

## Explanation of Provisions

These final section 4374 regulations clarify the persons who are liable for payment of the insurance premium excise tax and conform the regulations to the amendments made to section 4374 by the Tax Reform Act of 1976 (90 Stat. 1525). In particular, these regulations clarify that liability for the excise tax is incurred by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold.

One commentator suggested that the final regulation restrict application of the section 7270 penalty to a failure to pay the excise tax by the person who remitted the tax to the foreign insurer or reinsurer. Section 46.4374-1(d) of the regulation only is a cross-reference to section 7270, which section imposes a penalty of double the amount of tax when an underpayment results from an intention to evade the tax. Substantive guidance on the application of section 7270 is beyond the scope of this regulation, and accordingly, no change to the regulation was made as a result of this suggestion.

The same commentator suggested that the final regulation clarify whether the insured person under an insurance policy may be liable for the excise tax if all or a portion of the risks from such policy are reinsured with a foreign reinsurer on the basis that the insured may be treated as a person for whose benefit the reinsurance policy was made, signed, issued or sold. In response to the commentator's suggestion, § 46.4374-1(a) of these regulations has been revised to provide that in the case of a reinsurance policy other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy was made, signed, issued or sold. In these cases, when an insurer or reinsurer reinsures a risk with a foreign reinsurer, the insurer or reinsurer generally is the person for whose use or benefit the reinsurance policy is issued or sold for purposes of section 4374.

## Effective Date

The final regulations are effective for premiums paid on or after November 27, 2002.

## Special Analyses

It has been determined that this Treasury decision is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is David Lundy of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 46 is amended as follows:

### PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

**Paragraph 1.** The authority citation for part 46 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 2.** Section 46.4374-1 is revised to read as follows:

#### § 46.4374-1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371. For purposes of this section, in the case of a reinsurance policy that is subject to the tax imposed by section 4371(3), other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy is made, signed, issued, or sold.

(b) *When liability for tax attaches.* The liability for the tax imposed by

section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after November 27, 2002.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: November 13, 2002.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD01-02-133]

#### Drawbridge Operation Regulations: Hackensack River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. Under this deviation the bridge may remain closed

to vessel traffic for four hours a day from 12 midnight to 4 a.m., from November 18, 2002 through November 21, 2002. In addition, the bridge may remain closed to vessel traffic for two weekends from 9 p.m. on Saturday through 9 a.m. on Sunday, from December 7, 2002 through December 8, 2002, and from December 14, 2002 through December 15, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

**DATES:** This deviation is effective from November 18, 2002 through December 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Amtrak Portal Bridge has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing drawbridge operation regulations are at 33 CFR 117.723.

The bridge owner, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of the cable lift system, at the bridge. The bridge must remain in the closed position to navigation to perform these repairs. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the Amtrak Portal Bridge may remain closed to vessel traffic for four days from 12 midnight to 4 a.m., November 18, 2002 through November 21, 2002. In addition, the bridge may remain closed to vessel traffic for two weekends from 9 p.m. on Saturday through 9 a.m. on Sunday, from December 7, 2002 through December 8, 2002 and from December 14, 2002 through December 15, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 18, 2002.

**V.S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02-30104 Filed 11-26-02; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

#### 37 CFR Parts 1 and 2

[Docket No. 2003-C-004]

RIN 0651-AB51

#### Revision of Patent and Trademark Fees for Fiscal Year 2003

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this notice) is adjusting certain patent fee amounts and a trademark fee amount to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business. In addition, we are amending several patent and trademark document supply fees to streamline operations and to benefit our customers.

Legislation has also been introduced in the Congress that would alter our fees. If enacted, this legislation would supersede many of the fees identified in this final rule.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Matthew Lee by e-mail at [matthew.lee@uspto.gov](mailto:matthew.lee@uspto.gov), by telephone at (703) 305-8051, or by fax at (703) 305-8007.

**SUPPLEMENTARY INFORMATION:** This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Public Law 106-113), and section 1113 of title 15, United States Code. This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

In addition, this final rule amends several patent and trademark document supply fees. The wider availability of patent and trademark image stores to retrieve and make copies has allowed us to process and fill customer orders for issued patents, registered trademarks, and both patent and trademark applications-as-filed more predictably and in shorter total turnaround times,

regardless of whether a copy was ordered for regular or expedited delivery service. Therefore, we are eliminating the previous 37 CFR 1.19(a)(1)(ii), (a)(1)(iii), (b)(1)(i), 2.6(b)(1)(ii), (b)(1)(iii), and (b)(2)(i) fees and reducing the previous 37 CFR 1.19(b)(1)(ii) and 2.6(b)(2)(ii) fees. The cost benefit from streamlining our operations will be passed on to our customers. “At cost” services are still available for urgent (e.g., same day) service.

Legislation has been introduced in the Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this final rule. When such changes occur, we will make corresponding rule changes by publication in the **Federal Register**. Customers may wish to refer to the official USPTO Web site ([www.uspto.gov](http://www.uspto.gov)) for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office*.

### Background

#### Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Section 1113 of title 15, United States Code, authorizes the Director to establish fees for the filing and processing of an application for the registration of a trademark or other