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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[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.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is setting or adjusting certain trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The changes will allow the USPTO to continue to recover the prospective aggregate costs of strategic and operational trademark and Trademark Trial and Appeal Board (TTAB or Board) goals (based on workload projections included in the USPTO fiscal year (FY) 2021 Congressional Justification), including associated administrative costs. They will also 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. USPTO has weighed carefully current economic conditions and the potential hardship that the fee increase could create for businesses and individuals. The Office paused development of the fee rule because of uncertainty about the economy earlier this year. The latest economic data point to continued recovery in many sectors of the economy. Because of this and the relatively small annual cost to businesses and individuals from USPTO's trademark applications and maintenance fees, the Office has decided to finalize the fee rule for implementation in January 2021.

DATES: This rule is effective on January 2, 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 conducted a fee review in FY 2019 that formed the basis for this regulatory process to adjust and set new trademark user fees. While trademark-related costs of operations have risen, trademark fees have not changed since January 2017. The revenue and workload assumptions in this rule are based on the assumptions found in the FY 2021 Congressional Justification (*i.e.,* the USPTO's FY 2021 budget submission to Congress). However, projections of aggregate revenues and costs are based on point-in-time estimates, and the circumstances surrounding these assumptions can change quickly. Notably, since the FY 2021 Congressional Justification was published, some fee collections have been lower than anticipated, due to lower than expected post-registration and Madrid filings.

Although economic circumstances have changed substantially since the FY 2021 budget was developed, the USPTO determined it remains the most appropriate starting point for developing this Final Rule. First, the USPTO's projections of aggregate revenues and costs are necessarily estimates that can change substantially from one point in time to the next due to numerous factors outside the USPTO's control, including cyclical economic changes or exogenous shocks, such as COVID–19, changes in the laws governing USPTO revenues or expenditures, and other events. Nevertheless, the USPTO has historically used its most recent budget assumptions when setting fees because they are the most recent complete evaluation of the USPTO's budget expectations and requirements, and they provide assumptions for stakeholders to use when formulating their comments. Those projections were developed in late calendar year 2019, prior to the COVID–19 outbreak, and they assumed continuing stable economic growth, not the sharp economic downturn and rebound of 2020.

As part of the multi-year fee-setting process, the Trademark Public Advisory Committee (TPAC) held a public hearing at the USPTO on September 23, 2019. The Office considered and analyzed all comments, advice, and recommendations received from the TPAC in proposing the fees set forth in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on June 19, 2020, at 85 FR 37040. In formulating this rule, the USPTO considered the state of the U.S. economy, the operational needs of the agency, and public comments submitted pursuant to the NPRM and made adjustments to the substance of this rule based on these considerations.

The USPTO has considered the state of the U.S. economy, the operational needs of the agency, and the comments and advice received from the public during the 45-day comment period. The current economic conditions illustrate the need for the increases set forth in this rule. The majority of USPTO's trademark revenue comes from new applications, but the initial costs to examine applications exceed the revenues from those applications. These examination costs have been increasing over the years while the USPTO has kept filing fees low enough to encourage broad public participation in the trademark system by offsetting examination costs with revenues generated with intent-to-use (ITU) and maintenance filings. Despite this balancing of front- and back-end costs, the USPTO has been observing multi-year consistent trends that have begun to adversely affect this model. The USPTO is receiving record levels of new trademark application filings, carrying with them larger front-end examination costs, while the percentage of ITU and maintenance filings are decreasing, resulting in less back-end revenue. With larger net costs that are not being offset by back-end revenue, the USPTO would be unable to maintain an operating reserve, which puts the Office on an unsustainable funding model.

The USPTO has observed these trends taking place whether the economy is doing well or facing turmoil, but the present situation is particularly challenging in light of the impact of the pandemic and its effect on the economy and filings. In particular, over the last six months, the USPTO has experienced a surge in new applications while maintenance filings continue to be impacted by lower rates of payment from one-time filers and individual applicants. The surge is also undermining the other traditional revenue sources that have historically offset front-end costs, such as ITU, since the USPTO is receiving more use-based applications, especially from foreign filers. While the USPTO is observing a surge in filings at present, given past experience, we expect a future decline to bring filings in line with the underlying economic dynamism. Although the timing and the magnitude of a future correction may be difficult to anticipate with complete accuracy, given past experience, the USPTO anticipates that a correction in filing levels could generate funding shortfalls that quickly drain our reserves and affect our operations and financial stability.

The USPTO received some comments urging the Office not to raise any fees. As noted below, in the discussion of the Regulatory Flexibility Act, one regulatory alternative that was considered was to leave all trademark fees as currently set. This alternative was rejected because, due to changes in demand for certain services and rising costs described herein, the Office has determined that a fee increase is needed to meet future budgetary requirements as described in the FY 2021 Congressional Justification. As discussed further below, the alternative of making no changes to trademark fees would not have achieved the goals of this rulemaking. Those goals are to assist in promoting access to the trademark system, protect the integrity of the register, and promote the efficiency of the trademark registration process by incentivizing: (1) Maintenance of registrations for goods and services for which marks are actually in use, (2) more timely filing of applications and other documents, and (3) faster resolution of appeals and inter partes proceedings at the TTAB.

USPTO has weighed carefully current economic conditions and the potential hardship that the fee increase could create for businesses and individuals. The USPTO has undertaken many efforts to provide various types of relief, including deadline extensions and fee postponements. Additionally, in the FY 2021 Congressional Justification, implementation of the fee rule was slated for August of 2020. Considering the impact of the pandemic, uncertainty about the economy, and stakeholder feedback, the USPTO paused development of the fee rule over the summer of 2020. The latest economic data point to continued recovery in many sectors of the economy. Because of this and the relatively small annual cost to businesses and individuals from USPTO's trademark applications and maintenance fees, the Office has decided to finalize the fee rule for implementation in January 2021.

I. Purpose: The USPTO protects consumers and provides benefits to businesses by effectively and efficiently carrying out the trademark laws of the United States. As a fee-funded agency, appropriate fees are critically important for the USPTO to maintain the quality and timeliness of examination and other services, and to stabilize and modernize aging information technology (IT) infrastructure on which the Office and its customers rely. The fee schedule enacted in this rulemaking is estimated to provide aggregate revenue to recover the USPTO's aggregate estimated future costs and ensure the USPTO can achieve strategic and operational goals. These goals include effectively using resources to maintain low trademark pendency and high quality, fostering business effectiveness, stabilizing and modernizing trademark IT systems, continuing programs for stakeholder and public outreach, enhancing operations of the TTAB, and ensuring financial sustainability to facilitate effective trademark operations.

Section 10 of the AIA authorizes the Director of the USPTO (Director) to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended (the Trademark Act or the Act) for any services performed by, or materials furnished by, the Office. *See* section 10 of the AIA, Public Law 112–29, 125 Stat. 284, 316–17, as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158. Section 10 of the AIA prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials related to trademarks, including administrative costs to the USPTO with respect to such trademark and TTAB operations. This authority includes the flexibility to set individual fees to advance key policy objectives. Thus, the Director may set individual fees at, below, or above their respective associated costs, while taking into account the aggregate estimated costs to the USPTO.

The USPTO estimates, based on the assumptions found in the FY 2021 Congressional Justification, that the additional aggregate revenue derived from the fee schedule set forth here will recover the future costs of implementing strategic and operational goals, including the cost of necessary IT stabilization and modernization activities. Also, the additional revenue will allow the USPTO to achieve sustainable funding by gradually building the operating reserve, which mitigates the risk of immediate unplanned financial disruptions that can adversely affect pendency and quality. Based on the assumptions found in the FY 2021 Congressional Justification, the Office estimates reaching the optimal six-month trademark operating reserve level in FY 2025. However, projections of aggregate revenues and costs are based on point-in-time estimates, and the circumstances surrounding these assumptions can change quickly. Notably, since the FY 2021 Congressional Justification was published, some fee collections have been lower than anticipated, due to lower than expected post-registration and Madrid filings.

II. Summary of Major Provisions: The USPTO is setting or adjusting trademark fees codified in 37 CFR parts 2 and 7. Fees are increased for all application filing types (*i.e.,* paper applications, applications filed via the Trademark Electronic Application System (TEAS), and requests for extension of protection under section 66(a) of the Trademark Act, 15 U.S.C. 1141f). The per-class fee increases range from $25 for a TEAS Plus application to $150 for a paper application. In addition, fees for filing affidavits or declarations of use or excusable non-use under section 8 or section 71 of the Act (section 8 or section 71 affidavits), 15 U.S.C. 1058, 1141k, are increasing by $100 per class. As described in further detail below, these increases address policy considerations related to ensuring a more accurate register as well as reflecting increased processing costs to the Office in handling these filings.

This rule creates two levels of fees for petitions. There is one fee for petitions to the Director under §§ 2.146 and 2.147, and a lower fee for a petition to revive an abandoned application under § 2.66. Currently, the fees for these petitions are $200 if filed on paper and $100 if filed through TEAS. This rule sets the fee for petitions under §§ 2.146 and 2.147 at $350 if filed on paper and $250 if filed through TEAS. The fees for a petition to revive under § 2.66 are set at $250 if filed on paper and $150 if filed through TEAS. These fees take into account the different processing costs of these filings.

The USPTO is also setting a new $50 fee for filing a letter of protest, along with new regulations that codify letter-of-protest procedures. The new fee and procedures are designed to help offset processing costs and deter the filing of unsupported or irrelevant letters of protest, while not discouraging the filing of relevant, well-supported letters of protest. The new regulatory section is based on existing, longstanding procedures for letters of protest, which are currently set forth in the Trademark Manual of Examining Procedure (TMEP), as well as the procedures set out in the patents rules in 37 CFR 1.290 and 1.291 and the Manual of Patent Examining Procedure (MPEP) governing third-party submissions concerning pending applications, which serve a function similar to letters of protest.

As discussed further below, some of the fee adjustments made in this rule are meant to adjust applicant behaviors that put an undue burden on the trademark system and that can adversely affect the quality and integrity of the trademark register. Some of these behavior adjustments are accomplished with new fees (*e.g.,* post audit deletion of goods and services) or with targeted increases (*e.g.* TEAS Plus vs. TEAS Standard to promote more efficient, higher quality, and most cost effective filings, especially for small businesses, or increases for paper filing fees to encourage electronic filing). As a further example, the rule also sets a new fee structure to encourage registrants to perform due diligence before filing a section 8 or section 71 affidavit to maintain a registration, so as to determine the goods or services for which the registered mark is no longer in use and to delete those goods, services, and/or classes from the registration. The rule sets two fee levels for amendments to registrations to delete goods, services, and/or classes that depend on when the amendment is submitted. The first is a $0 fee if the only amendment made in a request under section 7 of the Act (section 7 request), 15 U.S.C. 1057(e), that is filed prior to submission of a section 8 or section 71 affidavit, is the deletion of goods, services, and/or classes. The current practice that results in no amendment fee for section 8 or section 71 affidavits that specify fewer than all of the goods or services listed in the registration when the affidavit is filed, which results in the deletion of goods, services, and/or classes not included in the affidavit from the registration, is unchanged. However a fee will be assessed if goods, services, and/or classes are deleted in either a section 7 request, a response to an Office action, or a voluntary amendment filed after submission, but prior to acceptance, of a section 8 or section 71 affidavit. This is a per-class fee of $250 for submissions filed through TEAS and $350 for submissions permitted to be filed on paper. To implement the new fee requirement, corresponding new regulations are enacted at §§ 2.161(c) and 7.37(c). In addition, the rule revises the section titles and restructures §§ 2.161 and 7.37 to set out the requirements for section 8 and section 71 affidavits more clearly. Except for the new provision regarding the fee required for deletions made after submission and prior to acceptance of the affidavit, the substantive text of §§ 2.161 and 7.37 is not otherwise revised.

Finally, as discussed below, 16 fees related to TTAB filings (8 for electronic filings and 8 for paper filings) are established or adjusted in this rule. Ten existing fees (5 electronic/5 paper) are increased, specifically, those for initiating an ex parte appeal from an examining attorney's refusal to register a mark, for initiating an opposition proceeding, for initiating a cancellation proceeding, and for filing each of two different types of extensions of time to oppose. Six new filing fees (3 electronic/3 paper) are established, which are explained below. The new and adjusted fees are generally designed to recover more of the costs of TTAB procedures, reduce the extent to which they are subsidized by other trademark fee collections, and advance policy objectives. The USPTO also revises § 2.114(a) to provide that a partial refund of the filing fee for a petition to cancel may be made in cases involving only a nonuse or abandonment claim, when default judgment is entered in the case, where there was no appearance by a defendant, and where no filings were made other than the petition to cancel.

III. Rulemaking Goals and Strategies: Consistent with federal fee setting standards, the Office conducted a biennial review of fees, costs, and revenues that began in FY 2019 and found that fee adjustments were necessary to provide the resources needed to improve trademark operations and to implement the USPTO 2018–2022 Strategic Plan (Strategic Plan). As a result, the fee adjustments in this rule directly align with the Office's strategic goals and key objectives as outlined in this section. Consistent with the USPTO's strategic goals and obligations under the AIA, the overall objective of this rule is to ensure the fee schedule generates sufficient revenue to recover the prospective aggregate costs of trademark and TTAB strategic improvements and operations, including the associated administrative costs. Fees must be set at levels projected to cover the cost of future budgetary requirements and maintain an operating reserve at a sufficient level.

