPTO in violation of § 11.18(b), 37 CFR 11.18(b). However, given the location of foreign applicants and those acting on their behalf, as well as potential language barriers, the show-cause authority has rarely been successful in resolving the underlying issues. Although all those who sign documents in trademark matters before the USPTO do so subject to criminal penalties for knowing and willful false statements made to a government agency under 18 U.S.C. 1001, the criminal perjury prosecution option under 18 U.S.C. 1001 is similarly difficult to enforce against those who are not subject, or are not easily subject, to U.S. jurisdiction. Further, proof to support such sanctions under § 11.18 is often difficult to obtain. For these primary reasons, when a foreign applicant fails to comply with statutory and regulatory requirements in ex parte examination, it has been challenging and, in some cases, impossible for the Commissioner to use her show-cause authority to impose the sanctions available under § 11.18(c).

(2) USPTO Disciplinary Authority Under 35 U.S.C. 32: Requiring foreign applicants, registrants, and parties to retain U.S. counsel in all trademark matters before the USPTO will likely reduce the instances of UPL and misconduct. In addition, when UPL and/or misconduct does occur, requiring foreign applicants, registrants, and parties to retain U.S. counsel will enable the Office of Enrollment and

Discipline (OED) to more effectively pursue those who are engaged in the UPL and/or misconduct. OED’s disciplinary jurisdiction extends to a “Practitioner,” as that term is defined in § 11.1, 37 CFR 11.1, or a non-practitioner who offers legal services to people seeking to register trademarks with the USPTO. For practitioners, OED may investigate and institute formal disciplinary proceedings, which can result in discipline of the practitioner, including: (1) Exclusion from practice before the Office; (2) suspension from practice before the Office; (3) reprimand or censure; or (4) probation.

When formal discipline is issued against a U.S. practitioner, OED may also notify other federal agencies and the U.S. state bar(s) where the practitioner is licensed and/or authorized to practice law, as appropriate. A number of states have criminal statutes penalizing UPL. Depending on the state, the state bar, consumer-protection arm of the state’s attorney office, and/or state consumer-protection agency may investigate UPL and take action to protect the public. Additionally, consumer-protection organizations and law-enforcement agencies can investigate possible civil or criminal fraud at the federal and state level. OED’s ability to refer a discipline matter to a state bar for further action or to a federal or state consumer-protection agency, or law-enforcement agency, thus effectively deters disciplined practitioners from violating the terms of their disciplinary orders.

However, the threat of a claim of UPL has not been equally effective with foreign applicants and the unqualified foreign individuals, attorneys, or firms advising them. Although the USPTO investigates possible UPL by such foreign parties, because these parties are not practitioners authorized to practice before the USPTO, the absence of any realistic threat of disciplinary action has impeded the USPTO’s efforts to deter foreign parties from engaging in UPL or violating a USPTO exclusion order. In addition, while the USPTO can send a letter to a foreign government regarding the USPTO’s exclusion order, foreign government officials have great discretion regarding whether to pursue further sanctions against their own citizens. Further, since foreign parties are representing foreign applicants, there may be few U.S. stakeholders

directly affected by the unauthorized practice of law by the foreign party. There is little incentive for a state or federal law-enforcement or consumer-protection agency to take action against a foreign party engaged in UPL to protect U.S. interests, or to pursue further action with consumer-protection agencies in other countries where the foreign national does business. Moreover, the threat of criminal perjury prosecution in U.S. courtrooms does not have the same deterrent effect for foreign nationals as it does for U.S. nationals and domiciles.

As a practical matter, even if U.S. law enforcement is able to devote resources toward prosecution of a foreign national for a violation of 18 U.S.C. 1001, exerting jurisdiction over such a party is not always possible. Furthermore, many foreign unauthorized parties acting on behalf of foreign applicants and registrants who have been excluded by a Commissioner’s order typically continue to engage in UPL before the USPTO, often increasing the scale of their efforts and employing tactics intended to circumvent the USPTO’s rules.

Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark. Further, because it would result in a more accurate and reliable trademark register, fewer U.S. applicants, registrants, and parties would incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

*Surge in Foreign Filings*

Contributing to concerns regarding UPL, in recent years the USPTO has experienced a significant surge in foreign filings, with the number of applications from foreign applicants increasing as a percentage of total filings, as shown in the following table. The numbers in parentheses indicate the number of applications represented by each percentage:

Filings from foreign or U.S. applicants as a percentage of total filings *	FY15	FY16	FY17
Foreign .....	19% (70,853)	22% (87,706)	26% (115,402)
U.S. ....	81% (301,098)	78% (306,281)	74% (320,885)

\* Data as of 12/10/2018.

