

limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09-135 is added to read as follows:

#### § 165.T09-135 Safety Zone; Pentwater Homecoming Fireworks, Pentwater, Michigan.

(a) *Location.* The following area is a Safety Zone: All waters of Lake Michigan within a 1000-foot radius of the fireworks launching site located on the north break wall in position 43°46.56" N/086°26.38" W (DATUM: NAD 83).

(b) *Effective Period.* This safety zone is effective from 9 p.m. until 11 p.m. on August 12, 2006.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his designated on-scene representative.

(2) The "designated on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan, to act on his behalf. The designated on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone shall contact the Captain of the Port or his

designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone must comply with all directions given to them by the Captain of the Port or his designated on-scene representative.

(4) The Captain of the Port may be contacted by telephone via the Sector Lake Michigan Operations Center at (414) 747-7182 during working hours. Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF-FM channels 16.

Dated: July 26, 2006.

**B.C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.*

[FR Doc. E6-12658 Filed 8-3-06; 8:45 am]

**BILLING CODE 4910-15-P**

### DEPARTMENT OF COMMERCE

#### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No.: PTO-P-2006-0007]

**RIN 0651-AC02**

#### Clarification of Filing Date Requirements for *Ex Parte* and *Inter Partes* Reexamination Proceedings

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is, in this final rule making, revising the rules of practice relating to the filing date requirements for *ex parte* and *inter partes* reexamination proceedings for consistency with the provisions of the patent statute governing *ex parte* and *inter partes* reexamination proceedings, and to permit the Office to have the full statutory three months to address a request for reexamination that is complete. The Office is specifically revising the rules to require that a request for *ex parte* reexamination or for *inter partes* reexamination must meet all the applicable statutory and regulatory requirements before a filing date is accorded to the request for *ex parte* reexamination or for *inter partes* reexamination.

**DATES:** *Effective Date:* August 4, 2006.

*Applicability Date:* The changes in this final rule apply to any request for reexamination (*ex parte* or *inter partes*) filed on or after March 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** By telephone—Kenneth M. Schor, at (571) 272-7710; by mail addressed to U.S.

Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Kenneth M. Schor; by facsimile transmission to (571) 273-7710 marked to the attention of Kenneth M. Schor; or by electronic mail message over the Internet addressed to [kenneth.schor@uspto.gov](mailto:kenneth.schor@uspto.gov).

**SUPPLEMENTARY INFORMATION:** The United States Patent and Trademark Office (Office) is revising the rules of practice in title 37 of the Code of Federal Regulations (CFR) to require that a request for *ex parte* reexamination or for *inter partes* reexamination must meet all the applicable statutory requirements in 35 U.S.C. 302 or 311 (respectively) and the regulatory requirements in § 1.510 or § 1.915 (respectively) before a filing date is accorded to the request for *ex parte* reexamination or for *inter partes* reexamination. Thus, the Office is amending the rules to clearly require compliance with all the requirements of filing an *ex parte* reexamination request set forth in § 1.510 before a filing date will be assigned to an *ex parte* reexamination request, and to clearly require compliance with all the requirements of filing an *inter partes* reexamination request set forth in § 1.915 before a filing date will be assigned to an *inter partes* reexamination request. The Office published an interim rule revising the rules of practice to implement this revision of the rules. See *Clarification of Filing Date Requirements for Ex Parte and Inter Partes Reexamination Proceedings*, 71 FR 9260 (February 23, 2006), 1304 *Off. Gaz. Pat. Office* 95 (March 21, 2006) (interim rule). This notice adopts the interim revision as a final revision of the rules of practice, while making stylistic and non-substantive changes to the relevant rules, which changes are discussed below.