Trademark applications in FY 2019 represented filings in a record number of over 673,000 classes of goods/services. During ordinary economic times, application filings generally have increased by an average historical rate of between 7% and 8% per year. To ensure its ability to keep pace with demand, the USPTO is in the midst of a multi-year IT systems and infrastructure upgrade, which is critical to the future of the U.S. trademark registration system and represents a significant cost to the Office.

Trademark filings—and, therefore, total revenue—are sensitive to general economic conditions. In the last two recessions, new application filings declined (2001, by −21.0%; 2002, by −12.7%; and 2009, by −12.3%). So far, in the current uncertain economic environment, trademark application filings are showing some resilience; however, with a protracted pandemic, the risk of a major filing decline remains high. The USPTO anticipates a return to historical growth rates as trademark applicants return to expected activities. However, current fees have not kept up with increases in salary, IT and other costs, and a return to traditional growth rates means a return to additional costs for new staff and supporting resources including information technology. In general, the proposed increases are commensurate with the size of the cost recovery shortfalls in trademark examination and TTAB proceedings. As discussed above, with the larger net costs from applications, revenue surpluses derived from other services, such as ITU and maintenance payments, are being reduced. The increases in this rule are designed to address those shortfalls, which as noted above are projected to increase in the future without the fee adjustments being made in this rule.

The USPTO, as a fully fee-funded agency, retains an operating reserve to ensure sufficient financial resources are available to support and promote public confidence in the U.S. intellectual property (IP) system. The operating reserve enables the USPTO to maintain operations by absorbing and responding to immediate and temporary changes in its economic and operating environments or circumstances, such as unexpected economic downturns, reducing the risk for short-term financial actions and providing the security for long-term strategic investments, such as IT development projects that are crucial to operations and customer support. An adequate operating reserve also allows the USPTO to continue serving its users in the event of a short-term lapse in congressional appropriations or other disruptions to the agency's cash flow.

The fee schedule in effect prior to this rulemaking was insufficient to satisfy future budgetary requirements to: (1) Meet the expenses that will result from projected filings; (2) recover the costs necessary to support trademark and TTAB operations and administrative services; (3) make necessary investments in IT systems, IP policy, and USPTO programs related to trademark and TTAB operations; and (4) achieve optimal operating reserve levels to ensure financial sustainability. Budgetary requirements increased to address unplanned pay raises, additional review of filings for potential fraud, post-registration audits, agency administrative operations, and continued investments in IT that required additional funding beginning in FY 2020. IT investments include modernization of IT systems to create a fully electronic workflow and state-of-the-art technological resources for external and internal users. New systems will also be deployed that enhance access for external trademark customers and stakeholders. Operational gains from these IT investments will allow for a broader public base to more efficiently and effectively apply for, register, and maintain trademark registrations and to continue to invest in and reap the benefits of strong brands, which will ultimately benefit American consumers and sustain economic activities.

Without the fee adjustments enacted in this rule, based on the assumptions found in the FY 2021 Congressional Justification, budgetary requirements would exceed revenues and available operating reserve balances beginning in FY 2022 through FY 2025 (*see* Table 1).

TABLE 1—TRADEMARK FINANCIAL OUTLOOK WITHOUT FINAL RULE FEES—FY 2021–FY 2025

	Dollars in millions				
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Projected Fee Collections	$367	$390	$412	$430	$447
Other Income	6	6	6	6	6
Total Projected Fee Collections and Other Income	373	396	418	436	453
Budgetary Requirements	419	460	462	478	497
Funding to (+) and from (−) Operating Reserve	(46)	(64)	(44)	(42)	(44)
Operating Reserve Balance	26	(38)	(81)	(123)	(167)
Over/(Under) Minimum Level	(49)	(113)	(156)	(198)	(242)
Over/(Under) Optimal Level	(184)	(268)	(312)	(362)	(415)

Table 2 below shows the available revenue and operating reserve balances by fiscal year, after including the new fee rates in the projected fee collections. The numbers in the table below were developed in late calendar year 2019, prior to the COVID–19 pandemic, in support of the FY 2021 Congressional Justification, and have been updated to remove the previously proposed fee for requests for reconsideration filed more than three months from the date of issuance of a final Office action. Under current circumstances, it is difficult to predict what the actual numbers will be. However, since the USPTO was projecting insufficient funding even during an economic expansion (*see* Table 1), and the trademark financial outlook has worsened since the onset of the pandemic, the fee increase is a necessary step to put the Office on a sustainable financial path.

TABLE 2—TRADEMARK FINANCIAL OUTLOOK INCLUDING FINAL RULE FEES—FY 2021–FY 2025

	Dollars in millions				
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Projected Fee Collections	$443	$471	$497	$518	$538
Other Income	6	6	6	6	6
Total Projected Fee Collections and Other Income	449	477	503	524	544
Budgetary Requirements	419	460	462	478	497
Funding to (+) and from (−) Operating Reserve	30	17	41	46	47
Operating Reserve Balance	101	118	159	206	253
Over/(Under) Minimum Level	26	43	84	131	178
Over/(Under) Optimal Level	(108)	(112)	(72)	(33)	4

Additional information on estimated costs can be found in the USPTO FY 2021 Congressional Justification at *https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information,* which includes two revenue estimates, one based on the current fee schedule and another based on the fee schedule proposed in the NPRM (*see* Appendix IV: USPTO Fees—Change from FY 2020 PB to FY 2021 PB).

Another fee setting goal of this rulemaking is to set individual fees to further key IP protection policy objectives while taking into account the cost of a particular service. The USPTO seeks to enhance trademark protection for IP rights holders by offering application processing options and promoting IP protection strategies.

A. Aligning Fees With Costs: The first fee setting policy consideration is to set and adjust trademark fees to more closely align them with the costs of providing the relevant services. The overall goal is to achieve total cost recovery from fee collections for trademark and TTAB operations, including associated administrative services. In determining which fees to set or adjust, this rule targets changes to the category of fees in which the gap between the cost of the service and the current fee rate is the greatest, and where narrowing that gap serves policy objectives. As noted above, application filing fees, petition fees, and TTAB fees do not fully cover the costs of processing and examination for those services. Instead, these costs are recovered or subsidized from fees paid for intent-to-use and post-registration maintenance filings that return more than the costs of processing such filings. As noted above, the USPTO anticipates, based on current trends, that this shortfall in cost recovery for these front-end services will continue absent the fee adjustments made in this rule. For example, using FY 2019 earned revenue compared to costs or expenses, application filing fees recovered 65% of expenses, petition (trademark processing) fees recovered 50% of expenses, and TTAB fees recovered just 31% of expenses (*see* Table 3).

TABLE 3—EARNED REVENUE VS. EXPENSE BY TRADEMARK PRODUCT

[Dollars in millions]

Trademark products	FY 2019 earned revenue	FY 2019 expense	FY 2019 variance	Earned revenue vs. expense or cost recovery (percent)
Application Filings	$190	$292	$(102)	65
Intent to Use/Use Fees	50	17	33	291
Trademark Processing Fees	3	5	(2)	50
Maintaining Exclusive Rights	80	14	66	571
Madrid Protocol	4	1	3	427
Other Trademark Fees	11	9	2	119
Trademark Trial and Appeal Board	8	28	(20)	31
Total	346	366	(20)	95

The fee schedule enacted in this rule will increase the percentage of fee revenues collected over a five year period for application filings by 21%, for petition filings by 73%, and for TTAB filings by 58% overall, thereby increasing the cost recovery for these services (*see* Table 4).

TABLE 4—INCREASE IN CUMULATIVE REVENUE OVER FIVE YEARS, BY PRODUCT

[Dollars in millions]

Trademark products	Projected cumulative revenue, FY 2021–FY 2025		% Increase
	Current fee rates (baseline)	Final fee rates	
Application Filings	$1,079	$1,301	21
Maintaining Exclusive Rights	518	659	27
Intent to Use/Use	293	293	0
Madrid	29	42	45
TTAB	53	83	58
Petition	18	30	73
Other Processing Fees	58	58	0
Total	2,047	2,467	20

Estimated revenues account for adjustments made to fee rates after considering public comments received in regard to this rulemaking.

B. Protecting the Integrity of the Trademark Register: The second fee setting policy consideration is to set or adjust fees to provide resources necessary to improve the accuracy of the trademark register. The trademark register is a reflection of marks that are actually in use in commerce in the United States for the goods and/or services identified in the registrations and its accuracy serves a critical purpose for the public and for all registrants. An accurate register allows the public to rely on the register to determine potential trademark rights. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to American businesses, by allowing them to strengthen and safeguard their brands and related investments. The public relies on the register to determine whether a chosen mark is available for use or registration. When a person's search of the register discloses a potentially confusingly similar mark, that person may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, initiating proceedings to cancel the registration or oppose the application of the disclosed mark, engaging in civil litigation to resolve a dispute over the mark, or changing business plans to avoid the use of that person's chosen mark. In addition, such persons may incur costs and burdens unnecessarily if a registered mark is not actually in use in commerce in the United States or is not in use in commerce in connection with all the goods and/or services identified in the registration. An accurate and reliable trademark register helps avoid such needless public costs and burdens.

This rule sets and adjusts fees to encourage actions by trademark filers that help facilitate more efficient processing and the prompt conclusion of application prosecution by assessing fees for second and subsequent extension requests to file appeal briefs. In addition, filings that may result in a less accurate register, including post-registration filings to maintain registrations that may include goods or services for which the mark is no longer in use, are among those filings targeted under this objective. The new fee structure for requests to delete goods, services, and/or classes from a registration will protect and improve the integrity of the register and the efficiency of the process by incentivizing both more timely filings and proactive action by registrants to ensure the accuracy of their registrations. The increased efficiencies realized through this rule will benefit all applicants and registrants by allowing registrations to be granted sooner and more efficiently by removing unused marks and unsupported goods and services from the register. In addition, revenue generated by this rule allows for continuing development of methods for detecting and addressing filing practices that threaten the integrity of the register.

C. Improving the Efficiency of USPTO Processes: The third fee setting policy consideration pertains to improving the efficiency of the trademark and TTAB processes. To that end, this rule targets changes to fees that will administratively improve application and appeal processing by incentivizing more complete and timely filings and prosecution. For example, TEAS Plus, the lowest-cost TEAS application filing option, has more stringent initial application requirements and thus tends to result in a more complete application, which expedites processing, shortens pendency, minimizes manual processing and the potential for data-entry errors, and is thus more efficient for both the filer and the USPTO. While the per-class fee for TEAS Plus is increasing by $25 (to $250) under this rule, the per-class fee for TEAS Standard, which has less stringent initial application requirements, is increasing by $75 (to $350), resulting in a difference of $100 in the per-class fees of the respective filing options (double the current difference of $50), providing a greater financial incentive to choose the more efficient TEAS Plus filing option.

D. Ensuring Financial Sustainability to Facilitate Effective Trademark Operations: The fourth fee setting policy consideration pertains to ensuring sufficient revenue to recover the aggregate costs of Trademark and TTAB operations in future years. Additional resources are necessary to fund the multi-year project to upgrade IT systems and infrastructure and other business improvements, while also maintaining a sufficient operating reserve balance to ensure sustainable funding that will mitigate the risk of unplanned financial disruptions that could threaten operations and planned investments.

Operating reserves are intended to mitigate operational risk caused by a lack of financial resources. The USPTO defines an optimal balance and a minimum acceptable balance for the trademark operating reserve. The optimal balance sets the goal for building and maintaining the operating reserve—it defines the desired level of operating reserves the USPTO wishes to maintain. The USPTO analyzes risks related to spending and fee collections, considering the likelihood and consequence of each and its impact to financial stability, in determining the optimal reserve level. The USPTO has determined six months of operating or budgetary requirements to be the optimal trademark reserve.

This rule will provide a stable financial foundation to fulfill the USPTO mission and maintain performance. The budgetary requirements of the USPTO are comprised of substantial fixed costs, which require increased fee rates to ensure revenue sufficient to recover aggregate costs. Based on the assumptions found in the FY 2021 Congressional Justification, this rule will produce sufficient revenue to recover the aggregate costs of Trademark and TTAB operations, including executing USPTO strategic goals, policy objectives, and initiatives; creating a better and fairer cost-recovery system that balances subsidizing costs to encourage broader usage of IP rights-protection mechanisms and participation by more trademark owners; promoting a strong incentive for more efficient filing behaviors; and protecting the federal trademark register as a reliable indicator of marks in use in commerce.

Based on the assumptions found in the FY 2021 Congressional Justification, the USPTO projects that trademark fee collections in total would increase by an average of 20% per year, or $76 million to $91 million per year, over the five-year planning period as compared to the baseline (*see* Table 5).