The USPTO predicts that the number of foreign filings will continue to rise based on a variety of economic factors, including the strength of the U.S. economy. This growth is coupled with a significant growth in the number of

filings by foreign pro se applicants in FY15 through FY17, especially as compared with filings by U.S. pro se applicants. The information shown below reflects the representation status at the time the USPTO electronic record

was searched to obtain the data. Representation status may change over the course of prosecution. However, system limitations only permit the USPTO to retrieve representation status at the time a search is done.

Filings from foreign or U.S. applicants—Representation Status *	FY15	FY16	FY17
U.S.—Pro Se .....	25.3% (76,140)	27.2% (83,161)	28.5% (91,593)
U.S.—Represented .....	74.7% (224,958)	72.8% (223,120)	71.5% (229,292)
Foreign—Pro Se .....	25.4% (17,967)	35.9% (31,475)	44.0% (50,742)
Foreign—Represented .....	74.6% (52,886)	64.1% (56,231)	56.0% (64,660)

\* Data as of 12/10/2018.

Currently, the USPTO is in the process of addressing numerous instances of UPL by foreign parties who engage in tactics designed to circumvent USPTO rules. When the USPTO has identified UPL by foreign parties in an application, the USPTO has sent information to the applicant’s address of record informing the applicant that its appointed representative has been “excluded” from practice before the USPTO and cannot represent the applicant in the matter. In addition, the USPTO has published the orders excluding foreign unauthorized individuals and entities on its website and suggested that applicants review all application submissions previously submitted on their behalf. However, in many applications, the address information for the applicant is not legitimate (*i.e.*, the address is for the unauthorized individual or entity representing the applicant) or is incomplete or inaccurate, and the USPTO cannot be sure that the affected applicants receive this information. This fact raises concerns that the applications are potentially invalid because they were signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark, which forms the underlying statutory basis for federal registration.

Efforts to educate foreign applicants about UPL or to impose effective sanctions against the foreign unauthorized individuals or entities have proved ineffective. The problem of foreign applicants who violate U.S. legal and regulatory requirements in trademark matters and do so largely on the advice of foreign unauthorized individuals or entities grows each month. Within the last few years, the scale of the problem has become massive, with the estimated number of total tainted applications now in the tens of thousands. It also is becoming increasingly difficult for the USPTO, with its limited resources, to identify

and prove misconduct and UPL, particularly as tactics and technology to mask the misconduct evolve.

**III. Proposed Rule Changes**

(1) *Requirement for Representation.* Under this proposed rule, § 2.11 would be amended to require applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories to be represented by an attorney who is an active member in good standing of the bar of the highest court of any of the 50 states of the U.S., the District of Columbia, and any Commonwealth or territory of the U.S. To ensure clarity regarding who is subject to the requirement, § 2.2 would be amended to define “domicile” and “principal place of business.” The proposed requirement is similar to the requirement that currently exists in many other countries, such as Brazil, Chile, the People’s Republic of China, Israel, Japan, Jordan, Republic of Korea, Morocco, and South Africa, as well as the European Union’s Intellectual Property Office. The majority of countries with a similar requirement condition the requirement on domicile. The USPTO intends to follow this practice. Moreover, requiring a qualified attorney to represent applicants, registrants, and parties whose domicile or principal place of business is not located within the U.S. or its territories is an effective tool for combatting the growing problem of foreign individuals, entities, and applicants failing to comply with U.S. law.

The applicant would be required to obtain U.S. counsel to prosecute the application. When the USPTO receives an application filed by a foreign domiciliary, with a filing basis under section 1 and/or section 44 of the Act, 15 U.S.C. 1051, 1126, that does not comply with the requirements of proposed § 2.11(a), the applicant would be informed in an Office action that appointment of a qualified U.S. attorney is required. The applicant would have

the usual period of six months to respond to an Office action including the requirement, and failure to comply would result in abandonment of the application. *See* 37 CFR 2.63, 2.65(a).

For those applicants the USPTO identifies as being subject to the rule, the USPTO is considering whether to: (1) Defer full examination of the application until the applicant complies with the requirement to appoint U.S. counsel, thereby allowing the appointed attorney to have the opportunity to review the application for compliance with U.S. law during the period to respond to the Office action raising the requirement; or (2) expend additional resources to conduct a complete examination and issue an Office action that includes the requirement along with other applicable refusals and requirements. The USPTO welcomes comments on the two approaches under consideration.

