are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed definition would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

**Paperwork Reduction Act of 1995**

The proposed definition does not contain any information collection requirements.

**Intergovernmental Review:** This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT,** individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register.** You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Ian Rosenblum,**

**Deputy Assistant Secretary for Policy and Programs Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office of Elementary and Secondary Education.**

**BILLING CODE 4000–01–P**

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 1**

[Docket No.: PTO–P–2021–0007]

**RIN 0651–AD54**

**Electronic Patent Issuance**

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

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is proposing to implement electronic patent issuance. Under the proposed change, the USPTO would issue patents electronically through its patent document viewing systems (i.e., Patent Center and Patent Application Image Retrieval (PAIR)). Patents would no longer be issued on paper, and as a result, they would no longer be mailed to the corresponding address of record as part of the patent issuance process. The elimination of these steps would allow issued patents to be available weeks sooner in electronic form, and the patentee would be able to view and print the complete issued patent via the USPTO’s patent document viewing systems immediately upon issue. Patentees would continue to have the option of ordering an unlimited number of paper presentation copies and certified copies of patents.

**DATES:** Comments must be received by February 14, 2022 to ensure consideration.

**ADDRESSES:** For reasons of Government efficiency, comments must be submitted through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). To submit comments via the portal, enter docket number PTO–P–2021–0007 on the homepage and click “Search.” The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click on the “Comment Now!” icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal ([www.regulations.gov](http://www.regulations.gov)) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Mark Polutta, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–272–7709. For technical questions, contact the Patent Electronic Business Center (EBC) at 1–866–217–9197 (toll-free), 571–272–4100 (local), or ebc@uspto.gov. The EBC is open from 6 a.m. to midnight ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The USPTO is proposing to issue and publish patent grants electronically via the USPTO’s document viewing systems. By doing so, the USPTO is continuing with its efforts to move to fully electronic processing of its patent applications. The electronic patent issuance process would enable the USPTO to issue patents approximately two weeks faster than the current process.

One of the specific powers granted to the USPTO by 35 U.S.C. 2(b)(1) is to “adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent . . . issued by the Office shall be authenticated.” Currently, the USPTO issues “letters patent” (hereafter, patents) as paper patents under the seal of the USPTO, by virtue of being bound with a cover sheet that has both an embossed seal and the signature of the USPTO Director. As proposed, the USPTO would instead issue patents electronically under a new digital USPTO seal and with a digital signature from the USPTO Director, and the patents would be made available via the USPTO’s patent document viewing systems upon patent issuance. In the USPTO’s patent document viewing systems, a patentee would be able to view and print the patent in its entirety, including the cover sheet, front page, drawings, specification, and claims.
In order to implement electronic patent issuance, the USPTO is proposing to remove and reserve 37 CFR 1.315, which states that “[t]he patent will be delivered or mailed upon issuance to the correspondence address of record.” Under the proposed changes, because patents would be issued electronically rather than on paper, the USPTO would no longer physically deliver the patent by mailing it to the correspondence address. Instead, the USPTO would issue the patent electronically via the USPTO’s patent document viewing systems.

**Background**


Further, the USPTO uses its patent document viewing systems to provide electronic access to the patent application file. These systems have a private side and a public side. The public side provides any member of the public with access to a display of the information contained in applications that have been patented, published, or otherwise made available pursuant to 37 CFR 1.14. The public side of the patent document viewing systems does not provide public access to information concerning applications that are maintained in confidence under 35 U.S.C. 122(a). The private side of these systems may be used by an applicant to access a display of the information contained in their pending application, regardless of whether it is being maintained in confidence under 35 U.S.C. 122(a) or has been published under 35 U.S.C. 122(b). To access the private side of the USPTO’s patent document viewing systems, a customer number must be associated with the correspondence address for the application, and the user of the system must have a verified USPTO.gov account with two-step authentication. For further information, contact the Customer Support Center of the EBC via the methods described above.

In an effort to continue streamlining its service delivery processes, the USPTO is now proposing to implement electronic patent issuance and to store the granted patent in the USPTO’s patent document viewing systems.

**I. Current Paper Patent Issuance Process:** Under the current patent issuance process, electronic capture of the information in a patent to be issued and printed (the Initial Data Capture) begins shortly after the notice of allowance has been mailed. Most of the information for printing a patent is electronically captured during the Initial Data Capture. The Initial Data Capture is completed, and if the issue fee has been paid and all other requirements are timely met (e.g., corrected drawings have been timely filed), the Final Data Capture process begins. After the Final Data Capture and final issue preparation are completed, the patent number and issue date are assigned. An Issue Notification is mailed generally three weeks prior to the issue date to inform the applicant of the patent number and issue date. On that date, the USPTO also publishes in the Official Gazette the patent number, title of the patent, names and residences of the inventors, the applicant, the assignee (if applicable), the filing and priority dates, the text of the first claim of the patent, the total number of claims in the patent, and the representative figures (if applicable). Once a paper patent is issued, a copy of the patent (without its cover sheet) is available for viewing and printing by the public on the USPTO’s website at www.uspto.gov/patents/search, via the Patent Full-Text and Full-Page Image Databases.