Section 1.510 sets forth the requirements for the content of a request for *ex parte* reexamination. Section 1.915 sets forth the requirements for the content of a request for *inter partes* reexamination. Former § 1.510(d) stated that the filing date of a request for *ex parte* reexamination is "(1) The date on which the request including the entire fee for requesting reexamination is received in the Patent and Trademark Office; or (2) The date on which the last portion of the fee for requesting reexamination is received." In like manner, former § 1.919(a) stated that "[t]he filing date of a request for *inter partes* reexamination is the date on

which the request satisfies the fee requirement of § 1.915(a).” Given the former rule language, it may have appeared that compliance with the provisions of § 1.510(b) or § 1.915(b) was not required for obtaining a filing date in reexamination. However, 35 U.S.C. 302 (for *ex parte* reexamination) explicitly requires that “[t]he request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.” Likewise, 35 U.S.C. 311(b) (for *inter partes* reexamination) explicitly requires that the request must “include the identity of the real party in interest” and “set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.” Reexamination requesters did not always comply with these statutory requirements when submitting requests for reexamination. Furthermore, the information missing due to a lack of compliance with § 1.510(b) or with § 1.915(b) was often relevant to the decision on whether to grant the request for reexamination. This presented a difficulty for the Office in view of the statutory requirements of 35 U.S.C. 303 (for *ex parte* reexamination) and 35 U.S.C. 312 (for *inter partes* reexamination) that the decision on the request must be issued within three months of the filing date of the request for reexamination, because the process of notifying the requester of the non-compliance and obtaining the missing information may very well extend beyond the three-month statutory deadline, or the information may be provided so close to the deadline that there is not sufficient time to properly evaluate it.

To address this problem, §§ 1.510(c) and (d) were revised via interim rule to clearly require compliance with all the requirements of §§ 1.510(a) and (b) in order to obtain an *ex parte* reexamination filing date (and a decision on the request for reexamination). Likewise, § 1.919(a) was revised to clearly require compliance with all the requirements of § 1.915 in order to obtain an *inter partes* reexamination filing date. This notice adopts the substance of the interim rule as final. It is to be noted that these changes should not have a significant impact on reexamination requesters, because the filing date in a reexamination proceeding does not have the same legal significance as the filing date in other Office patent proceedings (*cf.* 35 U.S.C. 102(b)). The rules now simply clearly recite that the statutory and regulatory requirements for a request for reexamination must be

fulfilled before a filing date will be assigned.

Unless otherwise stated, the present final rule simply adopts, or essentially adopts, the regulatory language of the interim rule. Sections 1.510(c) and 1.915(d) have been revised for parallelism purposes from the text that appears in the interim rule. Anything that is more than sentence structure, grammar, or style is identified in the discussion below.

#### Section-by-Section Discussion

**Section 1.11:** Section 1.11(c) is revised to provide that any request for reexamination “for which all the requirements of § 1.510 or § 1.915 have been satisfied” will be announced in the *Official Gazette*. Previously, § 1.11(c) provided that all requests for reexamination “for which the fee under § 1.20(c) has been paid” would be announced in the *Official Gazette*. This change was inadvertently omitted in the interim rule, but is not one of substance. As per the interim rule and this final rule, where all the requirements of § 1.510 or § 1.915 have not been satisfied, a request filing date is not assigned. Obviously, the Office cannot announce the “date of the request \* \* \* and the examining group to which the reexamination is assigned,” since these do not exist until the requirements of § 1.510 or § 1.915 have been satisfied.

**Section 1.510:** Section 1.510(c) is revised to provide that if a request for *ex parte* reexamination does not: (1) Include the fee for requesting *ex parte* reexamination, and (2) comply with all the requirements of § 1.510(b); then the person identified as requesting reexamination will be notified and will generally be given an opportunity to complete the request within a specified time. If the request is not completed within the time specified, the request will not be granted a filing date and no decision on the request will be made. The request may be placed in the patent file as a citation if it complies with the requirements of § 1.501. Deleted from former § 1.510(c) (as it existed prior to the interim rule) is the sentence: “If the fee for requesting reexamination has been paid but the defect in the request is not corrected within the specified time, the determination whether or not to institute reexamination will be made on the request as it then exists.”