Although applications based on section 66(a) of the Act (Madrid applications), 15 U.S.C. 1141f, would be subject to the requirement to appoint a qualified U.S. attorney, the USPTO is assessing its procedures for a small set of applications (2.9% of all Madrid applications in fiscal year 2017) that are submitted with all formalities and statutory requirements already satisfied, and therefore are in a condition ready for publication upon first action. Madrid applications are initially filed with the International Bureau (IB) of the World Intellectual Property Organization and subsequently transmitted to the USPTO. There is currently no provision for designating a U.S. or any other local attorney in an application submitted to the IB, and the USPTO does not expect that the IB will update its capabilities prior to the anticipated implementation of this proposed rule. Therefore, the USPTO may consider waiving the requirement to appoint a qualified U.S. practitioner prior to publication in this limited situation, until such time as the Madrid system is updated to allow for the designation of a U.S. attorney.

Conforming amendments would also be made to the following sections, which set out the requirements noted: § 2.17(e), for recognition for representation; § 2.22, for filing a TEAS Plus application; and 2.32(a)(4), for a complete application.

(2) *Reciprocal recognition.* Under this proposed rule, § 11.14 would be amended to clarify that only registered and active foreign attorneys or agents who are in good standing before the trademark office of the country in which the attorney or agent resides and practices may be recognized for the limited purpose of representing parties located in such country, provided the trademark office of such country and the USPTO have reached an official understanding to allow substantially reciprocal privileges. The proposed rule would also require that in any trademark matter where an authorized foreign attorney or agent is representing an applicant, registrant, or party to a proceeding, a qualified U.S. attorney must also be appointed pursuant to § 2.17(b), (c) as the representative with whom the Office will communicate and conduct business.

Currently, only Canadian attorneys and agents are reciprocally recognized under § 11.14(c). The proposed rule removes the authorization for reciprocally recognized Canadian patent agents to practice before the USPTO in trademark matters, but continues to allow reciprocal recognition of Canadian trademark attorneys and agents in trademark matters. Those Canadian patent agents already recognized to practice in U.S. trademark matters would continue to be authorized to practice in pending trademark matters on behalf of Canadian parties only (1) so long as the patent agent remains registered and in good standing in Canada and (2) in connection with an application or post-registration maintenance filing pending before the Office on the effective date of the proposed rule, for which the recognized

patent agent is the representative. Recognized Canadian trademark attorneys and agents would continue to be authorized to represent Canadian parties in U.S. trademark matters.

**IV. Cost To Retain U.S. Counsel**

The following tables estimate the costs for complying with the proposed rule, using FY17 filing numbers for pro se applicants and registrants with a domicile or principal place of business outside the U.S. or its territories and for Madrid applicants and registrants. The professional rates shown below are the median charges for legal services in connection with filing and prosecuting an application, or filing a post-registration maintenance document, as reported in the 2017 Report on the Economic Survey, published by the American Intellectual Property Law Association.

As noted above, applicants subject to the proposed rule would be required to retain U.S. counsel to prosecute an application and to handle post-registration maintenance requirements and proceedings before the Trademark Trial and Appeal Board. The tables below reflect two sets of aggregate costs—those for applicants who filed pro se in FY17 and would have retained counsel prior to filing and those who would have retained counsel after filing. As discussed above, the information shown below reflects the representation status at the time the USPTO electronic record was searched to obtain the data. Representation status may change over the course of prosecution. The USPTO does not collect information or statistics on applicants who file pro se but subsequently retain counsel during the prosecution of their application. The USPTO recognizes that there may have been a higher number of pro se applicants at filing than is reflected below, but that those applicants had retained counsel prior to the date the search report was generated. Therefore, although it is possible that a higher

number of pro se applicants may incur the cost of having counsel prepare and file an application, those applicants would have already incurred the additional cost for prosecution of the application.

The following table sets out the estimated costs, based on filing basis, if pro se applicants in FY17 with a domicile or principal place of business outside the U.S. or its territories retained counsel prior to filing their applications. A filing basis is the statutory basis for filing an application for registration of a mark in the U.S. An applicant must specify and meet the requirements of one or more bases in a trademark or service mark application. 37 CFR 2.32(a)(5). There are five filing bases: (1) Use of a mark in commerce under section 1(a) of the Act; (2) bona fide intention to use a mark in commerce under section 1(b) of the Act; (3) a claim of priority, based on an earlier-filed foreign application under section 44(d) of the Act; (4) ownership of a registration of the mark in the applicant’s country of origin under section 44(e) of the Act; and (5) extension of protection of an international registration to the United States, under section 66(a) of the Act. 15 U.S.C. 1051(a)–(b), 1126(d)–(e), 1141f(a). The number of applicants shown within each filing-basis category in the tables below reflects the basis status at the time the USPTO electronic record was searched to obtain the representation status.

