§ 382.78 May carriers charge individuals with disabilities for the damage their service animal causes?

While you cannot charge an individual with a disability for transporting service animals, or for providing other services that this rule requires, you may charge a passenger with a disability for damage caused by his or her service animal so long as you normally charge individuals without disabilities for similar kinds of damage.

§ 382.79 Under what other circumstances may carriers refuse to provide transportation to a service animal traveling with a passenger with a disability?

(a) You may deny transport to a service animal under the following circumstances:

(1) The animal poses a direct threat to the health or safety of others (see definition in § 382.3);

(2) The animal causes a significant disruption in the cabin or at an airport gate area, or its behavior on the aircraft or at an airport gate area indicates that it has not been trained to behave properly in public (*e.g.,* running freely, barking or growling repeatedly at other persons on the aircraft, biting or jumping on people, or urinating or defecating in the cabin or gate area); or

(3) The animal's carriage would violate FAA safety requirements or applicable safety requirements of a U.S. territory or foreign government (*e.g.,* the animal is too large or heavy to be accommodated in the cabin).

(b) In determining whether to deny transport to a service animal on the basis that the animal poses a direct threat under paragraph (a)(1) of this section, you must make an individualized assessment based on reasonable judgment that relies on the best available objective evidence to ascertain the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedure will mitigate the risk.

(c) In determining whether to deny transport to a service animal on the basis that the animal has misbehaved and/or has caused a significant disruption in the cabin under paragraph (a)(2), you must make an individualized assessment based on reasonable judgment that relies on the best available objective evidence to ascertain the probability that the misbehavior and/or disruption will continue to occur; and whether reasonable modifications of policies, practices, or procedure will mitigate the misbehavior and/or the disruption.

(d) In conducting the analysis required under paragraph (a)(1) and (a)(2), you must not deny transportation to the service animal if there are means available short of refusal that would mitigate the problem (*e.g.,* muzzling a barking service dog or taking other steps to comply with animal health regulations needed to permit entry of the service animal into a domestic territory or a foreign country).

(e) If you refuse to provide transportation to a service animal based on any provision in this Part, you must provide the individual with a disability accompanied by the service animal a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraphs (a) through (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the individual with a disability accompanied by the service animal either at the airport, or within 10 calendar days of the refusal of transportation.

§ 382.80 May carriers impose additional restrictions on the transport of service animals?

Carriers are not permitted to establish additional restrictions on the transport of service animals outside of those specifically permitted by the provisions in this Part, unless required by applicable FAA, TSA, or other Federal requirements or a foreign carrier's government.

§ 382.117 [Removed]

■ 6. Remove § 382.117.

Issued this 21st day of January, 2020, in Washington, DC.

Elaine L. Chao,

Secretary.

[FR Doc. 2020–01546 Filed 2–4–20; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2019–0009]

RIN 0651–AD33

Small Entity Government Use License Exception

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is proposing to amend the rules of practice in patent cases to clarify and expand exceptions to the rule pertaining to government use licenses and their effect on small entity status for purposes of paying reduced patent fees so as to support independent inventors, small business concerns and nonprofit organizations in filing patent applications. The proposed rule change is designed to encourage persons, small businesses, and nonprofit organizations to collaborate with the Federal Government by providing an opportunity to qualify for the small entity patent fees discount for inventions made during the course of federally-funded or federally-supported research.

DATES: Comments must be received by March 23, 2020 to ensure consideration.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *AD33.comments@uspto.gov.* Written comments also may be submitted by mail to Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of James Engel, Senior Legal Advisor, Office of Patent Legal Administration. Comments may also be sent 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–P–2019–0009).