Section 1.510(c) states that the requester will “generally” be given an opportunity to complete the request, because, in some instances, it may not be practical, or even possible, to provide an opportunity for completion of the request. For example, the request might be submitted anonymously (although

such is not proper), or without an address, or with an inoperative address. In such instances, the requester would be notified of the incomplete request by publication in the *Official Gazette*, but an opportunity to complete the request would not be provided.

Section 1.510(d) is revised to provide that the filing date of the request for an *ex parte* reexamination request is the date on which the request satisfies all the requirements of § 1.510. Until that point, the request for reexamination is not complete. In the interim rule, the language employed was “the date on which the request satisfies all the requirements of paragraphs (a) and (b) of this section.” The language now provided is “the date on which the request satisfies all the requirements of this section.” This language is used for consistency with § 1.919 which states, as a result of the interim rule, “[t]he filing date of a request for *inter partes* reexamination is the date on which the request satisfies all the requirements for the request set forth in § 1.915.”

**Section 1.915:** Section 1.915(d) is revised to provide that if a request for *inter partes* reexamination does not (1) include the fee for requesting *inter partes* reexamination, and (2) comply with all the requirements of § 1.915(b), then the person identified as requesting reexamination will be notified and will generally be given an opportunity to complete the request within a specified time. The interim rule inadvertently did not include, in the text of § 1.915(d), that the requester will be notified where the complete fee for requesting *inter partes* reexamination required by paragraph (a) was not provided, though it was included in the interim rule preamble. That omission has been rectified.

If the request is not completed within the time specified, the request will not be granted a filing date and no decision on the request will be made. Section 1.915(d) stated, prior to the change made via the interim rule, that the reexamination proceeding may be vacated under this circumstance. Based on the revision to § 1.919(a) set forth below, however, the *inter partes* request will not be granted a filing date under this circumstance in the first place; thus, there will be no reexamination proceeding to vacate.

Section 1.915(d) is revised to provide that, where the request was not given a filing date, the request will be placed in the patent file as a citation, if it complies with the requirements of § 1.501. This was not present in the interim rule, and conforms § 1.915(d) with § 1.510(c).

Section 1.915(d) states that the requester will “generally” be given an opportunity to complete the request, because, in some instances, it may not be practical, or even possible, to provide an opportunity for completion of the request (see the discussion of § 1.510(c)).

*Section 1.919:* Section 1.919(a) is revised to require that the request for *inter partes* reexamination must satisfy all the requirements for the request set forth in § 1.915, prior to assignment of a filing date. Until that point, the request for *inter partes* reexamination is not complete.

*Response to comments:* The Office received one set of written comments from a patent practitioner in response to the interim rule. The comments, and the Office’s response to the comments, now follow:

The commenter stated, in support of the change made to the rules, that “[t]he Interim Rule is well-merited for the reasons stated in on pages 9260–61 of the notice. The Office deserves a full three months in which to decide whether there is a substantial new question of patentability, and no examiner should be rushed into a decision because the requester failed to comply with the statute or rules.”

The commenter then pointed out one implementation concern, as follows:

“The rule should be easy to apply, with one potential exception—the statement of the pertinency and manner of applied cited prior art for every claim that is requested. See 35 U.S.C. 302, 311(b)(2); 37 CFR 1.510(b)(1)–(2), 1.915(b)(3). A request may initially appear (on intake) to contain this statement, but closer review (by the examiner) may reveal that the statement is not actually there. Under the Interim Rule, the filing date “is the date on which the request satisfies all the requirements for the request set forth in [the rule]”. Thus, one might read the rule as saying that if a filing date is assigned, the Office has decided that the required statement is present, and an examiner may not revisit the issue. \* \* \* In these situations, the examiner should be able to independently decide that the request fails to comply with the statute and rules. I therefore suggest that the rule be interpreted to allow the examiner to do this.”