Although the USPTO believes that applicants who would be subject to the proposed requirement should retain U.S. counsel prior to filing an application, the USPTO recognizes that not all would do so. Therefore, the USPTO expects that the total estimated costs reflected in the table below would be reduced by the number of applicants within each filing-basis category who chose to file an application without retaining U.S. counsel.

**FY17 PRO SE APPLICATIONS BY BASIS (EXCLUDING MADRID)—COST IF COUNSEL RETAINED BEFORE FILING \***

Activity performed by counsel	Median charge	1(a) ‡ 35,506	1(b) 4,010	1(a)/1(b) 69	44 1,142	44/1(b) 137	Total cost
Filing foreign origin registration application ready for filing.	\$600	N/A	N/A	N/A	\$603,000	N/A	\$603,000
Preparing and filing application	775	\$27,517,150	\$3,107,750	\$53,475	N/A	\$106,175	30,784,550
Prosecution, including amendments and interviews but not appeals.	1,000	35,506,000	4,010,000	69,000	1,142,000	Included in 44 applications.	40,727,000
Statement of use †	400	N/A	1,604,000	27,600	N/A	\$54,800	1,686,400
<b>Total</b>		<b>63,023,150</b>	<b>8,721,750</b>	<b>150,075</b>	<b>1,745,000</b>	<b>\$160,975</b>	<b>73,800,950</b>

\* Data as of 12/10/2018. In addition to the number of applications shown for each filing basis, an additional 62 applications did not indicate a basis on the date of filing and currently have no filing basis, either because the application has abandoned or because the applicant has not yet responded to the requirement to indicate a basis.

† If an application is filed under section 1(b) of the Act, the applicant must file a statement of use prior to registration.

‡ The numbers underneath the filing basis indicate the number of applications filed for that basis.

§ The cost shown is for 1,005 section 44 applications, which is the total number of section 44 applications minus the subset that also includes a section 1(b) filing basis.

Alternatively, the table below sets out the estimated costs, based on filing basis, if pro se applicants in FY17 with a domicile or principal place of business outside the U.S. or its territories retained counsel after filing their

applications. As in the situation described above, the USPTO anticipates that a certain number of these applicants would retain U.S. counsel prior to filing an application. Therefore, the USPTO expects that the total

estimated costs reflected in the table below would be increased by the number of applicants within each filing-basis category who chose to do so.

**FY17 PRO SE APPLICATIONS BY BASIS (EXCLUDING MADRID)—COST IF COUNSEL RETAINED AFTER FILING \***

Activity performed by counsel	Median charge	1(a) 35,506 ‡	1(b) 4,010	1(a)/1(b) 69	44 1,142	44/1(b) § 137	Total cost
Filing foreign origin registration application received ready for filing.	\$600	N/A	N/A	N/A	N/A	N/A	.....
Preparing and filing application .....	775	N/A	N/A	N/A	N/A	N/A	.....
Prosecution, including amendments and interviews but not appeals.	1,000	\$35,506,000	\$4,010,000	\$69,000	\$1,142,000	Included in prior column.	\$40,727,000
Statement of use † .....	400	N/A	1,604,000	27,600	N/A	\$54,800	1,686,400
<b>Total .....</b>	.....	<b>35,506,000</b>	<b>5,614,000</b>	<b>96,600</b>	<b>1,142,000</b>	<b>\$54,800</b>	<b>42,413,400</b>

\* Data as of 12/10/2018. In addition to the number of applications shown for each filing basis, an additional 62 applications did not indicate a basis on the date of filing and currently have no filing basis, either because the application has abandoned or because the applicant has not yet responded to the requirement to indicate a basis.

† If an application is filed under section 1(b) of the Act, the applicant must file a statement of use prior to registration.

‡ The numbers underneath the filing basis indicate the number of applications filed for that basis.

§ This column represents the subset of section 44 applications that also includes a section 1(b) filing basis.

As discussed above, Madrid applications are initially filed with the IB and subsequently transmitted to the USPTO. In FY17, the USPTO received 24,418 Madrid applications in which the applicant had an address outside the U.S. or its territories, and thus would be subject to the proposed requirement.

There is currently no provision for designating a U.S. attorney in an application submitted to the IB. Therefore, the USPTO presumes that none of the Madrid applicants subject to the requirement retained U.S. counsel prior to filing. However, USPTO records indicate that at some point after filing,

14,602 of those FY17 Madrid applicants were represented by counsel. Therefore, only the remaining 9,816 Madrid applicants would be subject to the requirement to retain U.S. counsel to prosecute their applications, as shown in the following table:

**FY17 MADRID APPLICATIONS—COST IF COUNSEL RETAINED AFTER FILING \***

Activity performed by counsel	FY17	Median charge	Total charge
Prosecution, including amendments and interviews but not appeals .....	9,816	\$1,000	\$9,816,000
<b>Total .....</b>	.....	.....	<b>\$9,816,000</b>

\* Data as of 12/10/2018.

