

**§ 165.T07–118 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.**

(a) *Location.* The following area is a security zone: All waters from surface to bottom, encompassed within a line connecting the following coordinates: 17°41'31" N, 64°45'09" W, to 17°39'36" N, 64°44'12" W, to 17°40'00" N, 64°43'36" W, to 17°41'48" N, 64°44'25" W, and then back to the point of origins.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, with the exception of vessels that have an arrival scheduled with the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port (COTP) San Juan, a Coast Guard commissioned, warrant, or petty officer designated by COTP San Juan. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24-hours-a-day, 7-days-a-week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24-hours-a-day, 7-days-a-week.

(c) *Dates.* This section is effective from November 5, 2004, until May 15, 2005.

Dated: November 5, 2004.

**E. Emeric,**

*Commander, U.S. Coast Guard, Captain of the Port, San Juan.*

[FR Doc. 05–962 Filed 1–18–05; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 2

[Docket No. 2004–T–051]

RIN 0651–AB83

#### Changes in Fees for Filing Applications for Trademark Registration

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is amending its rules of practice to adjust the fee for filing a trademark application for registration based on whether the application is filed on paper or electronically using the Trademark

Electronic Application System (TEAS). Specifically, the Office is amending its rules to provide that: The fee for a trademark application filed on paper shall be increased to \$375.00 for each class of goods or services; and the fee for a trademark application filed through TEAS shall be decreased to \$325.00 for each class of goods or services.

**EFFECTIVE DATE:** January 31, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Cheryl Black, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–9565, or by e-mail to [cheryl.black@uspto.gov](mailto:cheryl.black@uspto.gov).

**SUPPLEMENTARY INFORMATION:** The Office is amending the trademark rules of practice governing the payment of fees for trademark applications to require payment based on whether the application is filed on paper or electronically through TEAS. Specifically, the Office is amending its rules to provide that: (1) The fee for a trademark application filed on paper shall be increased to \$375.00 for each class of goods or services; and (2) the fee for a trademark application filed through TEAS shall be decreased to \$325.00 for each class of goods or services.

#### Background

The Consolidated Appropriations Act 2005, Pub. L. 108–447, (Appropriations Act) was enacted on December 8, 2004. The Appropriations Act amends the Trademark Act of 1946 to require that:

[D]uring fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under § 31(a) of the Trademark Act \* \* \* for (1) the filing of a paper application for trademark registration shall be \$375; (2) the filing of an electronic application shall be \$325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be \$275.

This final rule adjusts the trademark application filing fees for applications filed pursuant to § 1 or 44 of the Trademark Act on paper to \$375.00 per class and applications filed pursuant to § 1 or 44 of the Trademark Act through TEAS to \$325.00 per class in accordance with the provisions of 15 U.S.C. 1113(a), as amended by the Appropriations Act. The purpose of the lower fee for TEAS applications is to encourage applicants to file trademark applications electronically and to respond to any outstanding issues electronically. The Director will not prescribe rules for electronic applications that qualify for a filing fee of \$275.00 until the Office deploys the information technology systems necessary to process these

applications. Electronic applications in this third category will have additional filing date requirements.

The filing fee for Madrid Protocol applications under § 66(a) of the Trademark Act (66(a) applications) will remain unchanged. The Office will amend the filing fee for 66(a) applications in accordance with the requirements and procedures set forth in the Rule 35 of the Common Regulations Under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to That Agreement (Common Regs.) (April 1, 2004) and issue a notice of the effective date of the change. The rule change in § 2.6 is waived as to 66(a) applications until the procedures required by the Common Regs. are completed.

References below to “the Act,” “the Trademark Act,” or “the statute” refer to the Trademark Act of 1946, 15 U.S.C. 1051, *et seq.*, as amended.

#### Discussion of Specific Rules

The Office is amending rules 2.6, 2.86 and 2.87.

The Office is revising § 2.6(a)(1) to provide that the fee for filing an application on paper is \$375.00 per class, and that the fee for filing an application through TEAS is \$325.00 per class.

The Office is amending § 2.86(a)(2) to provide that the filing fees for a multiple class application are based on § 2.6, which lays out a two-track fee system based on whether payment is made on paper or through TEAS. For example, if the applicant files a single class application through TEAS, the applicant must pay the TEAS application filing fee for the class identified in the application. If, on examination, the Office determines that it is a multiple class application, the applicant may respond through TEAS and pay the TEAS application filing fee for each additional class. Alternatively, the applicant may respond by mail or fax and pay the paper application filing fee for each additional class.