This comment is adopted to the extent that the examiner is permitted, by Office procedure, to independently assert to a deciding official of the Office that the request fails to comply with the statute and/or rules, even after a reexamination filing date is assigned to a request. The deciding Official will then evaluate the examiner’s assertion, and will decide whether the filing date that was assigned should be vacated. This point has been addressed in the internal procedure established by the Office to

implement the revision of the rules made via this rule. Such procedure will be described below in this final rule, and will be incorporated into the *Manual of Patent Examining Procedure* in its next revision.

The commenter further pointed out that the interim rule “describes the Interim Rule as mandating compliance with ‘the statutory requirements’ before the Office will assign a filing date. But the specific language of the interim rule [preamble] mandates compliance with rules—37 CFR 1.510(b) and 1.915(b)—and does not mention the statute. Those rules include non-statutory requirements, e.g., an *inter partes* requester’s certificate of service on the patent owner, and an *inter partes* requester’s certificate of non-estoppel. See 37 CFR 1.915(b)(6)–(7). While these rules are sensible and easy to meet, it would be more accurate to describe the Interim Rule as mandating compliance with ‘statutory and regulatory requirements’ before the Office will assign a filing date.”

This comment is adopted, and the language is revised as set out in the preamble of this final rule.

*Office Procedure to Implement the Revision of the Rules Made via this Final Rule:* A request for reexamination is no longer assigned a filing date, upon receipt of the request in the Central Reexamination Unit (CRU). Rather, the CRU Legal Instrument Examiners (LIE) and Paralegals will check each request for compliance with the reexamination filing date requirements, prior to the assigning of a filing date. In order to obtain a reexamination filing date, the request papers must include all of the following:

(1) The complete reexamination fee. For *ex parte* reexamination, this is currently set at \$2,520.00 in § 1.20(c)(1). For *inter partes* reexamination, this is currently set at \$8,800.00 in § 1.20(c)(2).

(2) A statement pointing out *each* substantial new question of patentability based on the cited patents and publications (i.e., the cited prior art or double patenting art).

(3) An identification of *every* claim for which reexamination is requested.

(4) A detailed explanation of how *all* of the cited documents are applied to the claims for which reexamination is requested. For each identified substantial new question of patentability (SNQ), the request must explain how *all* of the cited documents identified for that SNQ are applied to meet/teach the claim limitations to thus establish the identified SNQ.

(5) A legible copy of *every* patent or printed publication relied upon or referred to in the request. (To conform

to current practice, this provision is not being enforced to require copies of U.S. patents and U.S. patent publications; the provision is deemed waived to that extent.) It is to be noted that the required “copy of every patent or printed publication” is construed by the Office to be a legible copy, since a non-legible copy cannot be used. Any copy of a patent or printed publication received by the Office that is illegible will not be accepted, and will be deemed to have not been received by the Office.

(6) Some translation (at least of the relevant portion(s)) of any non-English language patent or printed publication.

(7) A legible copy of the entire patent to be reexamined. The copy must include the front face, drawings, and specification/claims (in double column format) of the printed patent, and each page must be plainly written on only one side of a sheet of paper.

(8) A legible copy of any disclaimer, certificate of correction, or reexamination certificate issued for the patent, each page plainly written on only one side of a sheet of paper.

(9) If the request is not filed by the patent owner—A certificate of service on the patent owner at the address as provided for in § 1.33(c). The name and address of the party served must be given in the certificate of service. If service was not possible, a duplicate copy of the request papers must be supplied to the Office together with a factual explanation of what efforts were made to effect service, and why they were not successful.

(10) If the request is filed by an attorney/agent and identifies another party on whose behalf the request is being filed, then a power of attorney must be attached, or the attorney/agent must be acting in a representative capacity pursuant to § 1.34.

For *inter partes* reexamination, the request papers must also include—

(11) A certification by the requester that the estoppel provisions of § 1.907 do not prohibit the *inter partes* reexamination being requested.

(12) A statement identifying the real party in interest for whom (on whose behalf) the request is being filed.

