

wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

#### Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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

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

For the reasons discussed in the preamble, the Coast Guard amends 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 6.04-11, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07-022 is added to read as follows:

#### § 165.T07-022 Security Zones; Port of St. Petersburg, Florida.

(a) *Regulated area.* The Coast Guard is establishing temporary fixed security zones in all waters north of the marked channel in St. Petersburg Harbor, St. Petersburg, Florida. These security zones will encompass all waters on the north side of channel serving St. Petersburg Harbor, commencing at dayboard "10" in approximate position 27°45.58' N, 082°37.52' W, and westward along the seawall 100 feet from the seawall and around all moorings and vessels to the end of the storage facility in approximate position 27°45.68' N, 082°37.80' W. These zones

will also include the Coast Guard south moorings in St. Petersburg Harbor. This zone will extend 100 feet around the piers commencing from approximate position 27°45.52' N, 082°37.96' W to 27°45.52' N, 082°37.60' W. All positions noted are fixed using the North American Datum of 1983 (World Geodetic System 1984). The southern boundary of the zone is shoreward of a line between Green Daybeacon 11(LLN 2500) westerly to the entrance to Salt Creek.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or his designated representative. The Captain of the Port will notify the public via Marine Safety Broadcast on VHF-FM Channel 16 and 13 (157.1 MHz).

(c) *Dates.* This section is effective from 7 a.m. on May 1, 2002 until 6 p.m. on June 15, 2002.

Dated: April 16, 2002.

**A.L. Thompson, Jr.,**

*Captain, Coast Guard, Captain of the Port, Tampa.*

[FR Doc. 02-13005 Filed 5-22-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

#### RIN 0651-AB31

#### Amendment of Rule Regarding Filing of Trademark Correspondence via "Express Mail"

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

**ACTION:** Final Rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is amending its rules to provide that certain trademark documents sent by United States Postal Service (USPS) "Express Mail Post Office to Addressee" service (Express Mail) will no longer be considered to have been filed with the USPTO on the date of deposit with the United States Postal Service, but will be deemed to have been filed on the date of receipt in the USPTO. This amendment will not apply to documents filed with the Trademark Trial and Appeal Board (TTAB) and the Assignment Branch.

**DATE:** Effective Date: June 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Craig Morris, Office of the Commissioner for Trademarks, (703)

308–8910, extension 136, or e-mail questions to [tnexpressmail@uspto.gov](mailto:tnexpressmail@uspto.gov).

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Rulemaking was published in the **Federal Register** (66 FR 45792) on August 30, 2001. That notice proposed to amend rule 1.10, 37 CFR 1.10, concerning the use of USPS Express Mail to eliminate the filing of any document by Express Mail for which an electronic form is currently available in Trademark Electronic Application System (TEAS) and included proposals to amend other rules. The present notice pertains solely to the proposal regarding § 1.10.

Written comments regarding the proposal to amend Section 1.10 were submitted by one individual, eight law firms, and one organization.

#### Effect of Mailing Correspondence via “Express Mail”

Section 1.10 provides that, if the requirements of the rule are met, any correspondence delivered to the USPTO by USPS Express Mail will be considered to have been filed with the USPTO on the date of deposit with the USPS. Section 1.10 is amended to provide that if an electronic form is available in TEAS, but the applicant files a paper document, the filing date of the document will be the date of receipt in the USPTO, even if such document is delivered by Express Mail.

*Comment:* Two comments suggested that receipts issued by the USPS in connection with Express Mail submissions provide assurance that a document was filed at a particular time, and that the TEAS system cannot provide such assurance.

*Response:* TEAS provides filers with an assurance that the document submitted was received by the USPTO. Within seconds of completion of the filing process, the following message appears on the user’s screen: “Success! We have received your application and assigned the following serial number 78/—.” (or if not an initial application, then wording appropriate for the particular filing submitted). Filers can print and retain copies of this message. If the message does not appear within seconds, then the filing was not completed successfully. Hence, there is never any doubt as to whether a document was transmitted successfully.

Additionally, the USPTO provides e-mail acknowledgments as a follow-up courtesy. If, for whatever reason, a filer does not receive this acknowledgment, the filer may request that the acknowledgment be re-sent, so long as the filer has received the “success” message referred to above.