The following table sets out the estimated costs to FY17 pro se registrants who would be subject to

proposed § 2.11(a) when filing a post-registration maintenance document.

**FY17 PRO SE POST-REGISTRATION FILINGS—COST IF COUNSEL RETAINED BEFORE FILING \***

Activity performed by counsel	FY17	Median charge	Total charge
Section 8 and 15 † .....	976	\$500	\$488,000
Renewal ‡ .....	405	500	202,500
Section 71 § .....	522	500	261,000
Madrid Renewal √ .....	134	500	67,000
<b>Total .....</b>	.....	.....	<b>1,018,500</b>

\* Data as of 12/10/2018.

† Under section 8 of the Act, 15 U.S.C. 1058, an affidavit or declaration of continued use is required during the sixth year after the date of registration for registrations issued under section 1 or section 44 of the Act. Section 15 of the Act, 15 U.S.C. 1065, provides a procedure by which the exclusive right to use a registered mark in commerce on or in connection with the goods or services covered by the registration can become "incontestable," if the owner of the registration files an affidavit or declaration stating, among other criteria, that the mark has been in continuous use in commerce for a period of five years after the date of registration.

‡ Section 9 of the Act, 15 U.S.C. 1059, requires that registrations resulting from applications based on section 1 or section 44 be renewed at the end of each successive 10-year period following the date of registration.

§ Under section 71 of the Act, 15 U.S.C. 1141k, an affidavit or declaration of use is required during the sixth year after the date of registration for registered extensions of protection of international registrations to the U.S.

√ The term of an international registration is ten years, and it may be renewed for ten years upon payment of the renewal fee. Articles 6(1) and 7(1) of the Common Regulations Under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to That Agreement.

For applicants, registrants, and parties not subject to the proposed requirement, the USPTO anticipates that implementation of the proposed rule would result in a more accurate and reliable trademark register, which would have the benefit of generally reducing costs to applicants, registrants, and parties and providing greater value to consumers who rely on registered marks. Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark. Because it would result in a more accurate and reliable trademark register, fewer U.S. applicants, registrants, and parties would incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

#### *Discussion of Proposed Regulatory Changes*

The USPTO proposes to amend § 2.2 to add § 2.2(o), defining “domicile” and § 2.2(p), defining “principal place of business.”

The USPTO proposes to amend § 2.11 to change the title to “Requirement for representation,” to delete the first sentence, to include the remaining sentence in new § 2.11(a) and to add § 2.11(b)–(e), which set out the requirements regarding representation of applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories.

The USPTO proposes to amend § 2.17(e) to change the word “Canadian” in the title to “Foreign,” to state that recognition of foreign attorneys and agents is governed by § 11.14(c) of this chapter, and to delete current § 2.17(e)(1) and (2).

The USPTO proposes to amend § 2.22 to add § 2.22(a)(21), which would require representation by a U.S. attorney for applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories.

The USPTO proposes to amend § 2.32(a)(4) to indicate that when the applicant is, or must be, represented by a practitioner, the practitioner’s name, postal address, email address, and bar information are required.

The USPTO proposes to redesignate current § 11.14(c) as § 11.14(c)(1) and to clarify the requirements for reciprocal recognition in revised paragraph (c)(1). The USPTO also proposes to add § 11.14(c)(2) to require that in any trademark matter where an authorized foreign attorney or agent is representing an applicant, registrant, or party to a proceeding, a qualified U.S. attorney must also be appointed pursuant to § 2.17(b), (c) as the representative with whom the Office will communicate and conduct business and to amend § 11.14(e) to add the prefatory phrase “Except as specified in § 2.11(a) of this chapter” and the wording “or on behalf of” to the second sentence and to delete the third sentence. The USPTO also proposes to delete the wording “if such firm, partnership, corporation, or association is a party to a trademark proceeding pending before the Office” from § 11.14(e)(3).

#### **Rulemaking Requirements**

*A. Administrative Procedure Act:* The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the Office has

chosen to seek public comment before implementing the rule to benefit from the public’s input.

*B. Initial Regulatory Flexibility Analysis:* Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. The USPTO publishes this IRFA to examine the impact on small entities of the Office’s proposed requirement that foreign applicants, registrants, or parties to a proceeding be represented by a qualified U.S. attorney in trademark matters and to seek the public’s views.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 5 below discusses alternatives to this proposal that the Office considered.

#### *1. Description of the reasons that action by the USPTO is being considered:*

The USPTO proposes to require applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. and who is qualified to represent others before the Office in trademark matters.