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 Patents, Office of Patent Legal Administration, 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: James Engel, Senior Legal Advisor, Office of Patent Legal Administration, by phone: (571) 272–7725, or email: *James.Engel@uspto.gov* and Marina Lamm, Patent Attorney, Office of Policy and International Affairs, by phone: (571) 272–5905, or email: *Marina.Lamm@uspto.gov.*

SUPPLEMENTARY INFORMATION: The USPTO proposes to amend the rules of practice in patent cases at 37 CFR 1.27 to clarify and expand exceptions to the rule pertaining to government use licenses and their effect on small entity status for purposes of paying reduced patent fees so as to support independent inventors, small business concerns and nonprofit organizations in filing patent applications. The regulations at 37 CFR 1.27 currently have two basic exceptions—at paragraphs (a)(4)(i) and (ii)—to the general rule that every party holding rights to an invention must qualify as a small entity under 37 CFR 1.27 in order for small entity status to be claimed in a patent application.

The first exception—in section 1.27(a)(4)(i)—is for a government use license that a Federal employee inventor is obligated to grant if he/she is allowed to retain title to the workplace invention pursuant to a rights determination under Executive Order 10096. The Office is proposing to amend the regulations to specify that this exception applies to the government use license under 15 U.S.C. 3710d(a) a Federal employee, including an employee of a Federal laboratory, is obligated to grant if he/she is allowed to retain title to the workplace invention. It also proposes to expand the exception to cover a government use license to a Federal agency arising from an inventor's retention of rights under 35 U.S.C. 202(d), where the inventor is the employee of a small business or nonprofit organization contractor performing research under a funding agreement with the Federal agency, and the government use license is equivalent to that specified in 35 U.S.C. 202(c)(4). Retention of rights by the inventor under 35 U.S.C. 202(d) becomes possible when the contractor performing research under a federal funding agreement does not elect to retain title to the invention and the Federal agency is not interested in pursuing the patents rights either. Provided the Federal agency receives no more than the government use license and there is no other interest in the invention held by a party not qualifying as a small entity, the inventor who is otherwise qualified for small entity status, is not prohibited from claiming small entity status as a result of retaining rights under 35 U.S.C. 202(d) to his or her invention.

The second exception—in section 1.27(a)(4)(ii)—provides that a small business concern or nonprofit organization, which is otherwise qualified as a small entity for purposes of paying reduced patent fees under 37 CFR 1.27, is not disqualified as a small entity because of a license to a Federal agency pursuant to 35 U.S.C. 202(c)(4). Section 202(c)(4) reserves to the Federal agency, a government use license in any invention made by a ''contractor'' (*e.g.,* small business concern or nonprofit organization) pursuant to activities under a ''funding agreement,'' as those terms are defined in 35 U.S.C. 201(b) and (c), when the contractor elects to retain title to a subject invention. It has been brought to the USPTO's attention that much uncertainty exists as to whether the paragraph (a)(4)(ii) exception applies in cases where there is a Federal employee co-inventor. In response, this rule proposes to amend 37 CFR 1.27(a)(4)(ii) to refer to 35 U.S.C. 202(e)(1), which permits the Federal agency, in the case of a Federal employee co-inventor to ''license or assign whatever rights it may acquire in the subject invention to the nonprofit organization, small business firm, or non-Federal inventor. . .'' Section 1.27(a)(4)(ii) would be clarified to explicitly state that when the Federal agency takes action under 35 U.S.C. 202(e)(1) to place all ownership rights with the contractor, leaving to the Federal agency only the government use license under 35 U.S.C. 202(c)(4), the exception under section 1.27(a)(4)(ii) would still apply. This is considered appropriate given that a small entity contractor joint owner of a patent has the right to ''make, use, offer to sell, or sell the patented invention within the United States, or import the patented invention into the United States, without the consent of and without accounting to the other owners'' pursuant to 35 U.S.C. 262. Furthermore, Federal agency action to assign rights under 35 U.S.C. 202(e)(1) leaves to the Federal agency only the government use license, which is what the Federal agency would have acquired had there been no Federal employee co-inventor.