TABLE 5—ANNUAL INCREASES IN AGGREGATE REVENUE

[Dollars in millions]

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Average
Aggregate Revenue—Baseline	$367	$390	$412	$430	$447	$409
Aggregate Revenue—Final Rule	$443	$471	$497	$518	$538	$493
$ Increase	$76	$81	$85	$88	$91	$83
% Increase	21%	21%	20%	20%	20%	20%

The projections of both aggregate revenues and costs are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in estimating both fee collections and budgetary requirements in ordinary times, and even more so now. In addition to the COVID–19 pandemic, a number of other risks could materialize (*e.g.,* lower application volumes, decreased renewals, recompetition of major contracts, lease renewals, changing assumptions about presidentially authorized or congressionally mandated employee pay raises, etc.) that could change the USPTO's budgetary outlook. These estimates are refreshed annually in the formulation of the USPTO's Budget, and the USPTO continues to gain new data as the pandemic unfolds.

IV. Comments and Responses: In response to the NPRM published on June 19, 2020, the USPTO received comments from four intellectual property organizations and fifteen individual commenters, representing law firms, small business owners, and individuals. These comments are posted on the *Regulations.gov* website at *https://beta.regulations.gov/document/PTO-T-2019-0027-0001*.

The Office received comments both generally supporting the need to increase fees and objecting to particular proposed fee increases. Four major user groups representing thousands of trademark professionals and trademark owners, who run the gamut from large corporations, to small businesses and individuals submitted comments on behalf of their members. The user groups generally acknowledged and supported the need to increase fees to further USPTO's strategic objectives and facilitate effective operations, including encouraging e-filing and enabling needed improvements in technology and technology infrastructure. However, the user groups objected to or had comments regarding some specific fee increases, as discussed below. In addition, at least one user group noted that some business owners struggle to pay the current fees and suggested that the USPTO consider the state of the U.S. economy before issuing the final rule. Several of the other commenters objected to any increase in fees, as they believed such increases placed hardships on small business owners. Multiple commenters requested additional information on the rationales for the increases and that the Office take the current economy into consideration before issuing a final rule.

The USPTO appreciates the commenters' support of the need to increase revenue as well as their concerns regarding the impact of the rule on small businesses owners. As noted above, in formulating this rule, the USPTO considered the state of the U.S. economy, the operational needs of the agency, and comments submitted in response to the NPRM. The USPTO is also mindful of the current difficulties many USPTO users are experiencing as a result of the COVID–19 pandemic. The USPTO has undertaken many efforts to provide various types of relief, including deadline extensions and fee postponements. Additionally, in the FY 2021 Congressional Justification, implementation of the fee rule was slated for August of 2020. Considering the impact of the pandemic, and in response to the stakeholder feedback, the USPTO paused development of the fee rule over the summer of 2020 and deferred the timing of implementation of the fee rule from August 2020 to January 2021. This is the first change of trademark fee rules in almost four years. Fees were adjusted in January 2017, and many of those changes were to encourage electronic filing by increasing fees for certain paper submissions. See 81 FR 78042 and FR 81 72694. Since that time, the USPTO has made electronic filing mandatory except in limited circumstances.

Further, after considering all comments, the Office has withdrawn the proposed fee for requests for reconsideration filed more than three months from the date of issuance of a final Office action, which commenters noted are a frequently used option for applicants prosecuting applications.

It should also be noted that USPTO's fees for trademark services remain relatively small compared to the legal fees many applicants incur in seeking those services. Many applicants engage attorneys to handle their filing with the Office, and based on data concerning the cost of trademark representation, including from the American Intellectual Property Law Association's 2019 Report of the Economic Survey, USPTO understands that trademark fees represent a small fraction of the legal fees a filer would generally pay to have an attorney represent them during the application process. In a TTAB proceeding, where even more time and work is required by an attorney representing a party before the Board, the fees for TTAB services would generally be an even smaller fraction of attorney fees associated with the representation. Understanding that legal fees are a significant expense, the USPTO will continue to help to minimize the cost of the application process for small businesses through the USPTO's law school clinic program, which enables qualified individuals and small businesses in need of trademark legal services to receive pro bono assistance in filing applications and responding to Office actions in trademark applications.

The Office also notes that some of the fees being increased in this rule are paid by only a relatively small number of applicants—such as TTAB fees and letter of protest fees, which are not incurred by the majority of applicants with trademark business before the Office—and therefore these fee increases are unlikely to impact a large number of applicants, including small business owners.

Some commenters also expressed concerns with specific individual fees. In the interest of providing context, when the USPTO received comments about a specific fee, they are summarized, and the USPTO's responses are provided, in the discussion below of the individual fee rationale.

V. Individual Fee Rationale: Based on the assumptions found in the FY 2021 Congressional Justification, the USPTO projects the aggregate revenue generated from this rule will recover the prospective aggregate costs of its trademark and TTAB operations and associated administrative services. However, each individual fee is not necessarily set at an amount equal to the estimated cost of performing the activities related to the fee. Instead, as described above, some of the fees are set to address increases in budgetary requirements as well as balance several key policy considerations, and executing these policy considerations through the trademark fee schedule is consistent with the goals and objectives outlined in the Strategic Plan. Once the cost recovery and key policy considerations are factored in, fees are set at, above, or below individual cost-recovery levels for the service provided. Additional details on the cost methodologies used to derive the historical fee unit expenses can be found in ''USPTO Fee Setting—Activity Based Information and Trademark Fee Unit Expense Methodology'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting*.

A. Trademark application filing fees: This rule increases all application filing fees by varying amounts. The filing fee for a paper trademark application is increasing by $150, from $600 per class to $750 per class. The TEAS Plus application filing fee is increasing by $25, from $225 per class to $250 per class. The TEAS Standard application filing fee is increasing by $75, from $275 per class to $350 per class. The fee for filing an application under section 66(a) of the Act is increasing by $100, from the equivalent of $400 per class, as paid in Swiss francs, to the equivalent of $500 per class, as paid in Swiss francs.

Comments: One commenter expressed support for the increase in the paper application filing fee. Four commenters expressed concerns about the increase in electronic initial application fees. Of those four comments, one generally commented that increases will impact small businesses, while the others expressed concern about the amount of the increase in the TEAS Standard application and resulting gap in cost between TEAS Plus and TEAS Standard applications.

Response: The USPTO appreciates the commenter's support of the need to increase the paper application fee. The USPTO also appreciates commenters' concerns regarding the increase in the TEAS Standard fees and impact on small business owners. Initial application fees are generally kept lower than the full processing cost in order to enable broader participation in the trademark registration system. The increase in the fees will help close the gap between the processing cost and incoming revenue while still keeping the fees below the full processing cost. The USPTO also notes that filers continue to have the option to select TEAS Plus, which is only increasing by $25, from $225 per class to $250 per class, which is less than current TEAS Standard fee rates, and encourages filers, including individuals and small business owners, to use this less expensive filing option.

This rule also decreases the processing fee for failure to meet the filing requirements under § 2.22(a) for a TEAS Plus application from $125 to $100 per class. Thus, if the processing fee is required in a TEAS Plus application, the resulting per-class fee will equal the per-class fee for a TEAS Standard application. If a decrease in the processing fee were not enacted, the per-class fee for an application initially filed as TEAS Plus would exceed the fee for a TEAS Standard application, creating a disincentive to choose TEAS Plus, which, as noted above, tends to be more efficient for both filers and the USPTO.

B. Fees for Paper Trademark Filings: This rule maintains the cost differential for all paper filings to better align fees with costs by setting all trademark processing fees for paper filings $100 to

$200 higher than the corresponding electronic filing fees (per class, when applicable). Overall, it is more costly for the USPTO to process paper filings than electronic filings, and that cost is not recovered by the current fees for paper filings. Raising the fees for paper filings will help offset the higher processing costs and move the USPTO closer to total cost recovery.

A final rule published on July 31, 2019 (84 FR 37081), which became effective on February 15, 2020 (84 FR 69330), requires applicants and registrants to file electronically through TEAS all trademark applications based on section 1 and/or section 44 of the Act, 15 U.S.C. 1051, 1126, and all submissions filed with the USPTO concerning applications or registrations, with limited exceptions. This followed a final rule published on October 7, 2016 (81 FR 69950), which became effective on January 14, 2017, requiring all parties in TTAB proceedings to file electronically through the Electronic System for Trademark Trials and Appeals (ESTTA). At present, the vast majority of filings are submitted electronically. For example, in FY 2019, less than 0.02% of initial applications were filed on paper. Thus, an increase in paper filing fees will have no impact on the vast majority of applicants, registrants, and parties to Board proceedings, who already meet the requirement to file documents electronically.

C. Other Trademark Processing Fees: This rule also increases certain other trademark processing fees to further key policy goals. The rule sets out increases to the fees for petitions to the Director as well as section 8 and section 71 affidavits. In addition, the rule sets new fees and procedural regulations for filing a letter of protest, and for deleting goods, services, and/or classes from a registration after submission and prior to acceptance of a section 8 or section 71 affidavit. Finally, the USPTO decided not to implement the proposed new fee for a request for reconsideration filed more than three months, but within six months, after the issue date of a final action or with a petition to revive an abandoned application.

(1) Petitions to the Director in Trademark Matters: This rule separates petitions to the Director into two types. Each type has a new and distinct fee amount with different levels of increases from the current single fee. The rule increases the fee for filing a petition to the Director for petitions filed under §§ 2.146 or 2.147 by one amount and establishes a separate fee code for petitions to revive filed under § 2.66 that increases the fee by less than the fee for petitions filed under §§ 2.146 or 2.147. The fees enacted herein are intended to facilitate effective trademark operations. The fee for electronically filing a petition to the Director under §§ 2.146 or 2.147 is increasing from the current fee of $100 to $250, and the fee for filing on paper is increasing from $200 to $350. The fee for electronically filing a petition to revive an abandoned application under § 2.66 is increasing from the current fee of $100 to $150, and the fee for filing on paper is increasing from $200 to $250.

Generally, petitions under §§ 2.146 or 2.147 extend the trademark registration and post-registration processes by introducing additional processing and examination into the timeline, which may lead to applications and registration maintenance documents remaining in a pending status for longer periods of time, potentially blocking others. They can also be used to delay processing of TTAB matters. By increasing fees for these filings, the USPTO discourages misuse of the process through unnecessary filings that delay prosecution of an application or registration maintenance document.

Comments: One commenter indicated that they did not oppose the increase to the fee for petitions to the Director under § 2.66 to revive an abandoned application and also generally supported or are neutral regarding the increase in the fee for petitions to the Director under §§ 2.146 and 2.147. Another commenter noted that the amount of the increase for petitions under §§ 2.146 and 2.147, from $100 to $250, seems significantly beyond the rate that is appropriate for periodic increases.

Response: The USPTO appreciates the feedback regarding the increase in fees for a petition to the Director. The fee for filing a petition to the Director has not increased since the fee was established, more than 30 years ago. Under this rule, petitions to the Director have been separated by type. Petitions under § 2.66 to revive an application abandoned for failure to respond to an Office action or notice of allowance are increased by a smaller amount because they cost less to process. These petitions generally require less processing when the filer complies with certain criteria in the submission itself. Petitions to the Director under §§ 2.146 and 2.147 usually include unique facts that require a lengthier review process. The increase in the fees for each type of petition will help to recoup more of the costs to process these filings. Additionally, the increase will further policy considerations consistent with the goals and objectives outlined in the Strategic Plan because this fee should discourage misuse of the petition process through unnecessary filings that delay prosecution of an application or registration maintenance document, or an appeal or trial proceeding before the TTAB.

(2) Section 8 or Section 71 Affidavits: Fees from post-registration filings have historically been set to recover more than the costs of processing the filings. The fees are used to help offset the cost of application processing and examination as well as TTAB trial proceedings and appeals—services for which the fees charged generally do not recover the full cost. In general, fewer post-registration maintenance filings are made by pro se and foreign registrants, who comprise a growing share of new applicants. Based on recent pre-pandemic trends, the overall percentage of registrations being maintained is decreasing. Therefore, the USPTO anticipates that it will face a continuing decrease in revenue from maintenance filings going forward if adjustments are not made. Increasing fees for section 8 and section 71 affidavits is necessary to continue to enable the USPTO to achieve aggregate cost recovery while allowing other fees to remain below their individual unit costs.

This rule also increases the fees for these filings in part because of the post-registration audit program, which was implemented as a result of the 2012 Post Registration Proof of Use Pilot Program (pilot program). During the pilot program, section 8 or section 71 affidavits for 500 registrations were reviewed as to actual use of the marks in connection with the goods and/or services identified in the registrations in order to assess the accuracy and integrity of the trademark register. The findings of the pilot program demonstrated a need for ongoing measures for additional review of these filings on a permanent basis. Since codifying the authority to require additional information and evidence concerning the use of registered marks in connection with section 8 and 71 maintenance filings in 2017 (82 FR 6259), the USPTO has conducted additional reviews of the actual use of the marks in 8,276 section 8 or section 71 affidavits through January 1, 2020. In more than 50% of the registrations undergoing the additional review, the registrations have either been removed from the register or had goods or services deleted, resulting in a more accurate trademark register. The fee increases implemented in this rule will also support the cost of this additional review.

Comments: Three commenters expressed concerns about the increase in fees for filing a section 8 or section 71 affidavit. One commenter stated that the increase of $100 is excessive in light of the $25 increase four years ago. A second commenter indicated the increases will decrease renewal filings, particularly among small business owners. The third commenter stated that the increase in fees is significant. This commenter also mentioned increases to the section 15 fee. The USPTO notes that although an increase to the section 15 fee was initially considered, it was not proposed in the NPRM.