**II. Proposed Electronic Patent Issuance Process:** Electronic patent publication would result in electronic patent issuance under the USPTO seal and with the Director’s signature within one week, instead of three weeks, after the patent number or issue date are assigned. Thus, by discontinuing the printing, assembling, and mailing of a paper patent upon issuance, the USPTO would be able to reduce the pendency of every issued patent application by approximately two weeks. Applicants and the public would benefit from the time saved. In addition, patentees would be able to view and print their electronically issued patents (including their cover sheets) through the USPTO’s patent document viewing systems, rather than waiting for their paper patent to arrive by mail. The USPTO proposes to make electronic patent grants available on both the public and private sides of the USPTO’s patent document viewing systems such that the public would also be able to view the official electronic patent grant (including its cover sheet). Additionally, the USPTO is considering electronically issuing reexamination certificates, statutory invention registrations, patent term extension certificates, and certificates of correction rather than mailing them.

Patentees may exercise the legal rights granted by the patent without physical possession of it because the patent right exists independently of the physical possession of the patent. See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan, 69 FR 56481, 56521 (Sept. 21, 2004); 1287 Off. Gaz. Pat. Office 67, 98 (Oct. 12, 2004). Furthermore, under the proposed rule change, patentees who want a copy of the electronically issued patent would be able to access it themselves through the USPTO’s patent document viewing systems and print it at no charge.

Under the proposed electronic patent issuance process, the USPTO would issue the patent shortly after the payment of the issue fee. As a result, applicants would have less time, after the payment of the issue fee, to file continuing applications, Quick Path Information Disclosure Statements, or petitions under 37 CFR 1.313(c) to withdraw an application from issue. Therefore, the best practice would be for applicants to file these submissions as early as possible. Preferably, continuing applications should be filed before the payment of the issue fee. See Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee, 1221 Off. Gaz. Pat. Office 14 (Apr. 6, 1999).

Under the proposed electronic patent issuance process, patents would be issued about one week after the patent number is assigned. Issue Notifications would be available electronically via the USPTO’s patent document viewing systems approximately three to four weeks after the payment of the issue fee, usually on the Thursday before the
IV. Cover Sheet of Proposed Electronic Patent Grant: The patent cover sheet in the USPTO’s patent document viewing systems, as proposed, would likely be nearly identical in appearance to the cover sheets currently used for paper patents, except that the seal and Director’s signature would be in digital form. Importantly, the digital seal and electronic signature of the Director on the proposed electronic patent grant cover sheet would be in conformance with 35 U.S.C. 153, which requires that patents be issued “under the seal of the Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon and shall be recorded in the Patent and Trademark Office.” The new seal would not simply be an electronic image, but rather an official USPTO seal in digital form that serves to authenticate the patent, in conformance with 35 U.S.C. 2(b)(1).

Request for Public Comments

The USPTO invites interested persons and entities to participate in this rulemaking by submitting written comments, data, or views on the proposed regulations addressing the electronic issuance of patent grants, via the methods described earlier in this document.

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 that the 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), do 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))).

Importantly, the digital seal and electronic signature of the Director on the proposed electronic patent grant cover sheet would be in conformance with 35 U.S.C. 153, which requires that patents be issued “under the seal of the Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon and shall be recorded in the Patent and Trademark Office.” The new seal would not simply be an electronic image, but rather an official USPTO seal in digital form that serves to authenticate the patent, in conformance with 35 U.S.C. 2(b)(1).
The USPTO has determined that this proposed rule is not a "major rule" as defined in 5 U.S.C. 804(2). Therefore, a Statement of Energy Effects of 1969 is excluded from review under the Paperwork Reduction Act of 1995.

The proposed changes set forth in this rulemaking do not involve an information collection for the purpose of making a determination concerning whether the rulemaking is a significant regulatory action as defined in Executive Order 12866.

The proposed changes set forth in this rulemaking do not contain provisions relating to intergovernmental mandates as defined in Executive Order 13132.

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The proposed changes set forth in this rulemaking will not:

- Have significant adverse effects on the small business community.
- Impose on small businesses costs or other forms of burden in excess of the cost depicted in section 6(a)(3) and 6(a)(4) of the Regulatory Flexibility Act of 1980.
- Have a significant adverse effect on the proposed rulemaking is not likely to contain policies with federalism implications sufficient to warrant the preparation of a Federalism Assessment under Executive Order 13132.

For the reasons stated in the preamble, the Office proposes to amend 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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


§1.315 [Removed and Reserved]

2. Section 1.315 is removed and reserved.

Andrew Hirshfeld,
Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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