Cooperative research and development agreements (CRADAs) are another important tool to promote collaboration between Federal agencies and non-Federal parties, including those qualified as small entities. In support of research consistent with the mission of the Federal ''laboratory'' as that term is defined in 15 U.S.C. 3710a(d)(2), under CRADAs, the Government, through its laboratories, provide personnel, facilities, equipment, intellectual property or other resources, except for funds to non-Federal parties, and the non-Federal parties provide their own resources, which may include funds, for the collaborative activities. A CRADA may stipulate that the collaborating party assumes responsibility for the filing and prosecution of a patent application directed to a joint invention made under the CRADA and retains title to such invention, with the goal of achieving the practical application of technology advancements through commercialization. The Federal law providing for CRADAs (15 U.S.C. 3710a) reserves an obligatory government use license in exchange for ownership rights retained by the collaborating party much the same way as discussed above with respect to Federal funding agreements and government employee inventions. It was reported that some small businesses and nonprofit organizations are hesitant to enter into CRADAs with the Federal Government because, under the current rules, they would automatically lose their small entity status and would have to pay undiscounted patent fees as a result of granting the government use license or the government's interest in a joint invention. In response to these concerns and in order to encourage small business and nonprofit organization collaborating parties to take the initiative for filing and prosecuting patent applications for their inventions at no expense to the government, this rule proposes to expand the exceptions in 37 CFR 1.27(a)(4) to add a new section 1.27(a)(4)(iii) that would cover government use licenses that arise in certain situations when an otherwise qualifying small entity retains ownership rights to its invention made under a CRADA. This expansion of the government use license exception as it pertains to federally supported research is consistent with the President's ''Return on Investment Initiative'' as it applies to transferring technology to the private sector that originated from federally funded research or non-funded research performed at a Federal agency laboratory. *See* NIST Special Publication 1234 titled ''Return on Investment Initiative for Unleashing American Innovation'' (April 2019).

Background: The Patent and Trademark Law Amendments Act, Public Law 96–517, 94 Stat. 3015 (Dec. 12, 1980)—commonly referred to as the Bayh-Dole Act—added chapter 18 (sections 200 *et seq.*) to title 35 of the United States Code to ''encourage maximum participation . . . in federally supported research and development efforts'' (35 U.S.C. 200) by giving small businesses and nonprofit organizations the ability to elect to retain title to their inventions made under federal funding agreements. For more than thirty-five years the USPTO has provided the exception—now at 37 CFR 1.27(a)(4)(ii)—for Bayh-Dole Act government use licenses under 35 U.S.C. 202(c)(4). Similar to the Bayh-Dole Act, the Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96–480, 94 Stat. 2311 (Oct. 21, 1980), as amended by the Federal Technology Transfer Act of 1986, Public Law 99–502, 100 Stat. 1785 (Oct. 20, 1986) (''FTTA''), seeks to promote development and utilization of technologies made with federal support. Unlike the Bayh-Dole Act whereby support is in the form of federal funding, the FTTA, among other things, authorized CRADAs as the basis for research collaboration between Federal agencies and private sector businesses and organizations, including small business concerns and nonprofit organizations. Unlike 35 U.S.C. 202(c)(4) government use licenses, the patent rules have never provided an exception for government use licenses reserved to the government under CRADAs in exchange for the small business concern or nonprofit organization's retention of ownership rights to its invention made during research at the partnering Federal laboratory. In response to feedback from Federal agencies concerning the importance of the small entity discount to promote collaboration with small businesses and nonprofit organizations and technology transfer efforts of Federal agencies and laboratories, the USPTO is proposing to revise the patent rules to add a government use license exception that applies to small entities which make an invention under a CRADA with a Federal laboratory.

The statutory provisions for CRADAs, similar to those for federal funding agreements under the Bayh-Dole Act, reserve to the Federal Government use licenses for inventions made under a CRADA. 35 U.S.C. 202(c)(4) which provides the Bayh-Dole Act version of the government use license, and the CRADA government use license found in 15 U.S.C. 3710a(b)(2) and 3710a(b)(3)(D), are practically identical in scope. As set forth in 35 U.S.C. 202(c)(4):

> With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.