If it is determined that the request fails to meet one or more of the filing date requirements, the person identified as requesting reexamination will be so notified and will be given an opportunity to complete the requirements of the request within a specified time (generally thirty days). The new Office form used to provide the notification is a “Notice of Failure to Comply with \* \* \* Reexamination Request Filing Requirements.”

If after receiving a "Notice of Failure to Comply with \* \* \* Reexamination Request Filing Requirements," the requester does not remedy the defects in the request papers that are pointed out, then the request papers will not be given a filing date, and a control number will not be assigned. The simplest case of a failure to remedy the defect(s) in the Notice is where the requester does not timely respond to the Notice. The other case is where requester does timely respond, but the response does not cure the defect(s) identified to requester and/or the response introduces a new filing date defect or deficiency. If the requester timely responds to the Notice, then the CRU LIE and Paralegal will check the request, as supplemented by the response, for correction of all non-compliant items identified in the Notice. If any identified non-compliant item has not been corrected, then a filing date (and a control number) will not be assigned to the request papers. It is to be noted that a single failure to comply with the "Notice of Failure to Comply with \* \* \* Reexamination Request Filing Requirements" will ordinarily result in the reexamination request not being granted a filing date. Absent extraordinary circumstances (or some minor non-compliant item that can be rectified by a phone call which can be made at the Office's sole discretion), requester will be given only one opportunity to correct the non-compliance, i.e., only one opportunity for compliance with the Notice. Similarly, if the response introduces a new filing date defect or deficiency into the request papers, then the reexamination request will not be granted a filing date absent extraordinary circumstances. If the request papers are not timely made filing-date-compliant in response to the Office's Notice of Failure to Comply with \* \* \* Reexamination Request Filing Requirements, then the LIE will prepare a "Notice of Disposition of \* \* \* Reexamination Request." This notice will point out the disposition of the request papers (whether they are treated as a § 1.501 submission or discarded) and why.

After a filing date is assigned to the reexamination control number, the patent examiner reviews the request to decide whether to order the granting or denial of reexamination. If, in the process of reviewing the request, the examiner notes a non-compliant item not earlier recognized, then the examiner will then inform an appropriate deciding official of the Office. Upon confirmation of the existence of any such non-compliant

item(s), a decision vacating the assigned reexamination filing date will be issued. In the decision, the requester will be notified of the non-compliant item(s) and given time to correct the non-compliance. Only *one* opportunity will be given to comply with the notice to the requester included in the decision vacating the filing date, unless: (1) Extraordinary circumstances exist, or (2) there are only a few minor non-compliant items that can be rectified by a phone call, in which case such a phone call may be made; however, that is at the Office's sole discretion.

The requester must completely respond to the notice provided in the Office's decision vacating the filing date by rectifying all identified defects in the request papers without adding any new defect. If the third party requester does not timely and completely respond to the Office's decision vacating the filing date, the Office will issue a decision pointing out the disposition of the request papers (whether treated as a § 1.501 submission or discarded) and why. If the third party requester does timely and completely respond to the Office's decision vacating the filing date, a new filing date will be assigned to the proceeding, as of the date the requester's response was received.

#### Rule Making Considerations

##### *Administrative Procedure Act*

The changes in this final rule merely revise the rules of practice (§§ 1.510 and 1.915) to require that a request for *ex parte* reexamination or for *inter partes* reexamination meets the requirements in 35 U.S.C. 302 and 311 and regulations for a request for *ex parte* reexamination or for *inter partes* reexamination, before a filing date is accorded to the request for *ex parte* reexamination or for *inter partes* reexamination. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). See *Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are "rules of agency organization, procedure, or practice" and are exempt from the Administrative Procedure Act's notice and comment requirement); see also *Merck & Co., Inc. v. Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment

requirements of the Administrative Procedure Act apply), and *Fressola v. Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) ("it is extremely doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretive rules, general statements of policy, \* \* \* procedure, or practice.'") (quoting Casper W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law).