The requirement for representation by a qualified U.S. attorney is being proposed in response to the increasing problem of foreign trademark applicants who purportedly are pro se and who are filing what appear to be inaccurate and even fraudulent submissions that violate the Act and/or the USPTO’s rules. In the past few years, the USPTO has seen many instances of UPL where foreign parties who are not authorized to represent trademark applicants are improperly representing foreign applicants before the USPTO. As a result, increasing numbers of foreign applicants are likely receiving inaccurate or no information about the legal requirements for trademark registration in the U.S., such as the standards for use of a mark in commerce, who can properly aver to matters and sign for the mark owner, or even who the true owner of a mark is under U.S. law. This practice raises legitimate concerns that affected



applications and any resulting registrations are potentially invalid, particularly as to averments of use of the mark in U.S. commerce or intention to use the mark, and thus negatively impacts the integrity of the national trademark register.

The proposed requirement is also necessary to enforce compliance by all foreign applicants, registrants, and parties with U.S. statutory and regulatory requirements in trademark matters. Thus, it will not only aid the USPTO in its efforts to improve and preserve the integrity of the U.S. trademark register, but will also ensure that foreign applicants, registrants, and parties are assisted only by authorized practitioners who are subject to the USPTO's disciplinary rules.

*2. Succinct statement of the objectives of, and legal basis for, the proposed rule:*

The policy objectives of the proposed rule are to: (1) Instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters. As to the legal basis for the proposed rule, Section 41 of the Act, 15 U.S.C. 1123, as well as 35 U.S.C. 2, provide the authority for the Director to make rules and regulations for the conduct of proceedings in the Office.

*3. Description of and, where feasible, estimate of the number of affected small entities:*

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule. The proposed rule would apply to any entity filing with USPTO whose domicile or principal place of business is not located within the U.S. or its territories. The USPTO believes that although such entities would incur the costs associated with retaining counsel to prosecute applications and handle maintenance filings for registrations, the overall impact of the proposed rule on such entities would be positive, because it would (1) instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance

with statutory and regulatory requirements in trademark matters.

Further, the USPTO anticipates that implementation of the proposed rule would result in a more accurate and reliable trademark register, which would have the benefit of generally reducing costs to applicants, registrants, and parties. Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to an averment of use of the mark in U.S. commerce or intention to use the mark. Therefore, fewer U.S. applicants, registrants, and parties should incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

*4. Description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:*

The proposed rule imposes no new reporting or recordkeeping requirements.

To comply with the proposed rule, foreign applicants, registrants, or parties would be required to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. (including the District of Columbia and any Commonwealth or territory of the U.S.). The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity applicants, registrants, or parties, but does not anticipate that the proposed rule would have a disproportionate impact upon any particular class of small or large entities.

*5. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities:*

The USPTO considered three alternatives before recommending that foreign applicants, registrants, or parties be represented by a qualified U.S. attorney. The USPTO chose the alternative proposed herein because it will enable the Office to achieve its goals effectively and efficiently. Those goals are to (1) instill greater confidence

in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

Due to the difficulty in quantifying the intangible benefits associated with the preferred alternative, the Office provides below a discussion of the qualitative benefits to trademark applicants and registrants. One of the primary benefits of the preferred alternative is ensuring the accuracy of the trademark register. The accuracy of the trademark register as a reflection of marks that are actually in use in commerce in the U.S. for the goods/services identified in the registrations listed therein serves a critical purpose for the public and for all registrants. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to American businesses, by allowing them to strengthen and safeguard their brands and related investments. Such benefits would be especially valuable for small entities for the following reasons. The public relies on the register to determine whether a chosen mark is available for use or registration. When a person's search of the register discloses a potentially confusingly similar mark, that person may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, initiating proceedings to cancel the registration or oppose the application of the disclosed mark, engaging in civil litigation to resolve a dispute over the mark, or changing business plans to avoid use of the party's chosen mark. In addition, such persons may incur costs and burdens unnecessarily if a registered mark is not actually in use in commerce in the U.S., or is not in use in commerce in connection with all the goods/services identified in the registration. An accurate and reliable trademark register helps avoid such needless costs and burdens. A valid claim of use made as to a registered mark likewise benefits the registrant. Fraudulent or inaccurate claims of use jeopardize the validity of any resulting registration and may subject it to attack and render it vulnerable to cancellation.

The chosen alternative also addresses the increasing problem of foreign trademark applicants who purportedly are pro se and who are filing what appear to be inaccurate and possibly even fraudulent submissions that violate



the Act and/or the USPTO's rules. Requiring foreign applicants, registrants, and parties to retain U.S. counsel in all trademark matters before the USPTO will likely reduce the instances of UPL and misconduct and, when misconduct does occur, it will enable OED to more effectively pursue those who are engaged in the UPL and/or misconduct. The threat of a claim of UPL has not been effective with foreign applicants and the unqualified foreign individuals, attorneys, or firms advising them.