Under the Bayh-Dole Act provisions, the awardee of federal funding is called a ''contractor.'' Under the CRADA provisions of the FTTA, the term used for a participating non-Federal party is ''collaborating party.'' In addition, the CRADA government use license refers to ''the laboratory'' or ''the Government'' as the recipient, rather than ''the Federal agency.''

Currently, the patent rules provide a government use license exception only for such licenses arising under 35 U.S.C. 202(c)(4). The proposed change to 37 CFR 1.27(a)(4) would add exceptions for government use licenses that may arise under a CRADA pursuant to 15 U.S.C. 3710a(b)(2) or 3710a(b)(3)(D). Section 3710a(b)(2) concerns the use license reserved to the government for an invention made solely by employees of the collaborating party, and section 3710a(b)(3)(D) concerns the use license reserved to the government when the laboratory waives rights to a subject invention made by the collaborating party or employee of the collaborating party. The proposed change would add to 37 CFR 1.27 a new paragraph (a)(4)(iii) providing an additional exception for government use licenses under 15 U.S.C. 3710a(b)(2) and 3710a(b)(3)(D) for inventions made by small entities under a CRADA with a Federal laboratory.

Further, with respect to the current exception for the government use license under 35 U.S.C. 202(c)(4), it has been reported to the USPTO that small business firms and nonprofit organizations have become increasingly concerned that contributions of Federal employees in joint inventions could eliminate their entitlement to small entity status. In response, the current section 1.27(a)(4)(ii) exception—the so-called ''federal licensing safe harbor provision''—is proposed to be amended to clarify in a new paragraph (B) that the exception applies when there is a Federal employee co-inventor, and action is taken under 35 U.S.C. 202(e)(1) by the Federal agency. Under section 202(e)(1), the funding Federal agency may license or assign whatever rights the Federal agency acquired in the subject invention, made by the contractor with a Federal employee co-inventor, to the contractor, in accordance with the provisions of chapter 18 of title 35, which include a government use license. As proposed to be amended, the section 1.27(a)(4)(ii) exception would explicitly apply, under new paragraph (B), to such situations.

When an employee of the small entity contractor and an employee of the Federal agency are co-inventors, the small entity contractor, by virtue of an assignment from the contractor employee or the employee's current obligation to assign, would still have an undivided ownership interest in the joint invention. The undivided interest to the joint owner is provided at 35 U.S.C. 262. The requirement for an assignment or a currently existing obligation to assign is set forth in *Board of Trustees of Leland Stanford Junior University* v. *Roche Molecular Systems, Inc.,* 563 U.S. 776 (2011), where the Court held: ''[o]nly when an invention belongs to the contractor does the Bayh-Dole Act come into play.'' *Id.* at 790. In addition, ''. . . unless there is an agreement to the contrary, an employer does not have rights in an invention 'which is the original conception of the employee alone.' '' *Id* at 786. Accordingly, when action is taken by the Federal agency under 35 U.S.C. 202(e)(1), the contractor could elect to retain full ownership rights. These ownership rights would be the same as those retained by a contractor under proposed new paragraph (A) of section 1.27(a)(4)(ii) which would apply when the subject invention was made solely by the small entity contractor employee(s). 35 U.S.C. 202(e) refers to this as ''consolidating rights''.

