

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 4044**

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

■ 1. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, add an entry for “January–March 2021” at the end of the table to read as follows:

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
January–March 2021 .....	0.0169	1–20	0.0166	>20	N/A	N/A

Issued in Washington, DC, by:  
**Hilary Duke,**  
*Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*  
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**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 2**

[Docket No. PTO–T–2019–0027]

RIN 0651–AD42

**Trademark Fee Adjustment**

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

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** On November 17, 2020, the United States Patent and Trademark Office (USPTO) published in the **Federal Register** a final rule on setting and adjusting trademark fees that is scheduled to go into effect on January 2, 2021. This final rule changes the effective date of one fee paid by international applicants under the Madrid Protocol from January 2, 2021, to February 18, 2021.

**DATES:** The effective date of 37 CFR 2.6(a)(1)(ii), amended at 85 FR 73197, November 17, 2020, is delayed from January 2, 2021, to February 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571–272–8946, or by email at *TMPolicy@uspto.gov*.

**SUPPLEMENTARY INFORMATION:** The USPTO published a final rule (85 FR 73197, Nov. 17, 2020) that set or adjusted certain trademark fees, as

authorized by the Leahy-Smith America Invents Act, as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018. Those fee changes allow the USPTO to continue to recover the prospective aggregate costs of strategic and operational trademark and Trademark Trial and Appeal Board goals (based on workload projections included in the USPTO fiscal year 2021 Congressional Justification), including associated administrative costs, and to further USPTO strategic objectives by better aligning fees with costs, protecting the integrity of the trademark register, improving the efficiency of agency processes, and ensuring financial sustainability to facilitate effective trademark operations.

Among the changes in the November 17, 2020 final rule, the USPTO amended the fee at 37 CFR 2.6(a)(1)(ii) addressing applications under section 66(a) of the Trademark Act, 15 U.S.C. 1141f. This fee, paid by international applicants designating the United States under the World Intellectual Property Organization’s (WIPO) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), is set to increase from \$400 to \$500.

This final rule delays the effective date of the change to § 2.6(a)(1)(ii) because the treaty requires three months advance notice to WIPO, which then alerts international applicants, before an increase in the amount of the international application/subsequent designation fee can enter into force. On November 18, 2020, the USPTO provided WIPO with the required notice of the change to § 2.6(a)(1)(ii). Thus, the effective date of § 2.6(a)(1)(ii) is delayed from January 2, 2021, to February 18, 2021, three months following the notification.

**Rulemaking Requirements**

*A. Administrative Procedure Act:* This final rule revises the effective date of § 2.6(a)(1)(ii). This action relates to the setting or adjusting of trademark fees and is a rule of agency practice and procedure and/or an interpretive rule pursuant to 5 U.S.C. 553(b)(A). *See JEM Broad. Co. v. F.C.C.*, 22 F.3d 32 (D.C. Cir. 1994) (“[T]he ‘critical feature’ of the procedural exception [in 5 U.S.C. 553(b)(A)] ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.’” (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980))); *see also Bachow Commc’ns Inc. v. F.C.C.*, 237 F.3d 683, 690 (D.C. 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 are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See 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), do 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)).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B) and (d)(1), finds good cause to adopt the change in this final rule without prior notice and an opportunity for public comment or a 30-day delay in effectiveness, as such procedures would be impracticable and contrary to the public interest. Immediate implementation of the change to the

effective date of § 2.6(a)(1)(ii) is in the public interest because it will allow the USPTO to meet its obligation under the Madrid Protocol to provide three months advance notice to WIPO and to international applicants of any changes to international application/subsequent designation fees. A delay of this final rule to provide prior notice and comment procedures and a delay in effectiveness are impracticable because they would allow the change to § 2.6(a)(1)(ii) to go into effect before the agency has provided WIPO with the required three-month advance notice, thereby defeating the purpose of this rulemaking. Therefore, the Director finds there is good cause to waive notice and comment procedures and the 30-day delay in effectiveness for this rule.

*B. 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 Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required and none have been prepared. See 5 U.S.C. 605(b).

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs):* This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866 (Jan. 30, 2017).