Response: The USPTO appreciates the commenters' concerns regarding the increase in the fees. These post-registration filing fees have historically been set to recover more than the costs of processing the filings in order to offset costs in other parts of the process. In addition, these fees are increasing to offset the cost of the legal examination required to conduct the post registration audit program, a valuable tool for improving the accuracy and integrity of the trademark register.

Costs for this additional examination were discussed in the last fee adjustment in 2017. At that time, the Office was in the process of reviewing the findings from the pilot program and codifying regulations for the permanent audit program. The results of this ongoing audit program indicate that not only should this program continue, but also that the need for legal examination of an increasing number of filings is warranted. Based on these findings, the increase in fees is necessary to help offset costs for this program and allow other fees to remain below their individual unit costs.

(3) Letters of Protest in Trademark Applications: This rule sets a new $50 fee for filing a letter of protest. A letter of protest allows a third party to bring to the attention of the USPTO evidence bearing on the registrability of a mark in a pending application. In this way, the letter-of-protest procedure can potentially improve the quality of the examination of a given application. The procedure is not, however, a substitute for the statutory inter partes opposition and cancellation procedures available to third parties who believe they would be damaged by the registration of the involved mark. A letter of protest, properly supported, should aid in examination without causing undue delay or compromising the integrity and objectivity of the ex parte examination process, which is designed to involve communications regarding an application only between the applicant and the Office. For this reason, the protestor is not permitted to submit legal arguments, contact the examining attorney assigned to the subject application, or participate in any Office proceedings relating to the protest or the application to which it is directed. The limited involvement of the third party ends with the filing of the protest. The questions of whether evidence is relevant to a ground for refusal appropriate in ex parte examination, whether a refusal should be made, or whether a registration will issue are matters for the Office to determine during the ex parte examination process that occurs between the applicant and the Office acting on behalf of the public.

The Office incurs costs associated with the work of reviewing and processing each letter. The filing volume for letters of protest has steadily increased in recent years, with the USPTO receiving 2,726 in FY 2017; 3,480 in FY 2018; and 4,106 in FY 2019. Thus, letters of protest continue to generate increasing additional expenses, which will likely further increase in the future.

Comments: The Office received comments both generally supporting and objecting to the new fee to file a letter of protest. Commenters supporting the fee stated that the amount is reasonable and appropriate to recoup costs. Two of the commenters indicated that the fee should be kept as low as possible, with one suggesting that the fee should be set at $25 instead of $50, and one suggesting that the fee should be refunded if the letter of protest is granted. Several other commenters expressed concerns about the impact to small businesses by requiring a fee to file a letter of protest. These commenters also noted that letters of protest aid the Office by bringing to light information and/or refusals that an examining attorney may miss. These commenters stated that the Office should not charge a fee for a process that allows the public to aid in the registration process.

Response: The USPTO understands the desire to keep the fee low so as to not discourage the use of the letter-of-protest process. However, given the costs to process these filings, the USPTO has determined that a fee is necessary to help offset some of the processing costs. Similar to petitions under §§ 2.146 and 2.147, review of letters of protest cannot be automated because they include unique facts requiring review by staff attorneys to ensure guidelines are met before the information is sent to the examining attorney for review. In FY 2019, the evidence in approximately 25% of pre-publication letters of protest and 94% of post-publication letters of protest was not forwarded to the examining attorney. This suggests that a significant portion of filings do not contain relevant information or evidence, do not meet the requirements for a letter of protest, or are otherwise unnecessary. These filings generate additional costs without a proportionate corresponding benefit. The fee set by this rule is below the amount required to recoup the full processing cost. The fee is intended to be at a level high enough to partially offset processing costs and deter the filing of unsupported or irrelevant filings, but low enough so as not to discourage the filing of relevant, well-supported letters of protest. This fee is also consistent with the recommendations contained in the TPAC report that it fall within the $20 to $100 fee range. The USPTO does not anticipate that the letter of protest fee will impact a large number of parties with business before the Office. The letter of protest is a purely voluntary process that most applicants and registrants do not use. In addition, the letter of protest process was developed many years ago when examining attorneys had limited resources for gathering evidence to support refusals of registration. The tools available to examining attorneys today are far more advanced, reducing the need for letters of protest.

In connection with this fee, the USPTO also codifies a new regulatory section at 37 CFR 2.149, which sets out the procedures for letters of protest. The new regulatory section is based on the existing longstanding procedures for letters of protest, which are currently set forth in the TMEP, with appropriate modifications that more closely align the procedures with those for similar third-party submissions and protests in patent applications under 37 CFR 1.290 and 1.291 and as set out in MPEP §§ 1134 and 1901. This action is being undertaken at this time due to the rising volume of letters of protest in recent years, which has resulted in the need to codify procedures for submission of such protests in the regulations and to adjust those procedures to deal efficiently with this higher volume of filings.

Under the procedures set forth in the regulatory text at § 2.149, a letter of protest must be timely filed through TEAS and must include: (1) The fee; (2) the serial number of the pending application that is the subject of the protest; (3) an itemized evidence index that includes identification of the documents, or portions of documents, being submitted as evidence and a concise factual statement of the relevant grounds for refusal of registration appropriate in ex parte examination that each identified item supports; and (4) a clear and legible copy of the supporting evidence identified in the evidence index. If the letter of protest is filed before publication of the subject application, the evidence must be relevant to the identified ground(s) for refusal. If filed on the date of or within 30 days after publication of the subject application, the evidence must establish a prima facie case for refusal on the identified grounds, such that failure to issue a refusal or make a requirement would likely result in issuance of a registration in violation of the Act or regulations.

The letter-of-protest process is intended to provide an opportunity for the protestor to efficiently and effectively provide relevant evidence in support of the proposed legal grounds for refusing registration of the application identified in the submission. It is inappropriate for the protestor to ''dump'' evidence and leave it to the Office to determine its possible relevance. Therefore, an index is required for all submissions listing the documents submitted as evidence and the ground(s) for refusal each item of evidence supports. In addition, the procedures also require that the submission not total more than 10 items of evidence in support of a specified ground of refusal and not more than 75 total pages of evidence without a detailed and sufficient explanation that establishes the special circumstances that necessitate providing more than 10 items of evidence per refusal ground or more than 75 total pages of evidence. This requirement encourages the submission of evidence that is succinct, not duplicative, and limited to the most relevant evidence. It should be a rare situation in which more than 10 items of evidence or 75 total pages of evidence is necessary to support the proposed legal grounds for refusal. However, some examples of situations that might constitute such special circumstances are when: (1) A subject application includes multiple classes and the protestor needs to provide evidence of relatedness of the goods and/or services for all classes in the application; (2) evidence submitted to support a refusal for descriptiveness consists of fewer than 10 discrete items, but each item comprises multiple pages, totaling more than 75 pages; or (3) a protestor raises more than one ground for refusal and the evidence necessary to support all grounds raised totals more than 10 items or 75 pages.

A letter of protest submitted by a third party is not made part of the application record to preserve the ex parte nature of examination. If the USPTO determines that the submission complies with the proposed regulations, only the specified grounds for refusal and the provided evidence relevant to the grounds for refusal would be included in the application record for consideration by the examining attorney. A third party filing a letter of protest will not receive any communication from the USPTO relating to the submission other than acknowledgement that it has been received by the Office and notification of whether the submission is found to be compliant or non-compliant. Also, the Office will not accept amendments to a non-compliant submission that was previously filed or requests to reconsider a compliance determination. Rather, the third party may submit a new letter of protest that is compliant if the time period for submitting a letter of protest has not closed. A protestor does not, by the mere filing of a protest, obtain a ''right'' to argue the protest before the Office. As noted above, the questions of whether evidence is relevant to a refusal ground appropriate in ex parte examination, whether a refusal will be made, or whether a registration will issue are matters for the Office to determine as part of the ex parte examination process that occurs between the applicant and the Office acting on behalf of the public. Therefore, the procedures also provide that: (1) The Office's determination whether to include submitted evidence in the record of an application would be final and non-petitionable, (2) the limited involvement of the third party ends with the filing of the letter of protest, and (3) the third party may not directly contact the examining attorney assigned to the application.

(4) Requests for Reconsideration in Trademark Applications: The USPTO has decided not to implement the proposed new fee for a request for reconsideration filed more than three months, but within six months, after the issue date of a final action or with a petition to revive an abandoned application. The proposed fee was $400 for a TEAS submission and $500 for a paper submission. No fee was proposed to be incurred for requests filed within three months of the issue date of a final action.

Comments: Seven commenters objected to and expressed a variety of concerns regarding implementation of a fee for requests for reconsideration of a trademark application. One commenter noted that the proposed fee would impose a significant financial burden late in the process. Another commenter noted that the proposed fee would be higher than the initial application fee.

Response: After further review, the USPTO has determined that the proposed fee might not provide significant enhancement to the timeliness or quality of the examination process and would impose an additional financial burden to administer. Given these considerations and the public concerns about such a fee, including the impact of potential fee increases on small businesses and individuals, the USPTO withdraws this proposed fee.

(5) Deletion of Goods, Services, and/or Classes from Registrations: Currently, amendments to registrations may be made by filing a section 7 request for amendment or correction of a registration for $100, if submitted through TEAS, or $200, if filed on paper. This rule sets a $0 fee for a section 7 request that is filed through TEAS prior to the submission of a section 8 or section 71 affidavit and that consists only of a request to delete specified goods, services, and/or classes. As noted above, the current practice that results in no additional amendment fee for section 8 or section 71 affidavits that specify fewer than all of the goods or services listed in the registration when the affidavit is filed, which results in the deletion of goods, services, and/or classes not included in the affidavit from the registration, is unchanged. However, a fee will be assessed if goods, services, and/or classes are deleted in a section 7 request, a response to an Office action, or a voluntary amendment filed after submission, but prior to the acceptance, of a section 8 or section 71 affidavit. This rule sets a new fee of $250 per class, if filed through TEAS, or $350 per class, if a paper filing is permitted, for deleting goods, services, and/or classes from the registration under such circumstances.

The $0 fee option is available to, and the $250 (or $350) per-class fee will be assessed against, all registrants. Thus, the fees are not related to the post-registration audit program or a TTAB finding. The fees are intended to improve the accuracy and integrity of the register by encouraging all registrants to perform due diligence before filing a section 8 or section 71 affidavit to maintain a registration, so as to determine the goods, services, and/or classes for which the registered mark is no longer in use and to delete them from the registration.

Comments: One commenter indicated support for a $0 fee for a section 7 request to delete goods or services prior to filing a section 8 or 71 affidavit. Two commenters expressed concern for offsetting the cost to the USPTO to mail an updated paper registration certificate to filers who take advantage of the $0 fee.

Response: The comments have been considered; however, the USPTO anticipates that other fees will help offset these costs. The decision to implement this fee as proposed prioritizes the key policy objective of incentivizing improvement of the accuracy and integrity of the register.

Comments: Five commenters expressed concerns regarding the new fee to delete goods, services, and/or classes from a registration after a section 8 or 71 affidavit has been submitted. One commenter indicated there should be no fee for changes made online. Three commenters indicated the amount of the fee is too high, with two commenters suggesting the fee should be $100 per class. Finally, one commenter expressed concerns regarding the post-registration audit program and use of the fee to incentivize an increase in audited files.

Response: Applicants and registrants are required to submit all trademark filings electronically (*i.e.,* online). 37 CFR 2.23. Since the fee is intended to incentivize all registrants to perform the due diligence necessary to ensure that the mark is in use on all goods and/or services recited in the registration prior to the submission of a section 8 or 71 affidavit, not implementing the fee for an electronic filing would undermine the USPTO's express purpose in proposing the fee. Further, the fee is not charged if the registrant performs its due diligence and deletes any goods, services, and/or classes for which the mark is not in use within the section 8 or 71 affidavit at the time of filing.

As noted above, the fee structure for requests to delete goods, services, and/or classes from a registration will protect and improve the integrity of the register and the efficiency of the process by incentivizing both more timely filings and proactive action by registrants to ensure the accuracy of their registrations. Undermining the quality of the register will generate potentially exorbitant undue costs and hardship on registrants, applicants, and the agency. The new fee needs to be high enough to reflect the significance of incomplete due diligence. At the same time, the fee should not be so low as to have limited deterrence. The USPTO believes that $250 is the appropriate fee to incentivize the desired practices. Further, the increased efficiencies realized through this rule will benefit all applicants and registrants by allowing registrations to be granted sooner and more efficiently by removing unused marks and unsupported goods and services from the register. In addition, revenue generated by this rule allows for continuing development of methods for detecting and addressing filing practices that threaten the integrity of the register.

The USPTO assures the public that any decision to increase the number of registrations audited after submission of a post-registration maintenance document would be made to promote the accuracy and integrity of the register and not because of the possibility that it might increase revenue. As noted above, the no-fee option is available to, and the $250 (or $350) per-class fee will be assessed against, all registrants. The fee is applied to all registrations in which goods or services are deleted after submission, but prior to acceptance, of a section 8 or 71 affidavit, not only to deletions in registrations being audited.