Regarding the proposed new section 1.27(a)(4)(iii), which would apply to government use licenses arising under a CRADA where the small entity retains all ownership rights, paragraph (B) would be included to cover situations where the government took action under 15 U.S.C. 3710a(b)(3)(D) to waive in whole any right of ownership the government may have to the subject invention made by the small business concern or nonprofit organization. Paragraph (A) of section 1.27(a)(4)(iii) would apply to government use licenses arising in situations where the invention to which title is retained, was made solely by the employee of the small business concern or nonprofit organization. Thus consolidation of rights to a small entity collaborating party under the CRADA provision of 15 U.S.C. 3710a(b)(3)(D) would be treated similar to how consolidation of rights to a contractor under the Bayh-Dole Act provision of 35 U.S.C. 202(e)(1) are treated under 37 CFR 1.27(a)(4) as proposed to be amended. All the exceptions under 37 CFR 1.27(a)(4)(i) through (iii) would require that the government or the Federal agency receive no more than the applicable government use license and that there is no other interest in the invention held by a party not qualifying as a small entity.

New section 1.27(a)(4)(iv) is proposed to be added to specify that regardless of whether a government use license exception applies, no refund under 37 CFR 1.28(a) is available for any patent fee paid by the government. In addition, a new introductory clause is proposed to be added to 37 CFR 1.27(a)(4) which limits eligibility for any of the government use license exceptions to patent applications filed and prosecuted at no expense to the government (with the exception of any delivery expenses). To overcome any reluctance of research partners to take responsibility for seeking patent protection of the federally-supported inventions, the proposed new section 1.27(a)(4) introductory clause combined with proposed new paragraph (a)(4)(iv) should encourage small business concern and nonprofit organization contractors and collaborators to take the lead in seeking patent protection.

Although the USPTO can provide for government use license exceptions for small entity status qualification, these exceptions cannot apply to micro entities. The reason for this is that the statute authorizing micro entity patent fee discounts—35 U.S.C. 123(a)(4)—disqualifies an entity from micro entity status if they have assigned, granted, or conveyed a license or other ownership interest in the invention to an entity that exceeded the gross income limit (currently $189,537) in its previous calendar year's gross income. Because a ''gross national income'' is attributed to the United States each year, any government use license would run afoul of the 35 U.S.C. 123(a)(4) qualification requirement. Accordingly, a government use license may not disqualify an applicant from a small entity status, but would disqualify the applicant from micro entity status. For consistency, this would apply to micro entity status on the ''institution of higher education basis'' under section 1.29(d) as well as micro entity status on the ''gross income basis'' under section 1.29(a). A clarifying amendment to 37 CFR 1.29 is proposed in order to explicitly reflect this.

Discussion of Regulatory Changes: These rule changes would amend 37 CFR 1.27(a)(4) to clarify and expand the exceptions to the general rule that every party holding rights to an invention must qualify as a small entity under 37 CFR 1.27 in order for small entity status to be properly claimed.

The regulations currently at 37 CFR 1.27(a)(4)(i) provide an exception for a government use license resulting from a rights determination under Executive Order 10096, wherein title to the invention is retained by a Federal employee-inventor (''a person'' as defined in 37 CFR 1.27(a)(1)). That exception is proposed to be amended to acknowledge the regulations contained in 37 CFR part 501, which implement E.O. 10096. This would be accomplished by making reference in the rule to 37 CFR 501.6, which substantially incorporates the E.O. 10096 criteria for the determination of rights in and to any invention made by a Government employee. This exception, as proposed to be amended, would remain in section 1.27(a)(4)(i) under a new paragraph (A). It is also proposed to add a new paragraph (B) to section 1.27(a)(4)(i) referring to 15 U.S.C. 3710d(a) which provides for disposal of title to an invention from the Federal agency to the Federal employee-inventor, as well as the conditions under which the employee obtains or retains title to the invention subject to a government use license. Accordingly, proposed paragraphs 1.27(a)(4)(i)(A) and (B) would both relate to the government use license exception in the context of Federal employee inventors who retain title to their work inventions, subject to a government use license. It is also proposed to add to section 1.27(a)(4)(i) a new paragraph (C) for government use licenses to a Federal agency resulting from retention of rights by the inventor under 35 U.S.C. 202(d). This exception would be contingent upon the inventor meeting the criteria under 37 CFR 401.9 of an employee/inventor of a small business firm or nonprofit organization contractor. (37 CFR part 401 implements the provisions of the Bayh-Dole Act codified in 35 U.S.C. 200–212.) Thus, section 1.27(a)(4)(i), which applies to small entity ''persons'' as defined in 37 CFR 1.27(a)(1), is proposed to set forth three types of government use licenses which would not disqualify a patent applicant from claiming small entity status for purposes of paying reduced patent fees.