The USPTO has estimated the costs for complying with the proposed rule using FY17 filing numbers for pro se applicants and registrants with a domicile or principal place of business outside the U.S. or its territories, and for Madrid applicants and registrants. As discussed in the preamble, the cost estimates reflect the representation status at the time the USPTO electronic record was searched to obtain the data.

Applicants under section 1 or section 44 of the Act who are subject to the proposed rule would be required to retain U.S. counsel to meet the requirements for a complete application under proposed § 2.32(a)(4). If such applicants did not retain counsel prior to filing an application, the USPTO estimates that the cost for representation would be \$42,413,400. The estimated cost if such applicants had retained counsel prior to filing their applications would be \$73,800,950. Madrid applications, which are based on section 66(a) of the Act, are initially filed with the IB and subsequently transmitted to the USPTO. In FY17, the USPTO received 24,418 Madrid applications in which the applicant had an address outside the U.S. or its territories, and thus would be subject to the proposed requirement. There is currently no provision for designating a U.S. attorney in an application submitted to the IB. Therefore, the USPTO presumes that none of the Madrid applicants subject to the requirement would have retained U.S. counsel prior to filing. However, USPTO records indicate that at some point after filing, 14,602 of those FY17 Madrid applicants were represented by counsel. Therefore, only the remaining 9,816 Madrid applicants would be subject to the requirement to retain U.S. counsel to prosecute their applications. Therefore, the USPTO estimates the cost to all FY17 Madrid applicants to retain counsel after filing their applications as \$9,816,000. The estimated costs to FY17 pro se registrants who registered under section 1, section 44, or section 66(a) and who would be subject to the requirement to retain U.S. counsel when filing a post-registration maintenance document is \$1,018,500.

The costs to comply with the requirement proposed herein would be borne by foreign applicants, registrants, and parties. The proposed requirement would not impact individuals or large or small entities with a domicile or principal place of business within the U.S. Moreover, the proposed requirement would provide qualitative value to all applicants and registrants, as well as to consumers, because it would result in a more accurate and reliable trademark register. Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark. Because it would result in a more accurate and reliable trademark register, fewer applicants, registrants, and parties would incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

The second alternative considered would be to take no action at this time. This alternative was rejected because the Office has determined that the requirement is needed to accomplish the stated objectives of instilling greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and enabling the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

A third alternative considered was to propose a revision to § 2.22 that would require foreign applicants to retain U.S. counsel in order to obtain a filing date for an application under section 1 and/or section 44 of the Act. This alternative was rejected due to international considerations. Thus, when the USPTO receives an application filed by a foreign domiciliary, with a filing basis under section 1 and/or section 44 of the Act that does not comply with the requirements of proposed § 2.11(a), the USPTO must inform the applicant that appointment of a qualified U.S. attorney is required. Although this places an additional burden on the USPTO, it minimizes the impact of the proposed rule on small entities. Although such entities may choose to incur the cost of

retaining counsel to prepare and file an application, they would not be required to do so.

*6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule:*

The proposed rule would not duplicate, overlap, or conflict with any other Federal rules.

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs):* This proposed rule is not subject to the requirements of E.O. 13771 because it is expected to result in no more than *de minimis* costs to citizens and residents of the United States.

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

*G. Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not

required under Executive Order 13175 (Nov. 6, 2000).

*H. Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

*I. Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*J. Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*K. Executive Order 12630 (Taking of Private Property):* This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*L. Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

*M. Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are

necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

*N. National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

*O. National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

*P. Paperwork Reduction Act:* This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers 0651-0009, 0651-0050, 0651-0051, 0651-0054, 0651-0055, 0651-0056, and 0651-0061. We estimate that 41,000 applications will have an additional burden of 5 minutes due to this rulemaking, adding in 3,000 burden hours across all trademark collections.

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 11

Administrative practice and procedure, Lawyers, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office proposes to amend parts 2 and 11 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 and 35 U.S.C. 2 unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Amend § 2.2 by adding paragraphs (o) and (p) to read as follows:

#### § 2.2 Definitions.

\* \* \* \* \*

(o) The term *domicile* as used in this part means the permanent legal place of residence of a natural person.

(p) The term *principal place of business* as used in this part means the location of a juristic entity's headquarters where the entity's senior executives or officers ordinarily direct and control the entity's activities and is usually the center from where other locations are controlled.