When filing a section 8 or 71 affidavit, all registrants are required to specify the goods and/or services for which the mark is in use in commerce. These fees will serve to improve the integrity and quality of the register by incentivizing all registrants to perform the due diligence necessary before submission of a section 8 or 71 affidavit to maintain a registration. Thus, registrants who ensure that their marks are in use in commerce in connection with the goods and/or services listed in the registration before the submission of a section 8 or 71 affidavit, and who delete those goods, services, and/or classes for which the mark is not in use when the affidavit is submitted, are not subject to this fee. However, registrants who later determine, either as part of an audit or not, that some of the goods, services, and/or classes included in the affidavit must be deleted are subject to the fee.

D. TTAB Fees: This rule sets or adjusts 16 TTAB-related fees (8 for electronic filings and 8 for paper filings). Ten existing fees (5 electronic/5 paper) are increased, specifically, those for initiating an ex parte appeal from an examining attorney's refusal to register a mark, for initiating an opposition proceeding, for initiating a cancellation proceeding, and for filing each of two different types of extensions of time to oppose. Six new filing fees (3 electronic/3 paper) are established, and are explained below. The rule also codifies that the TTAB has discretion to grant a refund of a portion of the filing fee for a petition to cancel. While the percentage increase for a number of TTAB fees is larger than the application filing fees discussed above, the USPTO notes that many of the TTAB fees remain below cost recovery, considering the significant costs the Board incurs in conducting proceedings. In addition, TTABs fees are a small percentage of the total litigation costs incurred by a party before the Board, considering the attorney fees and other expenses of litigation.

(1) Existing Fees for Trial Cases: To better align the costs of providing TTAB services with the fees charged for them, this rule increases the fee for petitions for cancellation and notices of opposition by $200 per class. The rule also amends § 2.114(a) to allow the USPTO discretion to refund a portion of the petition fee in cases of default judgment where there is no appearance by a defendant and no filings are made other than the petition to cancel, reflecting reduced work needed on the part of the TTAB. The resulting lower net fee for a petition to cancel that meets these characteristics also furthers the policy goal of not discouraging the filing of petitions to cancel by petitioners with knowledge that a registered mark is no longer in use, or was never put to use, and therefore should be removed from the register. The refund will be in the amount of $200 per class, as explained below.

Comments: Four IP stakeholder organizations provided comments on the proposed $200 per class increases in the fees for trial cases (Notices of Opposition and Petitions for Cancellation). Three of the four noted the increases of four years ago, and stated that they consider the proposed increases ''steep'' or ''excessive.''

Response: The percentage of TTAB costs associated with processing of trial cases varies a great deal, as compared to the uniform per class filing fee. Clearly, in an opposition or cancellation case in which no appearance by a defendant is made, no filing other than the plaintiff's initial complaint is made, and the case is decided by way of default judgment, a higher percentage of TTAB operational costs is covered than in a case involving significant motion practice and a full trial. The original set of fee proposals discussed in the TPAC fee setting hearing with the public and stakeholders included a discussion of shifting some of the costs of TTAB trials to heavier users of trial case services, for example, by requiring a fee for the filing of a motion for summary judgment. However, initial stakeholder input during the fee setting hearing clearly indicated a preference for more uniform filing fees and fewer user fees for particular filings.

The costs associated with processing trial cases are more substantial than with appeal cases because of the larger number of trial cases and the procedural complexities. For example, the Board's staff of 18 interlocutory attorneys exists primarily to handle contested motions in trial cases. Since parties in trial cases pay no fees associated with the myriad motions, voluminous evidentiary submissions, and many briefs that can be filed, trial case filing fees need to be set for all commenced trial cases at a level that furthers cost recovery for all such cases. In addition, as noted above, USPTO initial fees for filing trial cases at the TTAB, compared to other costs associated with financing litigation, such as attorney fees, remain a small part of overall litigation costs.

As noted in the NPRM, TTAB fee revenue presently covers only 31% of TTAB operating costs. Applicants and registrants making filings in the trademark operation, the vast majority of whom do not use TTAB services, subsidize TTAB costs. The TTAB can recover a more substantial percentage of its operating costs, thereby reducing the subsidization of TTAB operations, while still keeping TTAB filing fees low as a portion of the overall cost of litigation by attaching fees to the TTAB filings that are significant enough in number to bring in appreciable revenue. The most effective means for raising revenue that will allow the Board to recover more of its operating costs lies in filing fees for trial cases, and in particular, oppositions

(2) Partial Refunds of Qualifying Cancellation Fees:

Comments: Three IP stakeholder organizations addressed the proposal to grant the TTAB discretion to provide partial refunds in cancellation cases asserting abandonment or nonuse of a registered mark, where there is no appearance by a defendant, no filings are made other than the petition to cancel, and where a default judgment is entered. Commenters sought clarification regarding how the Board would exercise such discretion, whether the refund would be processed as a matter of course by the Board, or whether a refund request must be filed and whether the refund of $200 is per class or per proceeding. One of these commenters also sought clarification as to whether the petitioner would need to have a deposit account for the refund to issue.

Response: First, the Office is granted discretion under revised § 2.114(a) precisely because it must have the discretion to refund any portion of a fee otherwise required. The TTAB will process refunds as a matter of course during the process of termination of a cancellation case, so long as the stated requirements are met. Paralegals will have no need to exercise individual discretion to determine whether to provide a refund or not.

Second, refunds will be handled by TTAB paralegals, during the process of terminating cancellation proceedings. The petitioner will not have to request the refund. The refund will be processed in the same way that refunds now are processed for cases that should not have been instituted and are dismissed as a nullity. Therefore, a filer who did not use a deposit account to pay the filing fee would not need to establish an account just for the purpose of receiving a refund.

Third, as explained in the NPRM, under this rule a petitioner filing only an abandonment or nonuse claim, where no other filings are made, and in which a default judgment is entered, would receive a $200 per class refund of the filing fee. That is, the net filing fee would be the same as it was prior to this rule. Notwithstanding the pressing need to cover more of the TTAB's operating costs, the refund of a portion of the fee for a petition to cancel provided for by this rule, under defined circumstances, means that many filers of petitions for cancellation will see no increase in the filing fee for such cases.

Comments: One commenter sought clarification as to what would happen if the Board granted a motion to reopen a case in which the Board had entered default judgment.

Response: To ensure that cancellation petitioners who do not obtain default judgments are treated equally, if a motion to reopen was granted in a cancellation case that was originally decided by default, the petitioner would be assessed the amount of the refund processed at the time of default.

Comments: One commenter suggested that the refund conditions be expanded to allow for filing of some documents prior to entry of a default judgment (*e.g.,* ''no substantive filings'' were made or only ''simple, procedural'' filings were made).

Response: The Office appreciates the comment that some cancellation cases asserting only abandonment or nonuse claims may have few filings and no ''substantive'' filings prior to entry of default judgment. However, the refund procedure is established with clear guidelines for determining when a refund will be provided to avoid case-by-case discretionary judgments on whether a filing was substantive or a ''simple, procedural filing.''

The Office will not expand the refund process to cancellation cases asserting abandonment that involve filing of more than just the initial complaint prior to entry of judgment. Extending the refund to cancellation cases asserting abandonment and that involve filings other than the initial complaint would require time-consuming case-by-case judgments regarding whether the filings were substantive or not or were simple and procedural. Moreover, cases that did not involve substantive filings might still involve many procedural filings that could cause the case to remain pending for a long period of time, and the refund proposal is designed to benefit cases that are terminated rapidly. In addition, decisions by TTAB personnel regarding whether filings were substantive or simple could then be subject to review on petition and would result in additional delays prior to termination.

Comments: Commenters also proposed that a refund should be available in opposition cases and for all cases of default judgment, regardless of the grounds asserted by the plaintiff. Of the two stakeholder organizations that addressed the issue of the frequency with which default judgment is entered in opposition proceedings, one stated that the reported experience of its members is that default judgments are just as frequent in opposition proceedings as they are in cancellation proceedings. In contrast, the other acknowledged that default judgments are rare in opposition proceedings.

Response: The TTAB's expedited cancellation proceeding pilot confirmed only the high rate of default judgment in cancellation cases asserting abandonment or nonuse alone. Thus, the Board did not have any basis to propose refunds in opposition cases or in cancellation cases asserting other grounds. The NPRM refund proposal was limited to cancellation cases asserting only abandonment or nonuse, in which the defendant does not enter an appearance, the only filing was the initial complaint, and that results in default judgment. This was rooted in the recognition of the high number of abandonment or nonuse claims, the high rate of default in cases in which those are the only claims, and the ability to handle refund processing in the normal course of terminating a cancellation proceeding. Based on statistics from the TTAB's recent two-year expedited cancellation proceeding pilot program, abandonment is the most common claim in cancellation proceedings, appearing in 34% of filings. The default rate in cancellation cases in which abandonment is the only claim is 60%. The decision to process refunds in such cases results in no net increase in the cancellation filing fee for many petitioners and also encourages filings that help ensure the integrity of the register. Cancellation cases involving assertion of other grounds serve other purposes that may be unrelated to the integrity of the register. Opposition cases typically do not involve abandonment claims and, even if they result in default judgments do not result in removal of registered but unused marks from the register.

(3) Fees for Extensions of Time to Oppose: This rule also increases fees for filing requests for an extension of time to file an opposition. Prior to enactment of this rule, applicants could request: (1) An initial 30-day extension for no fee, (2) a subsequent 60-day extension (or an initial 90-day extension) for a fee of $100 for electronic filings and $200 for paper filings, and (3) a final 60-day extension for a fee of $200 for electronic filings and $300 for paper filings. This rule maintains this tiered structure with an increase of $100 for the first 60-day (or initial 90-day) electronic extension and $200 for the final 60-day electronic extension. Paper-filed extension requests will increase by $200 for each filing. The fees are per application, not per class.

These fees are designed to yield efficiencies by encouraging potential opposers to make decisions regarding filing an opposition sooner, thus reducing delays to applicants whose filings have been made the subject of extensions of time to oppose. Additionally, by encouraging earlier decisions to initiate proceedings, the uncertainty experienced by these applicants will be ameliorated by having their applications proceed to determination on the merits sooner. This will also help protect the integrity of the trademark register by encouraging timely decisions and filings to ensure that the rights of other applicants and the public are not adversely affected.

Further, currently about two-thirds of the cost of TTAB operations is subsidized by revenue from other trademark processing fees. The increases in existing TTAB fees set by this rule, and the new fees set by this rule, will not recover the full costs of TTAB operations, but they are estimated to increase cost recovery by 7% and to bring the TTAB incrementally closer to full cost recovery.

Finally, the extension of time to oppose fees will help offset TTAB processing costs. In FY 2019, the USPTO received 20,502 requests for extensions of time to file a notice of opposition. It is customary for requests that delay processing of records, such as extensions, to incur a fee, which offsets costs associated with processing the filing, as well as the overall cost of processing appeals and trials. These fees are necessary to help achieve primary Office goals of recovering the aggregate costs of operations, along with key policy considerations, such as encouraging efficient processing.

Comments: Two IP stakeholder organizations and one law firm provided comments on the extension of time to oppose fees. One stakeholder organization noted only the proposed fee for the final 60-day extension of time to oppose, and it is unclear whether the organization's comment concerns only that extension or both types of extensions that carry fees. All commenters noted that fees for these filings were first levied four years ago and that the proposed increases are, percentage-wise, substantial. Comments also suggested that an applicant engaged in settlement talks with a potential opposer could attempt to force an increase in costs for the potential opposer to continue settlement talks by not responding to attempts to settle the parties' differences. The law firm suggested that potential opposers might proceed to file a notice of opposition rather than pay the increased fees for the extensions of time to oppose. The law firm also suggested that processing of extensions of time to oppose is largely automated and, therefore, the fee increase cannot be justified on the grounds of cost recovery.

Response: Many potential opposers are aware of applications that have been filed and that are perceived as potentially conflicting well before a mark is published for opposition, as demonstrated by the large number of Letters of Protest filed each year, many of which seek to ensure an examining attorney is aware of the protestor's prior registration or other concerns. A potential opposer and an applicant can initiate settlement discussions as soon as the application is approved for publication in the *Trademark Official Gazette* and before it actually publishes. Then, upon publication, there is a 30-day opposition period, and a 30-day extension of that period can be obtained at no cost. Extension of time to oppose fees do not apply until 60 days after the date of publication. The additional 60 days that can be obtained for the period covering 60–120 days from publication carry a fee that is charged per application, not per class of goods or services in the application. A final extension for another 60 days can be obtained for a higher fee, also per application, not per class. The fee structure encourages parties to discuss settlement of differences, but charges more the longer the discussions go on and applications are delayed.

When fees for extensions were first proposed, commenters posited that potential opposers might file oppositions rather than pay the extension fees. The Board has not seen any evidence of a significant change in practice. On the contrary, the number of extensions of time to oppose filed has generally increased on an annual basis. Opposition fees are paid per class for the opposed application, while fees that are required for extensions of the opposition period accrue on a per-application basis. As such, filing an opposition to avoid paying an extension fee when negotiations to avoid commencement of an opposition are progressing would in most instances cost a potential opposer more. When negotiations are not progressing, the potential opposer may wish to consider an earlier determination as to whether filing of an opposition is desirable. In trial cases, it is not unusual for the Board to be informed that an adversary is not willing to engage in settlement talks. The Board has limited ability to force such discussions. In addition, the Board has received objections to its approval of extensions of time to oppose from applicants who assert that the potential opposer has no real basis for an opposition and seeks only to delay the application. Thus, the extension fees are intended to facilitate earlier discussion of settlement and recognize that delay can be a concern for both parties.