The regulations currently at 37 CFR 1.27(a)(4)(ii) provide an exception for certain government use licenses granted by ''small business concerns'' and ''nonprofit organizations'' as defined in 37 CFR 1.27(a)(2) and (a)(3). With respect to small business concerns and nonprofit organizations, there are generally two types of agreements they enter into with the Federal Government that are pertinent to section 1.27(a)(4)(ii) as proposed to be amended: (1) Federal funding agreements under the Bayh-Dole Act (as defined in 35 U.S.C. 201(b)), and (2) cooperative research and development agreements (CRADAs) as provided for in 15 U.S.C. 3710a. Both of these agreements require a government use license to be granted to the Federal Government by the entity or person retaining title to an invention made under such agreement. Currently, section 1.27(a)(4)(ii) only provides an exception for Bayh-Dole Act government use licenses under 35 U.S.C. 202(c)(4). To clarify the current exception, new paragraphs (A) and (B) are proposed to be added to section 1.27(a)(4)(ii). Paragraph 1.27(a)(4)(ii)(A) would apply to the situation where the invention under federal funding agreement was made solely by employees of the small business concern or nonprofit organization. Paragraph 1.27(a)(4)(ii)(B) would address situations where there is a Federal employee co-inventor. The proposed rule change would provide an additional exception, reflected in a new section 1.27(a)(4)(iii), for government use licenses for inventions made by small entities under a CRADA in situations under 15 U.S.C. 3710a(b)(2) and 3710a(b)(3)(D) wherein the small entity retains title to the invention.

A new introductory clause is proposed to be added to 37 CFR 1.27(a)(4) to limit eligibility for any of the current and newly proposed government use license exceptions to patent applications filed and prosecuted at no expense to the government, with the exception of any expense taken to deliver the application and fees to the USPTO on behalf of the applicant.

A new paragraph (a)(4)(iv) is proposed to be added to 37 CFR 1.27 to specify that regardless of whether a government use license exception applies, no refund under 37 CFR 1.28(a) is available for any patent fee paid by the government.

Section 1.29 is proposed to be amended to clarify that the government use license exceptions under 37 CFR 1.27(a)(4) do not apply for purposes of micro entity status qualification. The baseline small entity requirement under sections 1.29(a)(1) and (d)(1) cannot be met if qualification as a small entity under 37 CFR 1.27 depends on one of the government use license exceptions specified in 37 CFR 1.27(a)(4). The amendment would reflect that the statutory condition for a micro entity, specified at 35 U.S.C. 123(a)(4) cannot be met if an applicant, inventor or a joint inventor has made (or is obligated to make) a government use license for the invention for which patent protection is sought in the relevant patent application.

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 exceptions to the rule pertaining to government use licenses and their effect on small entity status for purposes of paying reduced patent fees, as discussed in the preamble. The USPTO has estimated the number of small entities that would be impacted by this proposed rule to be in the range of 750 to 1000, based on the number of active CRADAs reported for FY2015 and its projected growth. However, it is difficult to predict how many more entities would claim small entity status under the proposed regulations. Thus, the USPTO is interested in receiving comments from the public, particularly small businesses and non-profit organizations, about the number of additional entities that might claim small entity status because of this rule, as well as possible impacts on small entities who already qualify for small entity status for the purpose of paying reduced patent fees. The USPTO is especially interested in information related to estimates of the number of small entities that would qualify for small entity status once the rule is revised as proposed, as well as comments on any reasons why an entity would or would not claim small entity status under this rule.