*Comment:* One comment suggested that Section 1.10 should be amended to provide that correspondence deposited as Express Mail should be considered to have been filed with the USPTO on the date of deposit with the USPS even if a TEAS form exists for transmitting that correspondence electronically, provided that the filer pays a surcharge.

*Response:* TEAS provides the same benefit provided by use of Express Mail under current § 1.10. A TEAS filer is assured that the document is received by the USPTO, and that the filing date of a document is the date the USPTO receives the transmitted document, provided that all requirements for accordance of a filing date are met. It is therefore unnecessary to continue to treat the date of deposit as Express Mail as the filing date; moreover, filing through TEAS will save applicants Express Mail fees.

*Comment:* One comment suggested that where correspondence includes specimens that cannot be easily scanned, the USPTO should continue to allow filing under § 1.10.

*Response:* The USPTO believes that scanning should be feasible in almost all circumstances. Low range scanners and digital cameras are relatively inexpensive. The quality of these scanners and cameras is sufficient for capturing an image that is acceptable for examination purposes.

*Comment:* In addition to the proposal to amend § 1.10, the Notice of Proposed Rulemaking published in the **Federal Register** (66 FR 45792) on August 30, 2001, also proposed amendments that are not addressed in the present Final Rule. These proposals were to amend various sections of 37 CFR to require mandatory use of TEAS forms, unless either: (1) The pro se applicant or registrant, or an attorney for the applicant or registrant, verifies that he or she lacks access to TEAS or the technical capability to use TEAS; or (2) the applicant or registrant is a person described in 15 U.S.C. 1126(b). One comment suggested that applications mailed via Express Mail should be considered to have been filed on the date of deposit, if the applicant falls within one of the proposed exceptions to the proposed requirement that TEAS must be used in all cases. Another comment asked whether that was the intended result of the proposed amendment to Section 1.10, and suggested that, if so, the language of § 1.10 should be amended to so state.

*Response:* The USPTO believes that it is unnecessary to amend § 1.10 to provide that correspondence mailed by Express Mail should be considered to have been filed in the USPTO on the

date of deposit with the USPS, in cases where the filer would be within one of the proposed exceptions to the proposed rule that TEAS be utilized in all cases. The USPTO believes that it can best meet the needs of its filers by encouraging the widespread use of TEAS. Hence, the USPTO wishes to provide all filers with incentive to use TEAS, including those filers who are persons described in 15 U.S.C. 1126(b). Additionally, the USPTO believes that a very small number of filers will lack access to TEAS or the capability to use TEAS. Even if a filer’s computer system becomes temporarily unavailable due to technical problems, most filers can utilize alternative systems, such as ones maintained by commercial vendors. It would be impractical to create an exception to the Express Mail rule that would cover only a small number of filers.

*Comment:* One comment suggested that computer viruses may at times render the Internet, and hence TEAS, unavailable. The comment maintains that there should be an exception for these circumstances. The comment suggested that if use of Express Mail no longer resulted in the date of mailing being treated as the date of filing, then these filers may not be able to submit correspondence in time to meet certain filing deadlines.

*Response:* The USPTO believes that filers can avoid the effects of emergencies such as computer viruses by making it a practice not to defer TEAS filings until the last possible hour. The USPTO also believes that if a filer experiences a computer problem, alternatives are available such as the computer services offered by the Patent and Trademark Depository Libraries and commercial vendors.

If the USPTO’s TEAS or the Revenue Accounting and Management (RAM) server is unavailable, the applicant or registrant can file a petition under Trademark Rule 2.146(a)(3)(5), 37 CFR 2.146(a)(5), requesting that its submission be deemed to have been filed on the day that it attempted to use TEAS. The petition should include an explanation of the petitioner’s efforts to file using TEAS, any relevant evidence of such efforts, and a statement that according to the petitioner’s knowledge TEAS was unavailable. The petition should be filed within two business days of the attempt(s) to file a document using TEAS. The USPTO is closely monitoring the operation of the TEAS and RAM servers and will routinely grant petitions in the instances where either of these USPTO servers are down.

*Comment:* One comment asked whether a TEAS application that does

not identify a filing basis and/or is unsigned would be accepted. This comment suggested that if such applications are not accepted by TEAS, and if use of TEAS is made mandatory in most cases, then filers who wish to file such applications should be allowed to do so using paper. This comment further suggested that in such cases, these paper filings, if mailed by Express Mail, should be considered filed on the date of deposit as Express Mail.

*Response:* There is no need to provide an exception for these applications since TEAS accepts both submissions that are unsigned and submissions that do not identify a filing basis.

*Comment:* One comment stated that converting from one system to another always entails costs, and that users whose filing systems use Express Mail would therefore incur costs if the benefits of Express Mail were no longer available.

*Response:* Those who use TEAS instead of Express Mail will save the cost of using Express Mail. Of course, filers may continue to use Express Mail if they wish to do so. The date of receipt of such mail will be its actual date of receipt in the USPTO.

#### Rulemaking Requirements

The USPTO has determined that the rule change has no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The comments received did not establish that the rule would have a significant impact under the Regulatory Flexibility Act. The changes have been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required 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 PRA unless that collection of information displays a currently valid OMB control number.

This final rule contains collections of information requirements that have been approved by OMB under OMB Control Number 0651-0009. The public reporting burden for this collection of information is estimated to average as follows: Seventeen minutes for applications to obtain registrations based on an intent to use the mark under 15 U.S.C. 1051(b), if completed using paper forms; fifteen minutes for applications based on 15 U.S.C. 1051(b), if completed using electronic forms; twenty-three minutes for applications to obtain registrations based on use of the mark in commerce under 15 U.S.C. 1051(a), if completed using paper forms; twenty-one minutes for applications to obtain registrations based on 15 U.S.C. 1051(a), if completed using electronic forms; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under 15 U.S.C. 1126(d), if completed using paper forms; nineteen minutes for applications to obtain registrations based on 15 U.S.C. 1126(d), if completed using electronic forms; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under 15 U.S.C. 1126(e), if completed using paper forms; eighteen minutes for applications to obtain registrations based on 15 U.S.C. 1126(e), if completed using electronic forms; thirteen minutes for allegations of use of the mark under §§ 2.76 and 2.88 if completed using paper forms; twelve minutes for allegations of use under §§ 2.76 and 2.88 if completed using electronic forms; ten minutes for requests for extensions of time to file statements of use under § 2.89 if completed using paper forms; nine minutes for requests for extensions of time to file statements of use if completed using electronic forms; eleven minutes for Section 8 affidavits if completed using paper forms; ten minutes for Section 8 affidavits if completed using electronic forms; fourteen minutes for combined Sections 8 and 9 filings if completed using paper forms; thirteen minutes for combined Sections 8 and 9 filings if completed using electronic forms; fourteen minutes for combined Sections 8 and 15 affidavits if completed using paper forms; thirteen minutes for combined Sections 8 and 15 affidavits if completed using electronic forms; eleven minutes for Section 15 affidavits if completed using paper forms; and ten minutes for Section 15 affidavits if completed using electronic forms. These time estimates include the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503 (Attn: PTO Desk Officer).

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Patents.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Patent and Trademark Office is amending part 1 of title 37 as follows:

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

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

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

2. Revise § 1.10(a) to read as follows:

##### § 1.10 Filing of correspondence by "Express Mail."

(a)(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS, except for documents described in the following paragraphs (a)(1)(i) and (ii) of this section:

(i) Trademark applications filed under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051 and 1126.

(ii) Other documents for which a Trademark Electronic Application System (TEAS) form exists:

(A) Amendment to allege use under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c);

(B) Statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(C) Request for extension of time to file a statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(D) Affidavit of continued use under section 8 of the Trademark Act, 15 U.S.C. 1058;

(E) Renewal request under section 9 of the Trademark Act, 15 U.S.C. 1059; and

(F) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

\* \* \* \* \*

Dated: May 15, 2002.

**Jon W. Dudas,**

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

[FR Doc. 02-12878 Filed 5-22-02; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 20

RIN 2900-A198

#### Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) by establishing safeguards in the case of "disinterested third-parties" who pay a veteran's attorney fees and by simplifying certain notice procedures. We have carefully considered the comments submitted in response to our notice of proposed rulemaking (NPRM), and have decided to adopt the amendments we proposed concerning those two matters, but not to adopt the provisions relating to payment of attorney fees from past-due benefits.

**DATES:** *Effective Dates:* This rule is effective June 24, 2002, except for § 20.609(i) which is effective July 22, 2002.

*Applicability Date:* Amendments to 38 CFR 20.609(i) will apply to third-party agreements received at the Board of Veterans' Appeals on or after July 22, 2002. Third party fee agreements received prior to that date will be subject to the pre-existing rules, which require that all fee agreements—

including third-party agreements—be filed with the Board.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-5978.

**SUPPLEMENTARY INFORMATION:** On December 9, 1997, VA published in the *Federal Register* at 62 FR 64790 a Notice of Proposed Rulemaking (NPRM) which would (1) discontinue VA's practice of paying attorney fees from past-due benefits; (2) establish safeguards in the case of "disinterested third-party" payers; and (3) simplify certain notice procedures. We provided a 60-day comment period that ended February 9, 1998.

We received more than 80 comments from attorneys, individuals, local veterans' groups, Vietnam Veterans of America, Veterans' Due Process, National Organization of Veterans' Advocates, a county bar association, and members of Congress.

Most of the comments related to the issue of paying attorney fees from past-due benefits. Some comments addressed the "third-party" issue. None of those comments supported either change.

There were no comments relating to the notice procedures.

In this document, we will consider the notice procedures, the fee payment procedures, and the third-party procedures, in that order. We will also separately discuss the effective date provisions of this rule.

Based on the rationales given in the NPRM and in this document, we adopt as a final rule the provisions of the proposed rule with the changes discussed below.

#### I. Simplifying Notice Procedures

In our NPRM, we proposed to amend Rule 609(i) (38 CFR 20.609(i)), relating to motions to review attorney fee agreements, and Rule 610(d) (38 CFR 20.610(d)), relating to motions challenging expenses. The amendments would eliminate the requirement of mailing by certified mail and replace it with a certification by the mailer.

We received no comments on this proposal. For the reasons set forth in the NPRM, we adopt it as published.

#### II. Taking VA Out of the Business of Paying Attorney Fees

In our NPRM, we proposed to end VA's discretionary practice of paying attorney fees out of a veteran's past-due benefits. No commenter supported this proposal.

We have decided not to adopt the proposed amendments as a final rule.

#### III. Third-Party Agreements

Eleven commenters, all attorneys, commented on the "third-party payer" rule. Those comments fell into eight categories:

1. VA has no business examining contracts where fees are not to be paid from past-due benefits.

2. VA has no business examining contracts where the veteran does not pay the fee.

3. Without a contingency agreement, third-party payers would have unlimited liability.

4. Prohibiting third-party contingency agreements will discourage attorneys from representing veterans.

5. The additional requirements VA proposed on third-party fee agreements will increase the administrative burden VA is trying to reduce.

6. Include in the presumption of "not disinterested" only dependent parents.

7. Do not adopt the proposed amendments because people will violate the law anyway.

8. Without third-party contingent fee agreements, claimants will not be able to afford attorneys.

As discussed below, we find none of these arguments persuasive and publish the rule as proposed.

##### A. VA Has No Business Examining Contracts Where Fees Are Not To Be Paid from Past-Due Benefits

Some commenters said that VA has no business examining agreements where fees are not to be paid from past-due benefits. The law itself permits the Board to review fee agreements for reasonableness regardless of whether or not they call for payment of fees from past-due benefits. 38 U.S.C. 5904(c)(2). We make no change based on the commenters' argument.

##### B. VA Has No Business Examining Contracts Where the Veteran Does Not Pay the Fee

Some commenters stated that VA has no authority to examine a fee agreement when the claimant is not paying the fee.

VA is the part of the Executive Branch charged with enforcing, among other things, the provisions of 38 U.S.C. 5904. *Id.* 501(a) (Secretary has authority to prescribe all rules and regulations necessary or appropriate to carry out the laws administered by the Department). VA is neither required nor expected to turn a blind eye to attempts to evade the law. Indeed, it is a criminal offense to charge a fee in VA cases except as provided by statute. 38 U.S.C. 5905.

It has been our experience that the majority of third-party agreements are rather blatant attempts to avoid the