As noted above in the discussion of increases in filing fees for trial cases, cost recovery by the TTAB is not assessed solely on the basis of each particular type of filing or Board proceeding. As stakeholders have indicated a preference for spreading out cost recovery over many filings, rather than be faced with steeply higher costs for involved and protracted proceedings, cost recovery for all Board operations is facilitated by apportionment of fees on filings that are most frequently made. Extensions of time to oppose are filed on an annual basis at three times the rate of the filing of notices of opposition. Therefore, they are a logical type of filing for which to charge nominal fees for longer extensions. In addition, the fact that processing of extensions of time to oppose is largely automated does not mean that there are no costs associated with their processing. Development and enhancements of automated processing systems cost a great deal.

(4) Fees for Filing an Appeal Brief: This rule increases the fee for filing a notice of appeal by $25 per class, based on inflation, and establishes new fees for filing an appeal brief of $300 per class if filed on paper and $200 per class if filed through ESTTA. These fees

address the TPAC report recommendations to apply the majority of the aggregate increases in appeal fees to the costs incurred when an appeal brief is filed, which increases the likelihood that the appeal will have to be decided on the merits.

(5) Fees for Filing Requests for Extension of Time to File an Appeal Brief: This rule sets fees for second and subsequent requests for extensions of time to file an appeal brief at $200 per application if filed on paper and $100 per application if filed through ESTTA. These fees yield efficiencies by encouraging applicants to move forward with their appeals, resulting in a quicker resolution of the appeal, the pendency of which can adversely impact the rights of other applicants and registrants. Implementing a tiered fee structure minimizes costs to all applicants, including smaller entities, as there is no fee for a first request for extension of time to file the appeal brief.

(6) Fees for Oral Hearing: This rule sets the fee for a request for an oral hearing at $500 per proceeding. Oral hearings are not requested in the vast majority of cases before the TTAB. They are optional and are most useful when cases involve complex issues, a complex record, or highly technical goods and/or services. This fee will help offset the costs of scheduling and conducting the hearing, as well as the maintenance of equipment for remote participation.

Comments: Two IP stakeholder organizations and one law firm addressed the proposed fee for an oral hearing in an ex parte appeal or trial case. One organization noted its concern but did not provide an explanation of the basis for its concern, though it did suggest limiting the fee to in-person arguments. The other organization concluded that the fee will discourage the use of oral hearings and could weaken a party's chance of success in a matter before the TTAB. The law firm considers trademark cases to be inherently complex and long and the fee to be a disservice to the bar, to the parties, and to fair determinations of cases.

Response: This fee appropriately places Board costs on actual users of this service. Approximately 100 hearings have been requested on an annual basis in recent years. While some practitioners routinely request an oral argument for cases in which they are involved, most do not. The Board has no evidence that outcomes for parties that request an oral argument are appreciably different than for those that do not. No Board case is decided without thorough review of the record and briefs, which, as frequently stated, are of paramount importance. However, hearings are available for those who request them.

Because there is no current fee for requesting an oral hearing, it is not unusual for a party to request one only to cancel shortly before the hearing. Charging a fee for requesting a hearing may help deter requests for hearings that could later be cancelled. Hearings incur costs that are not associated with cases submitted for decision on the briefs. The scheduling and running of hearings requires a dedicated staff position, and the TTAB must maintain a hearing room for use when in-person hearings are held and the technical infrastructure necessary to offer parties the option to appear by video rather than incur the costs associated with having to travel to the USPTO. This infrastructure has a finite lifespan and needs regular upgrading or replacement.

Discussion of Rule Changes

The USPTO revises § 2.6(a)(1)(i) to increase the per-class fee for filing an initial application on paper from $600 to $750.

The USPTO revises § 2.6(a)(1)(ii) to increase the per-class fee for filing an application under section 66(a) of the Act from $400 to $500.

The USPTO revises § 2.6(a)(1)(iii) to increase the per-class fee for filing a TEAS Standard application from $275 to $350.

The USPTO revises § 2.6(a)(1)(iv) to increase the per-class fee for filing a TEAS Plus application from $225 to $250.

The USPTO revises § 2.6(a)(1)(v) to decrease the processing fee under § 2.22(c) from $125 to $100 per class.

The USPTO adds § 2.6(a)(11)(iii) to establish a fee of $0 for filing a section 7 request to amend a registration through TEAS prior to submission of a section 8 or section 71 affidavit and that consists only of the deletion of goods, services, and/or classes.

The USPTO revises § 2.6(a)(12)(i) and (ii) to increase the per-class fee for filing a section 8 affidavit from $225 to $325 for a paper submission and from $125 to $225 for a TEAS submission.

The USPTO adds § 2.6(a)(12)(iii) and (iv) to establish fees for the deletion of goods, services, and/or classes after submission and prior to acceptance of a section 8 affidavit. The addition of § 2.6(a)(12)(iii) and (iv) sets the per-class fee at $350 for a paper submission and $250 for a TEAS submission.

The USPTO revises § 2.6(a)(15) to establish separate fees for petitions to the Director under §§ 2.146 or 2.147 and petitions to revive an abandoned application under § 2.66. The revisions to § 2.6(a)(15)(i) and (ii) set the fee for filing a petition to the Director under §§ 2.146 or 2.147 at $350 for a paper submission and $250 for a TEAS submission. The addition of § 2.6(a)(15)(iii) and (iv) sets the fee for filing a petition to revive an abandoned application under § 2.66 at $250 for a paper submission and $150 for a TEAS submission.

The USPTO revises § 2.6(a)(16)(i) and (ii) to increase the per-class fee for filing a petition to cancel from $500 to $700 for a paper submission and from $400 to $600 for an ESTTA submission.

The USPTO revises § 2.6(a)(17)(i) and (ii) to increase the per-class fee for filing a notice of opposition from $500 to $700 for a paper submission and from $400 to $600 for an ESTTA submission.

The USPTO revises § 2.6(a)(18) to increase the fee for filing an ex parte appeal and to establish new fees for requests for an extension of time to file an appeal brief and for filing a brief in an ex parte appeal. The revisions to § 2.6(a)(18)(i) and (ii) increase the per-class fee for filing an ex parte appeal from $300 to $325 for a paper submission and from $200 to $225 for an ESTTA submission. The addition of § 2.6(a)(18)(iii) sets the per-application fee for filing a first request for an extension of time to file an appeal brief at $0. The addition of § 2.6(a)(18)(iv) and (v) sets the per-application fee for filing a second or subsequent request for an extension of time to file an appeal brief at $200 for a paper submission and $100 for an ESTTA submission. The addition of § 2.6(a)(18)(vi) and (vii) sets the per-class fee for filing a brief in an ex parte appeal at $300 for a paper submission and $200 for an ESTTA submission.

The USPTO revises § 2.6(a)(22)(i) and (ii) to increase the fee for filing a request for an extension of time to file a notice of opposition pursuant to § 2.102(c)(1)(ii) or (c)(2) from $200 to $400 for a paper submission and from $100 to $200 for an ESTTA submission.

The USPTO revises § 2.6(a)(23)(i) and (ii) to increase the fee for filing a request for an extension of time to file a notice of opposition pursuant to § 2.102(c)(3) from $300 to $500 for a paper submission and from $200 to $400 for an ESTTA submission.

The USPTO adds § 2.6(a)(24) to establish a fee for filing a request for an oral hearing before the TTAB of $500 per proceeding.

The USPTO adds § 2.6(a)(25) to establish a fee of $50 for the filing of a letter of protest per subject application.

The USPTO revises § 2.114(a) to provide that a partial refund of the fee for a petition to cancel, equal to the increase in that fee otherwise enacted in this rulemaking, may be made in cases of default judgment where there was no appearance by a defendant and no filings are made other than the petition to cancel.

The USPTO adds § 2.149, which codifies the procedures and requirements for letters of protest.

The USPTO revises the section title and restructures § 2.161 to set out the requirements for section 8 affidavits or declarations more clearly. The USPTO also adds, at revised § 2.161(c), a provision stating that if goods, services, and/or classes are deleted from a registration after submission and prior to the acceptance of a section 8 affidavit or declaration, the deletion must be accompanied by the relevant fee under § 2.6(a)(12)(iii) or (iv) for each class from which goods, services, and/or classes are deleted.

The USPTO revises § 7.6(a)(6)(i) and (ii) to increase the per-class fee for filing a section 71 affidavit from $225 to $325 for a paper submission and from $125 to $225 for a TEAS submission.

The USPTO adds § 7.6(a)(6)(iii) and (iv) to establish fees for the deletion of goods, services, and/or classes after submission and prior to acceptance of a section 71 affidavit. The added § 7.6(a)(iii) and (iv) set the per-class fee at $350 for a paper submission and $250 for a TEAS submission.

The USPTO revises the section title and restructures § 7.37 to set out the requirements for section 71 affidavits or declarations more clearly. The USPTO also adds, at revised § 7.37(c), a provision stating that if goods, services, and/or classes are deleted from a registration after submission and prior to acceptance of a section 71 affidavit or declaration, the deletion must be accompanied by the relevant fee under § 7.6(a)(6)(iii) or (iv) for each class from which goods, services, and/or classes are deleted.

Rulemaking Requirements

A. America Invents Act: This rulemaking sets and adjusts fees under section 10(a) of the AIA as amended by the SUCCESS Act. Section 10(a) of the AIA authorizes the Director to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act for any services performed by, or materials furnished by, the USPTO (*see* section 10 of the AIA, Pub. L. 112–29, 125 Stat. 284, 316–17, as amended by Pub. L. 115–273, 132 Stat. 4158). Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the USPTO provide a public comment period of not less than 45 days.

The TPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of trademark operations. When adopting fees under section 10 of the AIA, the AIA requires the Director to provide the TPAC with the proposed trademark-related fees at least 45 days prior to publishing them in the **Federal Register**. The TPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing(s) on the proposed fees. The TPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the USPTO issues any final fees. The USPTO will consider and analyze any comments, advice, or recommendations received from the TPAC before finally setting or adjusting fees.

Consistent with the requirements of the AIA, on August 28, 2019, the Director notified the TPAC of the USPTO's intent to set or adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

The TPAC held a public hearing in Alexandria, Virginia, on September 23, 2019. Transcripts of this hearing and comments submitted to the TPAC in writing are available for review at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The TPAC subsequently issued a report, dated October 31, 2019, regarding the preliminary proposed fees. The report can be found online at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

B. Final Regulatory Flexibility Analysis: The USPTO publishes this Final Regulatory Flexibility Analysis (FRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to examine the impact of the USPTO's proposed changes to trademark fees on small entities. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment a FRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities (*see* 5 U.S.C. 603, 605). The USPTO published an Initial Regulatory Flexibility Analysis (IRFA), along with the NPRM, on June 19, 2020 (85 FR 37040). The USPTO received no comments from the public directly applicable to the IFRA, as stated below in Item 2.

Items 1–6 below discuss the six items specified in 5 U.S.C. 604(a)(1)–(6) to be addressed in a FRFA. Item 6 discusses alternatives considered by the Office.

1. Succinct statement of the need for, and objectives of, the rule:

The USPTO is setting and adjusting certain trademark fees as authorized by section 10 of the AIA, as amended by Public Law 115–273, 132 Stat. 4158 (the SUCCESS Act). The fee schedule established under section 10 in this rulemaking will, based on the assumptions found in the FY 2021 Congressional Justification, recover the aggregate estimated costs to the USPTO while achieving strategic and operational goals, such as implementing measures to maintain trademark pendency and high trademark quality, modernizing the trademark IT systems, continuing important programs for stakeholder and public outreach, enhancing operations of the TTAB, and maintaining a sufficient operating reserve. Aggregate costs are estimated through the USPTO budget formulation process with the annual preparation of a five-year performance-based budget request. Revenues are estimated based on the projected demand (workload) for trademark products and services and fee rates.

The policy objectives of the rule are to: (1) Better align fees with costs, (2) protect the integrity of the trademark register, (3) improve the efficiency of USPTO processes related to trademark and TTAB operations, and (4) ensure financial sustainability to facilitate effective trademark operations. The legal basis for the rule is section 10 of the AIA, as amended, which provides the authority for the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended. *See also* section 31 of the Trademark Act, 15 U.S.C. 1113.

2. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, *and a statement of any changes made in the proposed rule as a result of such comments:*

The USPTO did not receive any public comments in response to the IRFA. However, the Office received comments about fees in general, as well as particular fees, and their impact on small entities, which are further discussed in the preamble.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments:

The USPTO did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

4. Description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available:

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule.

This rule applies to any entity filing trademark documents with the USPTO. The USPTO estimates, based on the assumptions found in the FY 2021 Congressional Justification, that during the first full fiscal year under the fees as proposed, the USPTO would expect to collect approximately $76 million more in trademark processing and TTAB fees in FY 2021. The USPTO would receive an additional $40 million in fees from applications for the registration of a mark, including requests for extension of protection and subsequent designations; $2 million more from petitions and letters of protest; and $27 million more for section 8 and section 71 affidavits. TTAB fees would increase by $6 million.