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

The United States Patent and Trademark Office (USPTO) is proposing to amend the rules of practice in patent cases to clarify and expand exceptions to the rule pertaining to government use licenses and their effect on small entity status for purposes of paying reduced patent fees so as to support independent inventors, small business concerns and nonprofit organizations in filing patent applications. Currently, to be entitled to pay small entity patent fees, all parties holding rights in the invention must qualify for small entity status. There are two exceptions to this rule. Both exceptions relate to ''government use licenses'' granted under the law by independent inventors, small business concerns, or nonprofit organizations otherwise qualifying as a small entity, where such entities retain title to their inventions. The first current exception applies when an inventor employed by the Federal Government has an obligation to grant the government use license in the workplace invention in which the inventor obtains title pursuant to a rights determination under Executive Order 10096. This exception would continue to apply and is proposed to be clarified to apply to employees of Federal laboratories under 15 U.S.C. 3710d(a). The second current exception applies when the government use license in the government-funded invention is an obligation (pursuant to 35 U.S.C. 202(c)(4)) under a funding agreement with a Federal agency. This exception is proposed to be expanded to cover the situations where a small business concern or nonprofit organization qualifying as a small entity does not elect to retain title to an invention made by its employee under a federal funding agreement, and the Federal agency allows the inventor to retain title to the federally-funded invention. In that case, a government use license (equivalent to that specified in 35 U.S.C. 202(c)(4)) is an obligation arising from the employee's retention of rights under 35 U.S.C. 202(d). The proposed change to the rule would also expand the second exception to address situations where there is a Federal employee co-inventor. It is further proposed to add a third exception to cover a government use license arising from an obligation under a cooperative research and development agreement (CRADA) with a Federal agency pursuant to 15 U.S.C. 3710a(b). Regardless of whether any of the aforementioned exceptions apply, no refund is available for any patent fee paid by the government. In addition, patent applications filed and prosecuted at government expense, will not be entitled to the small entity discount. Finally, the qualifications for the micro entity patent fee discount are proposed to be clarified. The proposed rule changes are designed to encourage persons, small businesses, and nonprofit organizations to collaborate with the Federal Government by providing an opportunity to qualify for the small entity patent fees discount for inventions made during the course of federally-funded or federally-supported research. Thus, this rule would allow more entities to qualify for the small entity fee discount, wherein these entities may qualify for a 50% reduction in fees, resulting in a substantial cost savings to the entities. Although the cost savings may be substantial, this rule is not expected to impact a large number of small entities. We estimate the number of small entities impacted by this proposed rule to be in the range of 750 to 1000, based on the number of active CRADAs reported for FY2015 and its projected growth.

These changes are procedural and are not expected to have a direct economic impact on small entities. For the reasons described above, this rule is not expected to have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This proposed rule has been determined to be not 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 proposed rule; (2) tailored the proposed 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 expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866 (Jan. 30, 2017).

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 proposed 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 United States Patent and Trademark Office will submit a report containing the 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 proposed rule 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 proposed rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The proposed changes set forth in this rulemaking 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 which involve the use of technical standards.

P. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule does not involve an information collection requirement that is subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to nor shall any 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 for 37 CFR Part 1

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

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

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. Amend § 1.27 to revise paragraph (a)(4) as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

(a) * * *

(4) *Government Use License Exceptions.* In a patent application filed, prosecuted and, if patented, maintained at no expense to the Government, with the exception of any expense taken to deliver the application and fees to the Office on behalf of the applicant:

(i) For persons under paragraph (a)(1) of this section, claiming small entity status is not prohibited by:

(A) A use license to the Government resulting from a rights determination under Executive Order 10096 made in accordance with § 501.6 of this title;

(B) a use license to the Government resulting from Federal agency action pursuant to 15 U.S.C. 3710d(a) allowing the inventor to retain title to the invention; or

(C) a use license to a Federal agency resulting from retention of rights by the inventor under 35 U.S.C. 202(d), provided the conditions under § 401.9 of this title for retention of rights by an inventor employed by a small business concern or nonprofit organization contractor are met, and the license is equivalent to the license the Federal agency would have received had the contractor elected to retain title.