The Office is revising § 2.87(b) to provide that where a new separate application is created from a request to divide out some, but not all, of the goods or services in a class, the applicant must pay the fee for dividing the application and the applicable application filing fee as set forth in § 2.6(a)(1). Currently division requests can only be filed on paper, so the applicable filing fee will be \$375.00 per class. However, in the future it will be possible to file a request to divide through TEAS, and at that point, if the request to divide is filed through TEAS,

the TEAS application filing fee will apply.

### Rule Making Requirements

*Administrative Procedure Act:* The final rule changes certain fees for filing trademark applications in order to conform to the trademark fees specified in 15 U.S.C. 1113(a) as amended by the Appropriations Act. Because these changes merely implement the fees set forth in the Appropriations Act, these rule changes involve interpretive rules and/or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). See *Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001); *Paralyzed Veterans of America v. West* 138 F.3d 1434, 1436 (Fed. Cir. 1998); and *Komjathy v. National Transportation Safety Board*, 832 F.2d 1294, 1296–97 (D.C. Cir. 1987). Therefore, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

This final rule may also be adopted without thirty-day advance publication of the fee changes pursuant to 15 U.S.C. 1113(a). While nothing in the Appropriations Act or any other law requires delayed implementation of the fee changes in order to implement these fee changes, the Office must reprogram the trademark electronic filing system to accept the reduced fee. If TEAS is not reprogrammed before the fee changes go into effect, the Office will have to issue refunds to thousands of applicants for the amount paid in excess of the lower application filing fee. Such a corrective measure would be an administrative burden to the Office and to the public. Therefore, the Director has decided to briefly delay the implementation of the fee changes to allow the Office sufficient time to make the necessary programming changes. This final rule will go into effect on January 31, 2005.

### Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See 5 U.S.C. 603.

### Executive Order 13132

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

### Executive Order 12866

This rule making has been determined not to be significant for purposes of Executive Order 12866.

### Paperwork Reduction Act

This rule making 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 collections of information involved in this rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0009, 0651–0050.

### List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

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

### PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR Part 2 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 2, unless otherwise noted.

■ 1a. Amend § 2.6 by revising paragraph (a)(1) to read as follows:

#### § 2.6 Trademark fees.

\* \* \* \* \*

(a) \* \* \*

(1) For filing an application:

(i) On paper, per class—\$375.00

(ii) Through TEAS, per class—\$325.00

\* \* \* \* \*

■ 2. Amend § 2.86 by revising paragraph (a)(2) to read as follows:

#### § 2.86 Application may include multiple classes.

(a) \* \* \*

(2) Submit an application filing fee for each class, as set forth in § 2.6(a)(1).

\* \* \* \* \*

■ 3. Amend § 2.87 by revising paragraph (b) to read as follows:

#### § 2.87 Dividing an application.

\* \* \* \* \*

(b) In the case of a request to divide out one or more entire classes from an application, only the fee for dividing an application under paragraph (a) of this section, as set forth in § 2.6(a)(19), will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, the application filing fee, as set forth in § 2.6(a)(1), for each new separate application to be created by the division

must be submitted, together with the fee for dividing an application under paragraph (a) of this section, as set forth in § 2.6(a)(19).

\* \* \* \* \*

Dated: December 29, 2004.

**Stephen M. Pinkos,**

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

[FR Doc. 05–833 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–16–P

## POSTAL SERVICE

### 39 CFR Part 111

#### Periodicals Mail Enclosed With Merchandise Sent at Parcel Post or Bound Printed Matter Rates

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule allows sample copies of authorized and pending Periodicals publications to be enclosed with merchandise mailed at Parcel Post or Bound Printed Matter postage rates.

**DATES:** Effective October 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Donald Lagasse, (202) 268–7269, [Donald.T.Lagasse@usps.gov](mailto:Donald.T.Lagasse@usps.gov).

**SUPPLEMENTARY INFORMATION:** On February 25, 2004, pursuant to 39 U.S.C. 83623, the Postal Service filed with the Postal Rate Commission a request for a decision recommending a minor mail classification change. The change allows sample copies of authorized and pending Periodicals publications to be enclosed with merchandise mailed at Parcel Post or Bound Printed Matter rates. This change was approved by the Board of Governors on July 19, 2004, with an implementation date of October 3, 2004.

This change does not affect any existing standards (*e.g.*, circulation requirements) for Periodicals rates. To determine postage on mail entered under the new standard, postage of the Parcel Post or Bound Printed Matter rates is based on the combined weight of the sample publication and the host piece.

This change is desirable from the point of view of both publishers and the Postal Service because it provides another venue for promoting Periodicals and Package Services. The new standards benefit customers, printers, advertisers, and all affected parties by providing an opportunity for additional subscriptions, thereby creating more revenue and volume.