Trademark fees are collected for trademark-related services and products at different points in time in the trademark application examination process and over the lifecycle of the registration. Approximately 55% of all trademark fee collections are from application filing fees. Fees for TTAB proceedings and appeals comprise 2.5% of revenues. Fees from other trademark activities, petitions, assignments and certifications, and Madrid processing are approximately 5% of revenues. Fees for filing post-registration and intent-to-use filings, which subsidize the costs of filing, search, examination, and TTAB activities, comprise 37.5%.

The USPTO's five-year estimated aggregate trademark fee revenue is based on the number of trademark applications and other fee-related filings it expects to receive for a given fiscal year and work it expects to process in a given fiscal year (an indicator of future fee workload and budgetary requirements). Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on policy and cost considerations and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee, which is then used to calculate the aggregate revenue. Additional details about the USPTO's aggregate revenue, including projected workloads by fee, are available at *https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

5. Description of the reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

The final rule imposes no new reporting or recordkeeping requirements. The main purpose of the final rule is to set and adjust trademark fees. The final rule also codifies new procedural regulations at 37 CFR 2.149 for the submission of letters of protest. The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants and is unable to provide an estimate of the classes of small entities that will be subject to the new procedural requirements. However, the USPTO does not anticipate that the final rule would have a disproportionate impact upon any particular class of small or large entities.

6. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected:

The USPTO considered four alternatives, based on the assumptions found in the FY 2021 Congressional Justification, before enacting this rule: (1) The adjustments included in this final rule, (2) an across-the-board adjustment of 22%, (3) the unit cost of providing services based on FY 2019 costs, and (4) no change to the baseline of current fees. The alternatives are each explained here with additional information regarding how each alternative was developed and the aggregate revenue estimated. A description of the Aggregate Revenue Methodologies is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

The USPTO is setting or adjusting trademark fees codified in 37 CFR parts 2 and 7. Fees are adjusted for all application filing types (*i.e.,* paper applications, applications filed via TEAS, and requests for extension of protection under section 66(a) of the Trademark Act (15 U.S.C. 1141f)). The USPTO also sets or adjusts certain other trademark processing fees to further effective administration of the trademark system. For example, the rule increases the fees for certain petitions to the Director as well as section 8 and section 71 affidavits, sets a new fee and proposes procedural regulations for filing a letter of protest, and sets new fees for deleting goods, services, and/or classes from a registration after submission and prior to acceptance of a section 8 or section 71 affidavit.

The USPTO chose the alternative established in this rule because it will enable the Office to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative established here secures the USPTO's objectives for meeting the strategic goals of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners and more efficient resolution of appeals and inter partes proceedings at the TTAB by increasing revenue to meet the Office's aggregate future costs. In particular, the new fee structure for requests to delete goods, services, and/or classes from a registration will protect the integrity of the register and the efficiency of the process by incentivizing both more timely filings and proactive action by applicants and registrants. The increased efficiencies realized through this rule will benefit all applicants and registrants by allowing registrations to be granted in a timely manner and more efficiently by removing unused marks and unsupported goods and services from the register. All trademark applicants and registrants should benefit from the efficiency that will be realized under the final rule.

With regard to the new regulations governing the filing of letters of protest, the USPTO anticipates that the impact to affected entities will be small. The proposed fee of $50 is set at a level high enough to recognize there are processing costs and deter the filing of unsupported or irrelevant filings, but low enough so as not to discourage the filing of relevant, well-supported letters of protest. In addition, the new procedural regulations for filing letters of protest are not anticipated to significantly impact affected entities because the new regulations are based on existing informal procedures set out in the TMEP.

Finally, the new provision at § 2.114(a) provides that a partial refund of the fee for a petition to cancel may be made in cases of default judgement where there was no appearance by a defendant and no filings were made other than the petition to cancel. This change will balance the cost recovery obtained from the increase in the fee for a petition to cancel, a case type that has increased markedly in recent years, against the benefit of having petitions to cancel filed to remove registrations from the register when petitioners have determined through their investigations that the registered marks are no longer in use. In such situations, default judgments often result, efficiently clearing the register of marks that would otherwise stand as potential bars to applications seeking to register similar marks. This reduces costs for applicants filing such applications.

The fee schedule for this alternative (labeled ''Alternative 1—Final Rule'') is available in the document entitled ''Final Regulatory Flexibility Act Tables'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Another alternative to setting and adjusting fees that was considered was to increase all fees by the same 22% across the board. This alternative would maintain the status quo structure of cost recovery, where processing and examination costs are subsidized by fees paid for intent-to-use and post-registration maintenance filings (both of which exceed the cost of performing these services), given that all fees would be adjusted by the same escalation factor. This structure would promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants would pay maintenance fees above cost to subsidize the below-cost front-end fees. This alternative was ultimately rejected. Although this alternative generates sufficient aggregate revenue to recover aggregate operating costs, unlike the final rule fee structure, there would be no improvements in fee schedule design. As such, this alternative would not accomplish the stated objective of enhancing the integrity of the register by incentivizing users to maintain accurate goods and/or services. Further, it would not enhance the efficiency of the process, as it would offer no new incentives for users to timely file applications and other filings or to resolve appeals and inter partes proceedings at the TTAB more expeditiously. The fee schedule for this alternative (labeled ''Alternative 2—Across-the-Board Adjustment'') is available in the document entitled ''Final Regulatory Flexibility Act Tables'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

A third alternative that was considered was to set all trademark fees to allow for the USPTO to recover 100% of the unit costs associated with each product or service provided, based on the historical unit costs of the products and services provided by the USPTO. The USPTO uses activity based information to determine the unit costs of activities that contribute to the services and processes provided by individual fees. It is common practice in the Federal Government to set a particular fee at a level that recovers the cost of a given good or service. In Office of Management and Budget (OMB) Circular A–25, User Charges, the OMB states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the Government is acting in its capacity as sovereign. Under the unit cost recovery alternative, fees are generally set in line with the FY 2019 cost of providing the product or service. The USPTO recognizes that this approach does not account for changes in the fee structure or inflationary factors that could likely increase the costs of certain trademark services and necessitate higher fees in the out-years. However, the USPTO contends that the FY 2019 data is the best unit cost data available to inform this analysis. This alternative would produce a structure in which application and processing fees would increase significantly for all applicants, and intent-to-use and post-registration maintenance filing fees would decrease dramatically when compared with current fees. In addition, these fees would change from year to year based on the number of applications submitted. This alternative was rejected because it was determined that the unit costs for any given product or service can vary from year to year, such that a yearly review of all, and an adjustment to many, trademark fees would be continually required and could also lead to consumer confusion regarding the amount at which any given trademark fee was currently set and what the relevant fee would be in the future. Additionally, this alternative does not address improvements in fee design to accomplish the stated objectives of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners as well as practices that improve the efficiency of the process. The fee schedule for this alternative (labeled ''Alternative 3—Unit Cost Recovery'') is available in the document entitled ''Final Regulatory Flexibility Act Tables'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

A final alternative to setting and adjusting fees would be to take no action at this time regarding trademark fees and to leave all trademark fees as currently set. This alternative was rejected because, due to changes in demand for certain services and rising costs, the Office has determined that a fee increase is needed to meet future budgetary requirements as described in the FY 2021 Congressional Justification. Further, as previously explained, the fee schedule established in this final rule will assist in promoting access to the trademark system, protecting the integrity of the register, and promoting the efficiency of the trademark registration process by incentivizing: (1) Maintenance of registrations for goods and services for which marks are actually in use, (2) more timely filing of applications and other documents, and (3) faster resolution of appeals and inter partes proceedings at the TTAB. The fee schedule for this alternative (labeled ''Alternative 4—Baseline—Current Fee Schedule'') is available in the document entitled ''Final Regulatory Flexibility Act Tables'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

C. Executive Order 12866 (Regulatory Planning and Review): This rule has been determined to be Significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3)

selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This final rule is not subject to the requirements of Executive Order 13771 (Jan. 30, 2017) because this final rule involves a transfer payment.

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

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the comptroller general of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act of 1995: This final rule involves information collection requirements that are subject to review and approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved with this final rule have been reviewed and previously approved by OMB under OMB control numbers 0651–0009, 0651–0027, 0651–0028, 0651–0040, 0651–0050, 0651–0051, 0651–0054, 0651–0055, 0651–0056, and 0651–0061. This final rule establishes and adjusts certain trademark fees, which updates the total annual non-hour cost burdens by $33,440,550 as set out in the following table:

OMB control No.	Information collection title	Estimated update in total annual non-hour cost burdens (fees) due to final rule
0651–0009	Applications for Trademark Registration	$22,853,750
0651–0027	Recording Assignments	0
0651–0028	Fastener Quality Act Insignia Recordal Process	0
0651–0040	Trademark Trial and Appeal Board (TTAB) Actions	4,904,000
0651–0050	Response to Office Action and Voluntary Amendment Forms	−4,300
0651–0051	Madrid Protocol	3,205,450
0651–0054	Substantive Submissions Made During Prosecution of the Trademark Application	148,400
0651–0055	Post Registration (Trademark Processing)	2,159,000
0651–0056	Submissions Regarding Correspondence and Regarding Attorney Representation	0
0651–0061	Trademark Petitions	174,250

This estimated cost burden increase is based on the current OMB approved response volumes associated with these information collections, which may be slightly different than the workflow forecasts cited in other parts of this rule. In addition, updates to the aforementioned information collections as a result of this final rule will be submitted to OMB for approval prior to the rule's effective date.

Notwithstanding any other provision of law, no person is required to respond 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 Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in section 10(a) of the AIA; 15 U.S.C. 1113, 1123; and 35 U.S.C. 2, as amended, the USPTO amends parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112–29, 125 Stat. 284, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Amend § 2.6 by:
■ a. Revising paragraphs (a)(1)(i) through (v);
■ b. Adding paragraph (a)(11)(iii);
■ c. Revising paragraphs (a)(12), (15) through (18), (22), and (23); and
■ d. Adding paragraphs (a)(24) and (25).

The revisions and additions read as follows:

§ 2.6 Trademark fees.

(a) * * *

(1) * * *

(i) For filing an application on paper, per class—$750.00

(ii) For filing an application under section 66(a) of the Act, per class—$500.00

(iii) For filing a TEAS Standard application, per class—$350.00

(iv) For filing a TEAS Plus application under § 2.22, per class—$250.00

(v) Additional processing fee under § 2.22(c), per class—$100.00

* * * * *

(11) * * *

(iii) For filing an amendment to a registration prior to submission of an affidavit under section 8 or section 71 of the Act and consisting only of the deletion of goods, services, and/or classes—$0.00

(12) *Affidavit under section 8.* (i) For filing an affidavit under section 8 of the Act on paper, per class—$325.00

(ii) For filing an affidavit under section 8 of the Act through TEAS, per class—$225.00

(iii) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act on paper, per class—$350.00

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act through TEAS, per class—$250.00

* * * * *

(15) *Petitions to the Director.* (i) For filing a petition under § 2.146 or § 2.147 on paper—$350.00

(ii) For filing a petition under § 2.146 or § 2.147 through TEAS—$250.00

(iii) For filing a petition under § 2.66 on paper—$250.00

(iv) For filing a petition under § 2.66 through TEAS—$150.00

(16) *Petition to cancel.* (i) For filing a petition to cancel on paper, per class—$700.00

(ii) For filing a petition to cancel through ESTTA, per class—$600.00

(17) *Notice of opposition.* (i) For filing a notice of opposition on paper, per class—$700.00

(ii) For filing a notice of opposition through ESTTA, per class—$600.00

(18) *Ex parte appeal.* (i) For filing an ex parte appeal to the Trademark Trial and Appeal Board on paper, per class—$325.00

(ii) For filing an ex parte appeal to the Trademark Trial and Appeal Board through ESTTA, per class—$225.00

(iii) For filing a first request for an extension of time to file an appeal brief, per application—$0.00

(iv) For filing a second or subsequent request for an extension of time to file an appeal brief on paper, per application—$200.00

(v) For filing a second or subsequent request for an extension of time to file an appeal brief through ESTTA, per application—$100.00

(vi) For filing an appeal brief on paper, per class—$300.00

(vii) For filing an appeal brief through ESTTA, per class—$200.00

* * * * *

(22) *Extension of time for filing a notice of opposition under § 2.102(c)(1)(ii) or (c)(2).* (i) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) on paper—$400.00

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) through ESTTA—$200.00

(23) *Extension of time for filing a notice of opposition under § 2.102(c)(3).* (i) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) on paper—$500.00

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) through ESTTA—$400.00

(24) *Oral hearing.* For filing a request for an oral hearing before the Trademark Trial and Appeal Board, per proceeding—$500.00

(25) *Letter of protest.* For filing a letter of protest, per subject application—$50.00

* * * * *

■ 3. Amend § 2.114 by revising paragraph (a) to read as follows:

§ 2.114 Answer.

(a)(1) If no answer is filed within the time initially set, or as later may be reset by the Board, the petition may be decided as in the case of default. The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.

(2) If the cancellation proceeding is based solely on abandonment or nonuse and default judgment is entered with no appearance by the defendant, and no filings are made other than the petition to cancel, $200 per class of the petition to cancel fee may be refunded.