(ii) For small business concerns and nonprofit organizations under paragraphs (a)(2) and (3) of this section, a use license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not preclude claiming small entity status, provided that:

(A) The subject invention was made solely by employees of the small business concern or nonprofit organization, or

(B) In the case of a Federal employee co-inventor, the Federal agency employing such co-inventor took action pursuant to 35 U.S.C. 202(e)(1) to exclusively license or assign whatever rights currently held or that it may acquire in the subject invention to the small business concern or nonprofit organization, subject to the license under 35 U.S.C. 202(c)(4).

(iii) For small business concerns and nonprofit organizations under paragraphs (a)(2) and (3) of this section that have collaborated with a Federal agency laboratory pursuant to a cooperative research and development agreement (CRADA) under 15 U.S.C. 3710a(a)(1), claiming small entity status is not prohibited by a use license to the Government pursuant to:

(A) 15 U.S.C. 3710a(b)(2) that results from retaining title to an invention made solely by the employee of the small business concern or nonprofit organization; or

(B) 15 U.S.C. 3710a(b)(3)(D) provided the laboratory has waived in whole any right of ownership the Government may have to the subject invention made by the small business concern or nonprofit organization, or has exclusively licensed whatever rights the Government may acquire in the subject invention to the small business concern or nonprofit organization.

(iv) Regardless of whether an exception under this paragraph (a)(4) applies, no refund under § 1.28(a) is available for any patent fee paid by the Government.

* * * * *

■ 3. Amend § 1.29 to revise paragraphs (a)(1) and (d)(1) as follows:

§ 1.29 Micro entity status.

(a) * * *

(1) The applicant qualifies as a small entity as defined in § 1.27 without relying on a government use license exception under § 1.27(a)(4);

* * * * *

(d) * * *

(1) The applicant qualifies as a small entity as defined in § 1.27 without relying on a government use license exception under § 1.27(a)(4); and

* * * * *

Dated: January 24, 2020.

Andrei Iancu,

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

[FR Doc. 2020–01687 Filed 2–4–20; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0839; FRL–10004–92–Region 5]

Air Plan Approval; Minnesota; Revision to the Minnesota State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Minnesota State Implementation Plan (SIP) which updates Minnesota's air program rules. The Minnesota Pollution Control Agency (MPCA) submitted the request to EPA on November 14, 2018. The revision to Minnesota's air quality rules will reflect changes that have occurred to the state air program rules since August 10, 2011, and updates on actions deferred from previous SIP submittals. EPA is proposing to approve the majority of MPCA's submittal, which will result in consistent requirements of rules at both the state and Federal level.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0839 at *http://www.regulations.gov,* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Emily Crispell, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8512, *crispell.emily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

A. Overview of Revisions Made by Minnesota

On November 14, 2018 MPCA submitted a SIP revision with numerous rule updates. MPCA's submittal includes amendments to rules governing air emission permits, the removal of regulations unnecessary for Minnesota to attain and maintain the National Ambient Air Quality Standards (NAAQS), and the addition of new and previously deferred air program rules.

The following chapters of Minnesota's air program rules have undergone changes: Minnesota Rules Chapter 7000 Procedural Rules; Chapter 7002 Permit Fees; Chapter 7005 Definitions and Abbreviations; Chapter 7007 Permits and Offsets; Chapter 7008 Conditionally Exempt Stationary Sources and Conditionally Insignificant Activities; Chapter 7009 Ambient Air Quality Standards; Chapter 7011 Standards for