■ 3. Revise § 2.11 to read as follows:

#### § 2.11 Requirement for representation.

(a) An applicant, registrant, or party to a proceeding whose domicile or principal place of business is not located within the United States or its territories must be represented by an attorney, as defined in § 11.1 of this chapter, who is qualified to practice under § 11.14 of this chapter. The Office cannot aid in the selection of an attorney.

(b) The Office may require an applicant, registrant, or party to a proceeding to furnish such information or declarations as may be reasonably necessary to the proper determination of whether the applicant, registrant, or party is subject to the requirement in paragraph (a) of this section.

(c) An applicant, registrant, or party to a proceeding may be required to state whether assistance within the scope of § 11.5(b)(2) of this chapter was received in a trademark matter before the Office and, if so, to disclose the name(s) of the person(s) providing such assistance and whether any compensation was given or charged.

(d) Failure to respond to requirements issued pursuant to paragraphs (a) through (c) of this section is governed by § 2.65.

(e) Providing false, fictitious, or fraudulent information in connection with the requirements of paragraphs (a) through (c) of this section shall be deemed submitting a paper for an improper purpose, in violation of § 11.18(b) of this chapter, and subject to the sanctions and actions provided in § 11.18(c).

■ 4. Amend § 2.17 by revising paragraph (e) to read as follows:

#### § 2.17 Recognition for representation.

\* \* \* \* \*

(e) *Foreign attorneys and agents.* Recognition to practice before the Office in trademark matters is governed by § 11.14(c) of this chapter.

\* \* \* \* \*

■ 5. Amend § 2.22 by:

- a. Removing the word “and” at the end of paragraph (a)(19);
- b. Removing the period at the end of paragraph (a)(20) and adding “; and” in its place; and
- c. Adding paragraph (a)(21).  
The addition reads as follows:

**§ 2.22 Requirements for a TEAS Plus application.**

(a) \* \* \*

(21) An applicant whose domicile or principal place of business is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a).

\* \* \* \* \*

- 6. Amend § 2.32 by revising paragraph (a)(4) to read as follows:

**§ 2.32 Requirements for a complete trademark or service mark application.**

(a) \* \* \*

(4) The address of the applicant. When the applicant is, or must be, represented by a practitioner, as defined in § 11.1 of this chapter, who is qualified to practice under § 11.14 of this chapter, the practitioner's name, postal address, email address, and bar information;

\* \* \* \* \*

**PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE**

- 7. The authority citation for 37 CFR part 11 continues to read as follows:

**Authority:** 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41; Sec. 1, Pub. L. 113–227, 128 Stat. 2114.

- 8. Amend § 11.14 by revising paragraphs (c) and (e) to read as follows:

**§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.**

\* \* \* \* \*

(c) *Foreigners.* (1) Any foreign attorney or agent not a resident of the United States who shall file a written application for reciprocal recognition under paragraph (f) of this section and prove to the satisfaction of the OED Director that he or she is a registered and active member in good standing before the trademark office of the country in which he or she resides and practices and possesses good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: The

trademark office of such country and the USPTO have reached an official understanding to allow substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph (c) shall continue only during the period that the conditions specified in this paragraph (c) obtain.

(2) In any trademark matter where a foreign attorney or agent authorized under paragraph (c)(1) of this section is representing an applicant, registrant, or party to a proceeding, an attorney, as defined in § 11.1 and qualified to practice under paragraph (a) of this section, must also be appointed pursuant to § 2.17(b) and (c) of this chapter as the representative with whom the Office will communicate and conduct business.

\* \* \* \* \*

(e) *Appearance.* No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark matters on behalf of a client. Except as specified in § 2.11(a) of this chapter, an individual may appear in a trademark or other non-patent matter in his or her own behalf or on behalf of:

- (1) A firm of which he or she is a member;
- (2) A partnership of which he or she is a partner; or
- (3) A corporation or association of which he or she is an officer and which he or she is authorized to represent.

\* \* \* \* \*

Dated: February 6, 2019.

**Andrei Iancu,**

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

[FR Doc. 2019–02154 Filed 2–14–19; 8:45 am]

**BILLING CODE 3510–16–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R04–OAR–2018–0542; FRL–9989–59–Region 4]**

**Air Plan Approval; Florida; 2008 8-Hour Ozone Interstate Transport**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve Florida's October 3, 2017, State Implementation Plan (SIP) submission pertaining to the “good neighbor”

provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance of a NAAQS in any other state. In this action, EPA is proposing to determine that Florida's SIP contains adequate provisions to prohibit emissions within the state from contributing significantly to nonattainment or interfering with maintenance of the 2008 8-hour ozone NAAQS in any other state.

**DATES:** Comments must be received on or before March 18, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0542 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can also be reached via telephone at (404) 562–9140 and via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 12, 2008, EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per