* * * * *

■ 4. Add § 2.149 before the center heading "Certificate" to read as follows:

§ 2.149 Letters of protest against pending applications.

(a) A third party may submit, for consideration and entry in the record of a trademark application, objective evidence relevant to the examination of the application for a ground for refusal of registration if the submission is made in accordance with this section.

(b) A party protesting multiple applications must file a separate submission under this section for each application.

(c) Any submission under this section must be filed no later than 30 days after the date the application is published for opposition under section 12(a) of the

Act and § 2.80 of this part. If the subject application cannot be withdrawn from issuance of a registration while consideration of the protest is pending, the protest may be considered untimely.

(d)(1) If the letter of protest is filed before publication of the subject application, the evidence must be relevant to the identified ground(s) for refusal, such that it is appropriate for the examining attorney to consider whether to issue a refusal or make a requirement under the Act or this part.

(2) If the letter of protest is filed on or within 30 days after the date of publication of the subject application, the evidence must establish a prima facie case for refusal on the identified ground(s), such that failure to issue a refusal or to make a requirement would likely result in issuance of a registration in violation of the Act or parts 2 or 7 of this section.

(e) Filing a submission under this section does not stay or extend the time for filing a notice of opposition.

(f) Any submission under this section must be made in writing, filed through TEAS, and include:

(1) The fee required by § 2.6(a)(25);

(2) The serial number of the pending application that is the subject of the protest;

(3) An itemized evidence index that does not identify the protestor or its representatives, does not contain legal argument, and includes:

(i) An identification of the documents, or portions of documents, being submitted as evidence. The submission may not total more than 10 items of evidence in support of a specified ground of refusal and more than 75 total pages of evidence without a detailed and sufficient explanation that establishes the special circumstances that necessitate providing more than 10 items of evidence per refusal ground or more than 75 total pages of evidence; and

(ii) A concise factual statement of the relevant ground(s) for refusal of registration appropriate in ex parte examination that each item identified supports; and

(4) A clear and legible copy of each item identified in the evidence index where:

(i) Copies of third-party registrations come from the electronic records of the Office and show the current status and title of the registration;

(ii) Evidence from the internet includes the date the evidence was published or accessed and the complete URL address of the website; and

(iii) Copies of printed publications identify the publication name and date of publication.

(g) Any submission under this section may not be entered or considered by the Office if:

(1) Any part of the submission is not in compliance with this section;

(2) The application record shows that the examining attorney already considered the refusal ground(s) specified in the submission; or

(3) A provision of the Act or parts 2 or 7 of this chapter precludes acceptance of the submission.

(h) If a submission is determined to be in compliance with this section, only the specified ground(s) for refusal and the provided evidence relevant to the ground(s) for refusal will be included in the application record for consideration by the examining attorney. An applicant should not reply to the entry into the application record of evidence entered under this section.

(i) Any determination whether to include in an application record the ground(s) or evidence for a refusal of registration in a submission under this section is not petitionable.

(j) A third party filing a submission under this section will not receive any communication from the Office relating to the submission other than acknowledgement that it has been received by the Office and notification of whether the submission is found to be compliant or non-compliant with this section. Communications with the third party will not be made of record in the application. The Office will not accept amendments to a non-compliant submission that was previously filed. Instead, a third party who previously filed a non-compliant submission may file another submission that meets the requirements of paragraph (f) of this section, provided the time period for filing a submission in paragraph (c) of this section has not closed.

(k) The limited involvement of the third party ends with the filing of the submission under this section. The third party may not directly contact the examining attorney assigned to the application.

■ 5. Revise § 2.161 to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse; requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens; and fee for deletions of goods, services, and/or classes from a registration.

(a) *Requirements for a complete affidavit or declaration.* A complete affidavit or declaration under section 8 of the Act must:

(1) Be filed by the owner within the period set forth in § 2.160(a);

(2) Include a verified statement attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 8 of the Act. This verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a);

(3) Include the U.S. registration number;

(4)(i) Include the fee required by § 2.6 for each class that the affidavit or declaration covers;

(ii) If the affidavit or declaration is filed during the grace period under section 8(a)(3) of the Act, include the grace period surcharge per class required by § 2.6; and

(iii) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes, and the class(es) to which the fee(s) should be applied is not specified, the Office will issue a notice requiring either submission of the additional fee(s) or specification of the class(es) to which the initial fee(s) should be applied. Additional fees may be submitted if the requirements of § 2.164 are met. If the additional fee(s) is not submitted within the time period set out in the Office action, and the class(es) to which the original fee(s) should be applied is not specified, the Office will presume that the fee(s) covers the classes in ascending order, beginning with the lowest numbered class;

(5)(i) Specify the goods, services, or nature of the collective membership organization for which the mark is in use in commerce, and/or the goods, services, or nature of the collective membership organization for which excusable nonuse is claimed under paragraph (a)(6)(ii) of this section; and

(ii) Specify the goods, services, or classes being deleted from the registration, if the affidavit or declaration covers fewer than all the goods, services, or classes in the registration;

(6)(i) State that the registered mark is in use in commerce; or

(ii) If the registered mark is not in use in commerce on or in connection with all the goods, services, or classes specified in the registration, set forth the date when such use of the mark in commerce stopped and the approximate date when such use is expected to resume, and recite facts to show that nonuse as to those goods, services, or classes is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(7) Include one specimen showing how the mark is in use in commerce for each class in the registration, unless excusable nonuse is claimed under paragraph (a)(6)(ii) of this section. When requested by the Office, additional

specimens must be provided. The specimen must meet the requirements of § 2.56.

(8) Additional requirements for a collective mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a collective mark must:

(i) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(ii) If the registration issued from an application based solely on section 44 of the Act, state the nature of the owner's control over the use of the mark by the members in the first affidavit or declaration filed under paragraph (a)(1) of this section.

(9) Additional requirements for a certification mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a certification mark must:

(i) Include a copy of the certification standards specified in § 2.45(a)(4)(i)(B);

(A) *Submitting certification standards for the first time.* If the registration issued from an application based solely on section 44 of the Act, include a copy of the certification standards in the first affidavit or declaration filed under paragraph (a)(1) of this section; or

(B) *Certification standards submitted in prior filing.* If the certification standards in use at the time of filing the affidavit or declaration have not changed since the date they were previously submitted to the Office, include a statement to that effect. If the certification standards in use at the time of filing the affidavit or declaration have changed since the date they were previously submitted to the Office, include a copy of the revised certification standards;

(ii) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(iii) Satisfy the requirements of § 2.45(a)(4)(i)(A) and (C).

(10) For requirements of a complete affidavit or declaration of use in commerce or excusable nonuse for a registration that issued from a section 66(a) basis application, see § 7.37.

(b) *Requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens.* The Office may require the owner to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 8 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

(c) *Fee for deletions of goods, services, and/or classes from a registration.* Deletions by the owner of goods, services, and/or classes from a registration after submission and prior to acceptance of the affidavit or declaration must be accompanied by the relevant fee in § 2.6(a)(12)(iii) or (iv).

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 6. The authority citation for part 7 continues to read as follows:

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

■ 7. Amend § 7.6 by revising paragraph (a)(6) to read as follows:

§ 7.6 Schedule of U.S. process fees.

(a) * * *

(6) *Affidavit under section 71.* (i) For filing an affidavit under section 71 of the Act on paper, per class—$325.00

(ii) For filing an affidavit under section 71 of the Act through TEAS, per class—$225.00

(iii) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act on paper, per class—$350.00

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act through TEAS, per class—$250.00

* * * * *

■ 8. Revise § 7.37 to read as follows:

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse; requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens; and fee for deletions of goods, services, and/or classes from a registration.

(a) *Requirements for a complete affidavit or declaration.* A complete affidavit or declaration under section 71 of the Act must:

(1) Be filed by the holder of the international registration within the period set forth in § 7.36(b);

(2) Include a verified statement attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(b). A person who is properly authorized to sign on behalf of the holder is:

(i) A person with legal authority to bind the holder;

(ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the holder; or

(iii) An attorney, as defined in § 11.1 of this chapter, who has an actual written or verbal power of attorney or an implied power of attorney from the holder;

(3) Include the U.S. registration number;

(4)(i) Include the fee required by § 7.6 for each class that the affidavit or declaration covers;

(ii) If the affidavit or declaration is filed during the grace period under section 71(a)(3) of the Act, include the grace period surcharge per class required by § 7.6;

(iii) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes, and the class(es) to which the fee(s) should be applied is not specified, the Office will issue a notice requiring either submission of the additional fee(s) or specification of the class(es) to which the initial fee(s) should be applied. Additional fees may be submitted if the requirements of § 7.39 are met. If the additional fee(s) is not submitted within the time period set out in the Office action, and the class(es) to which the original fee(s) should be applied is not specified, the Office will presume that the fee(s) covers the classes in ascending order, beginning with the lowest numbered class;

(5)(i) Specify the goods, services, or nature of the collective membership organization for which the mark is in use in commerce, and/or the goods, services, or nature of the collective membership organization for which excusable nonuse is claimed under paragraph (a)(6)(ii) of this section; and

(ii) Specify the goods, services, or classes being deleted from the registration, if the affidavit or declaration covers fewer than all the goods, services, or classes in the registration;

(6)(i) State that the registered mark is in use in commerce; or

(ii) If the registered mark is not in use in commerce on or in connection with all the goods, services, or classes specified in the registration, set forth the date when such use of the mark in commerce stopped and the approximate date when such use is expected to resume, and recite facts to show that nonuse as to those goods, services, or classes is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(7) Include one specimen showing how the mark is in use in commerce for each class in the registration, unless excusable nonuse is claimed under

paragraph (a)(6)(ii) of this section. When requested by the Office, additional specimens must be provided. The specimen must meet the requirements of § 2.56 of this chapter.

(8) Additional requirements for a collective mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a collective mark must:

(i) State that the holder is exercising legitimate control over the use of the mark in commerce; and

(ii) State the nature of the holder's control over the use of the mark by the members in the first affidavit or declaration filed under paragraph (a)(1) of this section.

(9) Additional requirements for a certification mark: In addition to the above requirements, a complete affidavit or declaration pertaining to a certification mark must:

(i) Include a copy of the certification standards specified in § 2.45(a)(4)(i)(B) of this chapter;

(A) *Submitting certification standards for the first time.* In the first affidavit or declaration filed under paragraph (a)(1) of this section, include a copy of the certification standards; or

(B) *Certification standards submitted in prior filing.* If the certification standards in use at the time of filing the affidavit or declaration have not changed since the date they were previously submitted to the Office, include a statement to that effect. If the certification standards in use at the time of filing the affidavit or declaration have changed since the date they were previously submitted to the Office, include a copy of the revised certification standards;

(ii) State that the holder is exercising legitimate control over the use of the mark in commerce; and

(iii) Satisfy the requirements of § 2.45(a)(4)(i)(A) and (C) of this chapter.

(b) *Requirement for the submission of additional information, exhibits, affidavits or declarations, and specimens.* The Office may require the holder to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 71 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

(c) *Fee for deletions of goods, services, and/or classes from a registration.* Deletions by the holder of goods, services, and/or classes from a registration after submission and prior to acceptance of the affidavit or declaration must be accompanied by the relevant fee in § 7.6(a)(6)(iii) or (iv).

Andrei Iancu,

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

[FR Doc. 2020–25222 Filed 11–16–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0416; FRL–10016–10–Region 7]

Air Plan Approval; Iowa; Air Quality Implementation Plan—Muscatine Sulfur Dioxide Nonattainment Area and Start-up, Shutdown, Malfunction SIP Call Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision, submitted by the state of Iowa, through the Iowa Department of Natural Resources (IDNR), to the EPA on May 26, 2016, for the purpose of providing for attainment of the 2010 1-hour primary Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in the Muscatine County, Iowa nonattainment area (NAA). The EPA concludes that Iowa has appropriately demonstrated that its SIP provides for attainment with the 2010 1-hour primary SO_2 NAAQS in the NAA, and that the plan meets the other applicable requirements under the Clean Air Act (CAA or Act). As a part of approving the attainment demonstration, the EPA is taking final action to approve into the Iowa SIP the SO_2 emissions limits and associated compliance parameters for the NAA. The EPA is also applying a policy regarding startup, shutdown, and malfunction (SSM) exemption provisions in the Iowa SIP that is consistent with the EPA's national policy. In light of this policy and the EPA's evaluation of Iowa's SIP, the EPA is withdrawing the SIP call issued to Iowa as part of the EPA's 2015 SSM SIP Action.

DATES: This rule will become effective on December 17, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2017–0416. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Atmospheric Programs Section, Air Planning and Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. The EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ashley Keas, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7629; email address: *keas.ashley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," and "our" is used, we mean the EPA.

Table of Contents

I. Background for This Action

A. The Muscatine Attainment Plan

On June 22, 2010, the EPA published a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50.[1] On August 5, 2013, the EPA designated the first set of areas of the country as nonattainment for the 2010 1-hour SO_2 NAAQS, including the partial Muscatine County NAA in Iowa.[2] The designations were effective

[1] *See* 75 FR 35520, codified at 40 CFR 50.17(a)b).

[2] *See* 78 FR 47191, codified at 40 CFR part 81, subpart C.