

the TEAS application filing fee will apply.

### Rule Making Requirements

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

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

### Regulatory Flexibility Act

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

### Executive Order 13132

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

### Executive Order 12866

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

### Paperwork Reduction Act

This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0009, 0651–0050.

### List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

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

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

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

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

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

#### § 2.6 Trademark fees.

\* \* \* \* \*

(a) \* \* \*

(1) For filing an application:

(i) On paper, per class—\$375.00

(ii) Through TEAS, per class—\$325.00

\* \* \* \* \*

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

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

(a) \* \* \*

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

\* \* \* \* \*

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

#### § 2.87 Dividing an application.

\* \* \* \* \*

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

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

\* \* \* \* \*

Dated: December 29, 2004.

**Stephen M. Pinkos,**

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

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

BILLING CODE 3510–16–P

## POSTAL SERVICE

### 39 CFR Part 111

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

**AGENCY:** Postal Service.

**ACTION:** Final rule.

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

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

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

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

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

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

Since advertising is not permitted in items mailed at Library Mail and Media Mail rates, enclosures of Periodicals publications sample copies are limited to Parcel Post and Bound Printed Matter mailpieces.

**Summary of Comments**

The Postal Service received three comments on the September 2, 2004, proposal (69 FR 53664). Two commenters strongly supported the proposal, but requested that the Postal Service expand the rule to include merchandise sent at Standard Mail rates. This request is outside the scope of this rulemaking. The Postal Rate Commission case authorized only a limited exception to the prohibition against entering Periodicals at Package Service rates. The prohibition against enclosing Periodicals in Standard Mail pieces remains in place at this time. The third commenter expressed concerns as to why the Postal Service provides discounts to any mailer at any mail class. This comment is also outside the scope of this rulemaking, and postal policies in this area are consistent with the ratemaking provisions established by statute.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

**E Eligibility**

\* \* \* \* \*

**E700 Package Services**

*E710 Basic Standards*

**1.0 BASIC INFORMATION**

**1.1 Definition**

[Amend 1.1 by revising the first sentence to read as follows:]

Package Services mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (except as permitted under 1.7) unless permitted or required by standard or as

Customized MarketMail under E660.

\* \* \*

[Add new section 1.7 to read as follows:]

**1.7 Attachments or Enclosures of Periodicals Sample Copies**

Sample copies of authorized and pending Periodicals publications may be enclosed or attached with merchandise sent at Parcel Post or Bound Printed Matter rates. Postage at the Parcel Post or Bound Printed Matter rates is based on the combined weight of the host piece and the sample copies enclosed.

\* \* \* \* \*

An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 05–975 Filed 1–18–05; 8:45 am]

**BILLING CODE 7710–12–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[R05–OAR–2004–OH–0003; FRL–7850–4]**

**Approval and Promulgation of State Implementation Plans; Ohio; Revised Oxides of Nitrogen (NO<sub>x</sub>) Regulation and Revised NO<sub>x</sub> Trading Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On June 28, 2004, Ohio submitted an oxides of nitrogen (NO<sub>x</sub>) State Implementation Plan (SIP) revision request to EPA which included amended rules in Ohio Administrative Code (OAC). The purpose of the SIP revision is to exclude from the NO<sub>x</sub> trading program carbon monoxide boilers associated with fluidized catalytic cracking units (FCCU). The revision also allocates additional NO<sub>x</sub> allowances to the overall budget and to the trading budget to correct a typographical error made in the original rule. Removal of the FCCU boilers from the NO<sub>x</sub> trading program is an option Ohio has elected to incorporate in its NO<sub>x</sub> SIP. The Ohio SIP revision addresses some minor corrections in the rules and also incorporates by reference specific elements of the NO<sub>x</sub> SIP Call. EPA is approving the Ohio request because the changes conform to EPA policy under the Clean Air Act. The collective emissions from these sources are small and the administrative burden,

to the states and regulated entities, of controlling such sources is likely to be considerable. Inclusion of these small NO<sub>x</sub> sources in the NO<sub>x</sub> SIP Call control program would not be cost effective.

**DATES:** This “direct final” rule is effective on March 21, 2005 unless EPA receives adverse written comments by February 18, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in eDocket (RME) ID No. R05–OAR–2004–OH–0003 by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments. Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Once in the system, select “quick search” then key in the instructions for submitting comments.

*E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

*Fax:* (312) 886–5824.

*Mail:* You may send written comments to:

J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), 18th floor, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to RME ID No. R05–OAR–2004–OH–0003. EPA’s policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) Web site are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly