

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

## Taking of Private Property

This rule would 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.

## Protection of Children

The Coast Guard 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 pose 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. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Environment

The Coast Guard considered the environmental impact of this rule and

concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under ADDRESSES.

## 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 that order because it is not a “significant regulatory 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), 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. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–139 to read as follows:

### § 165.T01–139 Safety Zone: Chelsea River Blasting, Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River three hundred (300) yards around the Great Lakes dredge barge, at a location on the eastern bank approximately 1000 yards north of the Chelsea Street Bridge.

(b) *Effective date.* This section is effective from 9 a.m. to 7 p.m. each day from Monday, August 13, 2001 through Saturday, September 22, 2001.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of

the Port or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: August 8, 2001.

**M.E. Landry,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.*

[FR Doc. 01–22814 Filed 9–11–01; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### 37 CFR Parts 1 and 104

[Docket No. 010808202–1202–01]

RIN 0651–AB22

### Legal Processes

**AGENCY:** Office of the General Counsel, United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO” or “Office”) is implementing rules relating to civil actions and claims involving the Office. Specifically, the rules provide procedures for service of process, for obtaining Office documents and employee testimony, for indemnifying employees, and for making a claim against the Office under the Federal Tort Claims Act.

**DATES:** Effective September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bernard J. Knight, Jr., Deputy General Counsel for General Law, at 703–308–2000.

**SUPPLEMENTARY INFORMATION:** This rule was proposed in a notice of proposed rulemaking published at 65 FR 80810 on December 22, 2000. Background information on this rule may be found in that notice.

### Discussion of Comments

*Comment:* Proposed section 104.23 purports to prohibit “employees” (which include ex-employees) from giving expert testimony regarding “Office information, subjects, or activities.” In patent infringement actions, it is common for a party to put up an ex-USPTO employee (often a very senior employee, such as a former Commissioner) as an expert witness to explain the procedures of the USPTO to

the judge or jury. It is unclear that the Office has the authority to prohibit ex-employees from so testifying, but in any event the use of ex-USPTO employees as expert witnesses on such general subjects should not be prohibited. If this is not the intent of proposed section 104.23 then the rule should be clarified.

*Response:* Under the provisions of 37 CFR 104.21(b)(2), former employees are excluded from the scope and purpose of Subpart C with respect to matters in which the former employee did not participate personally while at the Office. In addition, under 37 CFR 104.23(a)(2), the General Counsel may authorize an employee to give expert testimony in exceptional circumstances and purpose. Consequently, the rule does not prohibit former employees from giving expert testimony in appropriate circumstances.

*Comment:* Generally, it is not clear that the Office should preclude an investigation into whether inequitable conduct or fraud on the Office had been practiced in a given patent application. Interested parties (e.g., the defendant in an infringement action) should be permitted to inquire into certain events if fraud is alleged. For instance, if an exhibit had been shown at an interview and it were alleged that the exhibit (which had since been destroyed) had fraudulently represented the invention, there would be no way to obtain that information absent interviewing the Examiner—the interview summary sheet would not be effective here. Permitting such discovery would impose only a slight burden on the Office and would not be inconsistent with the policies discussed in the notice of the proposed rule. Moreover, to the extent that permitting such inquiry would assist in uncovering and deterring fraud and inequitable conduct, other important policies would be furthered. It may be appropriate to treat requests for such discovery under proposed section 104.3 (relating to exceptional circumstances). If such is the case, then the Office is requested to respond to this comment by indicating that lawsuits in which fraud/inequitable conduct issues are raised are sufficiently “exceptional” that requests for discovery into such allegations will be favorably considered (or at least deemed appropriately raised) under this rule.

*Response:* The rule does not prohibit a party from calling an employee as a fact witness. The rules do prevent inquiry into an examiner’s state of mind. For example, subjective state of mind of the employee is irrelevant to an inequitable-conduct inquiry. If fact testimony proves to be inadequate, then the parties may avail themselves of the

provisions of section 104.3, which provides that the General Counsel may waive or suspend the rules in extraordinary circumstances.

*Comment:* The application of the Department of Commerce (“DOC”) rules and the proposed USPTO rules to former employees is unnecessary to protect the legitimate interests of the Office. The existing USPTO rules of practice preclude former employees from taking any action which gives an appearance of impropriety. 37 CFR 10.110 and 10.111. Those rules give adequate protection to the USPTO for voluntary testimony by former employees concerning matters the former employees worked on while employed by the USPTO. *Friedman v. Lehman*, 40 USPQ2d 1206 (D.D.C. 1996).

*Response:* Part 10 only applies to registered patent practitioners and trademark attorneys practicing before the USPTO. If the former employee is not practicing before the USPTO, Part 10 does not apply. Thus, this proposed rule is intended to apply to all employees, not just those employees who practice before the USPTO. Indeed, some former employees do not practice before the Office. Further, Part 10 is intended to protect the public from improper conduct by practitioners, while these rules are intended in part to protect the USPTO’s deliberative or otherwise confidential information from unauthorized disclosure.

*Comment:* If, however, the USPTO does adopt rules applying to former employees, it should be made clear that such rules would not have retroactive effect, so that activity that was considered proper when performed would not now become improper and subject a former employee to some type of disciplinary action. In this regard, it would be desirable to clarify what relationship any violation of the proposed rules would have to misconduct under the disciplinary rules of 37 CFR Part 10.

*Response:* The rules are not given retroactive effect. Under the provisions of 37 CFR 10.23, misconduct potentially could include the actions of an employee who provided testimony that was not authorized by the rules. This issue, however, is within the jurisdiction of the Director, Office of Enrollment and Discipline, and is not properly addressed in these rules. Note, however, that the DOC rules have explicitly applied to former employees since 1995.

*Comment:* In addition, consideration should also be given to the effect which the current DOC rules will have with respect to former USPTO employees

which proposed § 104.21 (b) (2) would exempt. Such former USPTO employees are also former DOC employees and the proposed rules do not appear to address this question.

*Response:* While USPTO is a separate agency within the DOC, only the USPTO rules are applicable to current and former USPTO employees with respect to testimony related to official USPTO business. Of course, a former USPTO employee who is also a current or former employee of another DOC organization would be subject to the DOC rules with respect to matters related to that organization. Moreover, the exception provided by § 104.21(b)(2) for former employees, is consistent with DOC policy regarding similar testimony of former DOC employees.

*Comment:* With respect to information sought by subpoena addressed in § 104.22, the USPTO should be required to appear if it opposes a disclosure of information and should not be able to shift that obligation to the former employee. Thus, the commenter opposes the proposed rules insofar as they would enable the USPTO to sanction a former employee for failure to comply with proposed § 104.22(f) when the Office has been properly notified but does not send legal counsel to appear and contest the subpoena on behalf of the employee.

*Response:* The purpose of § 104.22(f) is not to “shift that obligation to the former employee.” The USPTO intends to seek Department of Justice representation for former employees when the General Counsel makes a determination under the rules that an employee should not comply with a subpoena. In those cases where compliance with a subpoena is commanded before Department of Justice representation can be arranged, the employee must, nevertheless, refuse to comply. In order to minimize the occurrence of this event, § 104.22(a) requires employees to immediately notify the General Counsel when they are served with a subpoena.

*Comment:* It is noted that unlike the DOC rules which define employee as including “current or former employees” (15 CFR 15.12(f)) and then consistently use the term “employee”, the proposed rules use the same definition as the DOC rules but then make a reference to “former employee” in § 104.21(b)(2). While this appears appropriate for § 104.21(b)(2), other sections seem to apply solely to a current employee but are not so limited. We believe that such potential ambiguities will render application of the rules unclear.

*Response:* The term “employee” is consistently used in the rules to refer to both current and former employees. The use of the term “former employee” in § 104.21(b)(2), which is the only section that does not apply to both current and former employees, does not create ambiguity.

*Comment:* The USPTO should clarify that proposed section 104.21(b)(2), which prohibits former employees from testifying as to matters in which they “participate[d] personally,” does not prohibit former high ranking USPTO officials or employees from providing expert testimony in court on USPTO procedures during the period when the official or employee was working at the USPTO.

*Response:* The term “participated personally” is derived from 18 U.S.C. 207(a) and is used here in keeping with the interpretation the Office of Government Ethics has given the phrase at 5 CFR 2637.201(d).

#### Other Revisions to the Proposed Rule

A new section 104.4 has been added to clarify that nothing in the rules waives or limits any requirement under the Federal Rules of Criminal or Civil Procedure. Subsection 104.24(f) has been modified to clarify the Office’s duty to seek Department of Justice representation for the employee

involved when the General Counsel makes a decision not to comply with a subpoena. In addition, other minor changes have been made to the wording of the proposed rule.

#### Other Considerations

This rule is not significant under Executive Order 12866.

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 control number 0651-0046. The USPTO is not resubmitting an information collection package 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 0651-0046.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), USPTO has certified that this rule will not have a significant impact on a substantial number of small businesses. The factual basis for this certification was provided in the Notice of Proposed Rulemaking published on December 22, 2000, 65 FR 80810. The factual basis for the

certification remains the same for this final rule, and therefore, need not be repeated.

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

#### List of Subjects in 37 CFR Parts 1 and 104

Administrative practice and procedure, Claims, Courts, Freedom of information, Inventions and patents, Tort claims, Trademarks.

For the reasons stated in the preamble, the United States Patent and Trademark Office amends 37 CFR chapter I 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. Section 1.17 is amended by revising paragraph (h) to read as follows:

#### § 1.17 Patent application processing fees.

\* \* \* \* \*

(h) For filing a petition to the Commissioner under one of the following sections which refers to this paragraph .....	\$130.00
§ 1.12—for access to an assignment record	
§ 1.14—for access to an application	
§ 1.47—for filing by other than all the inventors or a person not the inventor	
§ 1.53(e)—to accord a filing date	
§ 1.59—for expungement and return of information	
§ 1.84—for accepting color drawings or photographs	
§ 1.91—for entry of a model or exhibit	
§ 1.102—to make an application special	
§ 1.103(a)—to suspend action in an application	
§ 1.138(c)—to expressly abandon an application to avoid publication	
§ 1.182—for decision on a question not specifically provided for	
§ 1.183—to suspend the rules	
§ 1.295—for review of refusal to publish a statutory invention registration	
§ 1.313—to withdraw an application from issue	
§ 1.314—to defer issuance of a patent	
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent	
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent	
§ 1.644(e)—for petition in an interference	
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference	
§ 1.666(b)—for access to an interference settlement agreement	
§ 1.666(c)—for late filing of an interference settlement agreement	
§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term	
§ 5.12—for expedited handling of a foreign filing license	
§ 5.15—for changing the scope of a license	
§ 5.25—for a retroactive license	
§ 104.3—for waiver of a rule in Part 104 of this title	

\* \* \* \* \*

3. Redesignate subchapter B to read as follows:

#### **SUBCHAPTER B—ADMINISTRATION**

4. Add Part 104 to read as follows:

### **PART 104—LEGAL PROCESSES**

#### **Subpart A—General Provisions**

Sec.

104.1 Definitions.

104.2 Address for mail and service; telephone number.

104.3 Waiver of rules.

104.4 Relationship of this Part to the Federal Rules of Civil and Criminal Procedure.

#### **Subpart B—Service of Process**

104.11 Scope and purpose.

104.12 Acceptance of Service of Process.

#### **Subpart C—Employee Testimony and Production of Documents in Legal Proceedings**

104.21 Scope and purpose.

104.22 Demand for testimony or production of documents.

104.23 Expert or opinion testimony.

104.24 Demands or requests in legal proceedings for records protected by confidentiality statutes.

#### **Subpart D—Employee Indemnification**

104.31 Scope.

104.32 Procedure for requesting indemnification.

#### **Subpart E—Tort Claims**

104.41 Procedure for filing claims.

104.42 Finality of settlement or denial of claims.

**Authority:** 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101, except as otherwise indicated.

#### **Subpart A—General Provisions**

##### **§ 104.1 Definitions.**

*Demand* means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

*Director* means the Director of the United States Patent and Trademark Office.

*Document* means any record, paper, and other property held by the Office, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

*Employee* means any current or former officer or employee of the Office.

*Legal proceeding* means any pretrial, trial, and posttrial stages of existing or reasonably anticipated judicial or

administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings.

*Office* means the United States Patent and Trademark Office, including any operating unit in the United States Patent and Trademark Office, and its predecessors, the Patent Office and the Patent and Trademark Office.

*Official business* means the authorized business of the Office.

*General Counsel* means the General Counsel of the Office.

*Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videotaped statements or any responses given during discovery or similar proceedings, which response would involve more than the production of documents, including a declaration under 35 U.S.C. 25 or 28 U.S.C. 1746.

*United States* means the Federal Government, its departments and agencies, individuals acting on behalf of the Federal Government, and parties to the extent they are represented by the United States.

##### **§ 104.2 Address for mail and service; telephone number.**

(a) Mail under this part should be addressed to General Counsel, United States Patent and Trademark Office, P.O. Box 15667, Arlington, VA 22215.

(b) Service by hand should be made during business hours to the Office of the General Counsel, Crystal Park Two, Suite 905, 2121 Crystal Drive, Arlington, Virginia.

(c) The Office of the General Counsel may be reached by telephone at 703-308-2000 during business hours.

##### **§ 104.3 Waiver of rules.**

In extraordinary situations, when the interest of justice requires, the General Counsel may waive or suspend the rules of this part, sua sponte or on petition of an interested party to the Director, subject to such requirements as the General Counsel may impose. Any petition must be accompanied by the petition fee set forth in § 1.17(h) of this title.

##### **§ 104.4 Relationship of this Part to the Federal Rules of Civil or Criminal Procedure.**

Nothing in this part waives or limits any requirement under the Federal Rules of Civil or Criminal Procedure.

#### **Subpart B—Service of Process**

##### **§ 104.11 Scope and purpose.**

(a) This subpart sets forth the procedures to be followed when a summons and complaint is served on the Office or on the Director or an employee in his or her official capacity.

(b) This subpart is intended, and should be construed, to ensure the efficient administration of the Office and not to impede any legal proceeding.

(c) This subpart does not apply to subpoenas, the procedures for which are set out in subpart C.

(d) This subpart does not apply to service of process made on an employee personally on matters not related to official business of the Office or to the official responsibilities of the employee.

##### **§ 104.12 Acceptance of service of process.**

(a) Any summons and complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Office, on the Director, or on an employee in his or her official capacity, shall be served as indicated in § 104.2.

(b) Any employee of the Office served with a summons and complaint shall immediately notify, and shall deliver the summons and complaint to, the Office of the General Counsel.

(c) Any employee receiving a summons and complaint shall note on the summons and complaint the date, hour, and place of service and whether service was by hand or by mail.

(d) When a legal proceeding is brought to hold an employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the employee by law is to be served personally with process. *See Fed. R. Civ. P. 4(e)*. An employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons and complaint to the General Counsel.

(e) An employee sued personally in connection with official business may be represented by the Department of Justice at its discretion (28 CFR 50.15 and 50.16).

(f) The Office will only accept service of process for an employee in the employee's official capacity.

#### **Subpart C—Employee Testimony and Production of Documents in Legal Proceedings**

##### **§ 104.21 Scope and purpose.**

(a) This subpart sets forth the policies and procedures of the Office regarding the testimony of employees as witnesses in legal proceedings and the production

or disclosure of information contained in Office documents for use in legal proceedings pursuant to a demand.

(b) *Exceptions.* This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is to testify as an expert in connection with a particular matter in which the former employee did not participate personally while at the Office.

#### **§ 104.22 Demand for testimony or production of documents.**

(a) Whenever a demand for testimony or for the production of documents is made upon an employee, the employee shall immediately notify the Office of the General Counsel at the telephone number or addresses in § 104.2 and make arrangements to send the subpoena to the General Counsel promptly.

(b) An employee may not give testimony, produce documents, or answer inquiries from a person not employed by the Office regarding testimony or documents subject to a demand or a potential demand under the provisions of this subpart without the approval of the General Counsel. The General Counsel may authorize the provision of certified copies not otherwise available under Part 1 of this title subject to payment of applicable fees under § 1.19.

(c)(1) *Demand for testimony or documents.* A demand for the testimony of an employee under this subpart shall be addressed to the General Counsel as indicated in § 104.2.

(2) *Subpoenas.* A subpoena for employee testimony or for a document shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable state procedure, and a copy of the subpoena shall be sent to the General Counsel as indicated in § 104.2.

(3) *Affidavits.* Except when the United States is a party, every demand shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or 35 U.S.C. 25(b) setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reason for the demand, a showing that the desired testimony or document is not reasonably available from any other source, and, if testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony.

(d) Failure of the attorney to cooperate in good faith to enable the General

Counsel to make an informed determination under this subpart may serve as a basis for a determination not to comply with the demand.

(e) A determination under this subpart to comply or not to comply with a demand is not a waiver or an assertion of any other ground for noncompliance, including privilege, lack of relevance, or technical deficiency.

(f) *Noncompliance.* If the General Counsel makes a determination not to comply, he or she will seek Department of Justice representation for the employee and will attempt to have the subpoena modified or quashed. If Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena. In such a case, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony nor to produce the requested document. If a legal tribunal rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

#### **§ 104.23 Expert or opinion testimony.**

(a)(1) If the General Counsel authorizes an employee to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the employee. Employees, with or without compensation, shall not provide expert testimony in any legal proceedings regarding Office information, subjects, or activities except on behalf of the United States or a party represented by the United States Department of Justice.

(2) The General Counsel may authorize an employee to appear and give the expert or opinion testimony upon the requester showing, pursuant to § 104.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Office or the United States.

(b)(1) If, while testifying in any legal proceeding, an employee is asked for expert or opinion testimony regarding Office information, subjects, or activities, which testimony has not been approved in advance in writing in accordance with the regulations in this subpart, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by this subpart;

(ii) Request an opportunity to consult with the General Counsel before giving such testimony; and

(iii) Explain that upon such consultation, approval for such testimony may be provided.

(2) If the tribunal conducting the proceeding then orders the employee to provide expert or opinion testimony regarding Office information, subjects, or activities without the opportunity to consult with the General Counsel, the employee shall respectfully refuse to provide such testimony, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) If an employee is unaware of the regulations in this subpart and provides expert or opinion testimony regarding Office information, subjects, or activities in a legal proceeding without the aforementioned consultation, the employee shall, as soon after testifying as possible, inform the General Counsel that such testimony was given and provide a written summary of the expert or opinion testimony provided.

(d) *Proceeding where the United States is a party.* In a proceeding in which the United States is a party or is representing a party, an employee may not testify as an expert or opinion witness for any party other than the United States.

#### **§ 104.24 Demands or requests in legal proceedings for records protected by confidentiality statutes.**

Demands in legal proceedings for the production of records, or for the testimony of employees regarding information protected by the confidentiality provisions of the Patent Act (35 U.S.C. 122), the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), or any other confidentiality statute, must satisfy the requirements for disclosure set forth in those statutes and associated rules before the records may be provided or testimony given.

### **Subpart D—Employee Indemnification**

#### **§ 104.31 Scope.**

The procedure in this subpart shall be followed if a civil action or proceeding is brought, in any court, against an employee (including the employee's estate) for personal injury, loss of property, or death, resulting from the employee's activities while acting within the scope of the employee's office or employment. When the employee is incapacitated or deceased, actions required of an employee should be performed by the employee's executor, administrator, or comparable legal representative.

**§ 104.32 Procedure for requesting indemnification.**

(a) After being served with process or pleadings in such an action or proceeding, the employee shall within five (5) calendar days of receipt, deliver to the General Counsel all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the incident giving rise to the court action or proceeding.

(b)(1) An employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee only if the employee has timely satisfied the requirements of paragraph (a) of this section.

(2) No request for indemnification will be considered unless the employee has submitted a written request through the employee's supervisory chain to the General Counsel with:

- (i) Appropriate documentation, including copies of the verdict, judgment, appeal bond, award, or settlement proposal;
- (ii) The employee's explanation of how the employee was acting within the scope of the employee's employment; and
- (iii) The employee's statement of whether the employee has insurance or any other source of indemnification.

**Subpart E—Tort Claims**

**Authority:** 28 U.S.C. 2672; 35 U.S.C. 2(b)(2); 44 U.S.C. 3101; 28 CFR Part 14.

**§ 104.41 Procedure for filing claims.**

Administrative claims against the Office filed pursuant to the administrative claims provision of the Federal Tort Claims Act (28 U.S.C. 2672) and the corresponding Department of Justice regulations (28 CFR Part 14) shall be filed with the General Counsel as indicated in § 104.2.

**§ 104.42 Finality of settlement or denial of claims.**

Only a decision of the Director or the General Counsel regarding settlement or denial of any claim under this subpart

may be considered final for the purpose of judicial review.

Dated: September 6, 2001.  
**Nicholas P. Godici,**  
*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 01-22854 Filed 9-11-01; 8:45 am]  
**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**  
**[CA 249-0290a; FRL-7045-9]**

**Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and South Coast Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants and from other solvent containing materials. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on November 13, 2001 without further notice, unless EPA receives adverse comments by October 12, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
- Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1199.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

**A. What Rules Did the State Submit?**

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
BAAQMD .....	8-51	Adhesive and Sealant Products.	05/02/01	05/31/01
SCAQMD .....	443.1	Labeling of Materials Containing Organic Solvent.	12/05/86	06/09/87

On July 20, 2001, submitted Rule 8-51 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V,

which must be met before formal EPA review. Completeness was not required

for rules like 443.1 that were submitted prior to 1988.