**Andrei Iancu,**

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

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## POSTAL REGULATORY COMMISSION

**39 CFR Parts 3030, 3040, 3045, 3050, and 3055**

[Docket No. RM2017-3; Order No. 5763]

### System for Regulating Market Dominant Rates and Classifications

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting final rules modifying the system for regulating rates and classifications for Market Dominant products. The revised rules incorporate feedback from comments received from the Commission's prior proposed rulemaking. The rules as adopted are

intended to enable the Market Dominant rate making system to achieve certain statutory objectives.

**DATES:** *Effective:* January 14, 2021.

**ADDRESSES:** For additional information, Order No. 5763 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

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#### I. Relevant Statutory Requirements

The Postal Accountability and Enhancement Act (PAEA),<sup>1</sup> directed the Commission to promulgate rules establishing a ratemaking system for Market Dominant products within 18 months after the law's enactment, which the Commission did in 2007. See 39 U.S.C. 3622(a); Docket No. RM2007-1. Section 3622(d)(3) of title 39 of the United States Code requires the Commission to review the ratemaking system 10 years after the PAEA's enactment to determine if the system has achieved the 9 statutory objectives as specified by the PAEA, taking into account the 14 statutory factors. 39 U.S.C. 3622(b), (c), and (d)(3). After making its determination that the ratemaking system did not achieve the statutory objectives, taking into account the statutory factors, the Commission began a public rulemaking process to make modifications to the ratemaking system for Market Dominant products as necessary to achieve the objectives pursuant to 39 U.S.C. 3622(d)(3).

#### II. Background

Pursuant to section 3622(d)(3), the Commission initiated Docket No. RM2017-3 for the purpose of conducting its 10-year review of the Market Dominant ratemaking system. In Order No. 4257,<sup>2</sup> the Commission found that in the decade following the PAEA's enactment, the ratemaking system had not achieved the statutory objectives, taking into account the statutory factors. Order No. 4257 at 275. On the same day that it released its findings, the Commission issued a notice of proposed rulemaking (NPR), setting forth a number of proposed regulatory modifications intended to enable the ratemaking system to achieve the

statutory objectives and seeking public input.<sup>3</sup> In response to comments received, the Commission issued a revised notice of proposed rulemaking (Revised NPR) again seeking public comment on the Commission's revised proposals.<sup>4</sup> The Commission's further modifications and responses to public comments received from the Revised NPR are addressed in its final rules.

#### III. Basis and Purpose of Final Rules

Order No. 4257 concluded that while the ratemaking system had fulfilled some of the PAEA's goals, the overall system had not achieved the statutory objectives, taking into account the statutory factors. Order No. 4257 at 3-4. For ease of organization, the Commission's analysis grouped the PAEA's nine statutory objectives into three principal areas: (1) The structure of the ratemaking system; (2) the financial health of the Postal Service; and (3) service.

For the first principal area, the Commission found that the ratemaking system had resulted in predictable and stable rates, in terms of timing and magnitude (Objective 2); that it had reduced administrative burden and increased transparency (Objective 6); that it had provided the Postal Service with pricing flexibility (Objective 4); and that it had, on balance, maintained just prices (Objective 8). *Id.* at 142-145. However, the Commission found that the ratemaking system had not increased pricing efficiency (Objective 1). *Id.* at 146. For the second principal area—the financial health of the Postal Service—the Commission found that while the ratemaking system had been sufficient to provide for mail security and terrorism deterrence (Objective 7); had provided a sufficient mechanism to allocate institutional costs between Market Dominant products and Competitive products (Objective 9); and had generally enabled the Postal Service to achieve short-term financial stability, medium- and long-term financial stability had not been achieved (Objective 5). *Id.* at 247-249. The Commission also found that cost reductions and operational efficiency improvements were not sufficient to achieve overall financial stability and therefore not maximized (Objective 1). *Id.* at 184-194, 221-226. Likewise due to loss-making products and classes, the Commission found the system did not

<sup>3</sup> Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258), 82 FR 58280 (December 11, 2017).

<sup>4</sup> Revised Notice of Proposed Rulemaking, December 5, 2019 (Order No. 5337), 84 FR 67685 (December 11, 2019).

<sup>1</sup> Public Law 109-435, 120 Stat. 3198 (2006).

<sup>2</sup> Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017 (Order No. 4257).