##### *Regulatory Flexibility Act*

As discussed previously, the changes in this final rule involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this final rule, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required for the changes in this final rule. See 5 U.S.C. 603.

##### *Executive Order 13132*

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

##### *Executive Order 12866*

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

##### *Paperwork Reduction Act*

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection of information involved in this final rule has been reviewed and previously approved by OMB under OMB control number 0651–0033. The United States Patent and Trademark Office is not resubmitting any information collection to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collection under OMB control number 0651–0033. The principal impacts of the changes in this final rule are to clarify the requirement for compliance with all the

requirements of filing a reexamination before a filing date will be assigned to a reexamination. Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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 in 37 CFR Part 1

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

■ For the reasons set forth in the preamble, the interim rule amending 37 CFR part 1 which was published at 71 FR 9260-62 on February 23, 2006, is adopted as final with the following changes:

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

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

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

■ 2. Section 1.11 is amended by revising paragraph (c) to read as follows:

##### § 1.11 Files open to the public.

\* \* \* \* \*

(c) All requests for reexamination for which all the requirements of § 1.510 or § 1.915 have been satisfied will be announced in the *Official Gazette*. Any reexaminations at the initiative of the Director pursuant to § 1.520 will also be announced in the *Official Gazette*. The announcement shall include at least the date of the request, if any, the reexamination request control number or the Director initiated order control number, patent number, title, class and subclass, name of the inventor, name of the patent owner of record, and the

examining group to which the reexamination is assigned.

\* \* \* \* \*

■ 3. Section 1.510 is amended by revising paragraphs (c) and (d) to read as follows:

##### § 1.510 Request for *ex parte* reexamination.

\* \* \* \* \*

(c) If the request does not include the fee for requesting *ex parte* reexamination required by paragraph (a) of this section and meet all the requirements by paragraph (b) of this section, then the person identified as requesting reexamination will be so notified and will generally be given an opportunity to complete the request within a specified time. Failure to comply with the notice will result in the *ex parte* reexamination request not being granted a filing date, and will result in placement of the request in the patent file as a citation if it complies with the requirements of § 1.501.

(d) The filing date of the request for *ex parte* reexamination is the date on which the request satisfies all the requirements of this section.

\* \* \* \* \*

■ 4. Section 1.915 is amended by revising paragraph (d) to read as follows:

##### § 1.915 Content of request for *inter partes* reexamination.

\* \* \* \* \*

(d) If the *inter partes* request does not include the fee for requesting *inter partes* reexamination required by paragraph (a) of this section and meet all the requirements of paragraph (b) of this section, then the person identified as requesting *inter partes* reexamination will be so notified and will generally be given an opportunity to complete the request within a specified time. Failure to comply with the notice will result in the *inter partes* reexamination request not being granted a filing date, and will result in placement of the request in the patent file as a citation if it complies with the requirements of § 1.501.

Dated: July 31, 2006.

Jon W. Dudas,

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

[FR Doc. E6-12600 Filed 8-3-06; 8:45 am]

BILLING CODE 3510-16-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 49 CFR Part 1507

[Docket No. TSA-2004-19845; Amendment No. 1507-2]

RIN 1652-AA34

### Privacy Act of 1974: Implementation of Exemptions; Intelligence, Enforcement, Internal Investigation, and Background Investigation Records

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Transportation Security Administration is amending its regulations to exempt four systems of records from certain provisions of the Privacy Act. The systems intended for exemption are the Transportation Security Intelligence Service Operations Files, the Personnel Background Investigation File System, the Transportation Security Enforcement Record System, and the Internal Investigation Record.

**DATES:** Effective September 5, 2006.

**FOR FURTHER INFORMATION CONTACT:** Lisa S. Dean, Privacy Officer, Office of Transportation Security Policy, TSA-9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-3947; facsimile (571) 227-2555.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or
- (3) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

##### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the Transportation Security Administration (TSA) to comply with small entity requests for information and advice about