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## List of Subjects

### 21 CFR Part 882

Medical devices.

### 21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR parts 882 and 895 be amended as follows:

## PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. In § 882.5235, revise paragraph (b) to read as follows:

### § 882.5235 Aversive conditioning device.

\* \* \* \* \*

(b) *Classification.* Class II (special controls), except for electrical stimulation devices for self-injurious or aggressive behavior. Electrical stimulation devices for self-injurious or aggressive behavior are banned. See § 895.105 of this chapter.

## PART 895—BANNED DEVICES

■ 3. The authority citation for part 895 continues to read as follows:

**Authority:** 21 U.S.C. 352, 360f, 360h, 360i, 371.

■ 4. Add § 895.105 to subpart B to read as follows:

### § 895.105 Electrical stimulation devices for self-injurious or aggressive behavior.

Electrical stimulation devices for self-injurious or aggressive behavior are aversive conditioning devices that apply a noxious electrical stimulus to a person’s skin to reduce or cease self-injurious or aggressive behavior.

Dated: March 12, 2024.

**Robert M. Califf,**

*Commissioner of Food and Drugs.*

[FR Doc. 2024–06037 Filed 3–25–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Parts 2 and 7

[Docket No. PTO–T–2022–0034]

RIN 0651–AD65

### Setting and Adjusting Trademark Fees During Fiscal Year 2025

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) proposes to set and adjust 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 proposed fee adjustments will provide the USPTO sufficient aggregate revenue to recover the aggregate costs of trademark operations in future years (based on assumptions and estimates found in the agency’s Fiscal Year 2025 Congressional Justification (FY 2025 Budget)), including implementing the USPTO 2022–2026 Strategic Plan (Strategic Plan).

**DATES:** The USPTO solicits comments from the public on this proposed rule. Written comments must be received on or before May 28, 2024 to ensure consideration.

**ADDRESSES:** Written comments on proposed trademark fees must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>.

To submit comments via the portal, commenters should go to <https://www.regulations.gov/docket/PTO-T-2022-0034> or enter docket number PTO–T–2022–0034 on the homepage and select the “Search” button. The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this notice and select the “Comment” button, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe portable document format (PDF) or Microsoft Word format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic

submission of comments is not possible, please contact the USPTO using the contact information below in the **FOR FURTHER INFORMATION CONTACT** section of this notice for special instructions.

**FOR FURTHER INFORMATION CONTACT:**

Brendan Hourigan, Director, Office of Planning and Budget, at 571-272-8966, or [Brendan.Hourigan@uspto.gov](mailto:Brendan.Hourigan@uspto.gov); or C. Brett Lockard, Director, Forecasting and Analysis Division, at 571-272-0928, [Christopher.Lockard@uspto.gov](mailto:Christopher.Lockard@uspto.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*A. Introduction*

The USPTO publishes this notice of proposed rulemaking (NPRM or proposed rule) under section 10 of the AIA (section 10), Public Law 112-29, 125 Stat. 284, as amended by the SUCCESS Act, Public Law 115-273, 132 Stat. 4158, which authorizes the Under Secretary of Commerce for Intellectual Property and Director of the USPTO to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act of 1946 (the Trademark Act), 15 U.S.C. 1051 *et seq.*, as amended, for any services performed or materials furnished by the agency. Section 10 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 relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while considering the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Trademark Public Advisory Committee (TPAC) and congressional oversight. TPAC held a public hearing on the USPTO's preliminary trademark fee proposals on June 5, 2023, and issued a report (TPAC Report) on August 14, 2023, containing its comments, advice, and recommendations on the preliminary fee proposals. The USPTO considered and analyzed the TPAC Report before publishing the fee proposals in this NPRM. See Part IV: Rulemaking Goals and Strategies for further discussion of the TPAC Report.

*B. Purpose of This Action*

Based on a biennial review of fees, costs, and revenues that began in fiscal year (FY) 2021, the USPTO concluded that fee adjustments are necessary to provide the agency with sufficient

financial resources to facilitate the effective administration of the U.S. trademark system, including implementing the Strategic Plan, available on the agency website at <https://www.uspto.gov/StrategicPlan>. The individual fee proposals align with the USPTO's fee structure philosophy, including the agency's four key fee setting policy factors: (1) promote innovation strategies; (2) align fees with the full cost of trademark services; (3) set fees to facilitate the effective administration of the trademark system; and (4) offer application processing options. The proposed fee adjustments will enable the USPTO to accomplish its mission to drive U.S. innovation, inclusive capitalism, and global competitiveness by delivering high-quality and timely trademark examination and review proceedings that produce accurate and reliable trademark rights for domestic and international stakeholders.

*C. Summary of Provisions Impacted by This Action*

The USPTO proposes to set and adjust 31 trademark fees, including the introduction of 12 new fees. The agency also proposes discontinuing 6 fees.

Under the proposed fee schedule in this NPRM, the routine fees to obtain and maintain a trademark registration (e.g., application filing, intent-to-use/use (ITU) filings, and post-registration maintenance fees) will increase relative to the current fee schedule, in order to ensure financial sustainability and provide for improvements needed relative to trademark filings and registration. Additional information describing the proposed fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the Table of Trademark Fees—Current, Proposed, and Unit Cost (Table of Trademark Fees), available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

**II. Legal Framework**

*A. Leahy-Smith America Invents Act—Section 10*

The AIA was enacted on September 16, 2011. See Public Law 112-29, 125 Stat. 284, 316-17. Section 10(a) 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 for any services performed or materials furnished by the agency. Section 10 provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for

processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) requires the Director to publish the final fee rule in the **Federal Register** and the USPTO's Official Gazette at least 45 days before the final fees become effective.

*B. The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018*

The SUCCESS Act was enacted on October 31, 2018. See Public Law 115-273, 132 Stat. 4158. Section 4 of the SUCCESS Act amended section 10(i)(2) of the AIA by striking “7-year” and inserting “15-year” in reference to the expiration of fee setting authority. Therefore, updated section 10(i) terminates the Director's authority to set or adjust any fee under section 10 upon the expiration of the 15-year period that began on September 16, 2011, and ends on September 16, 2026.

*C. Trademark Public Advisory Committee Role*

The Secretary of Commerce established TPAC under the American Inventors Protection Act of 1999. TPAC advises the 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 Director must provide the proposed fees to TPAC at least 45 days prior to publishing the proposed fees in the **Federal Register**. TPAC then has 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing on the proposed fees. Then, TPAC must publish a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fees. The USPTO must consider and analyze any comments, advice, or recommendations received from TPAC before setting or adjusting fees.

Accordingly, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given an opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf>. Members of the public were also given an opportunity to submit written comments for TPAC to consider, and these comments are available on [Regulations.gov](https://www.regulations.gov) at <https://www.regulations.gov/docket/PTO-T-2023-0016>. On August 14, 2023, TPAC issued a written report setting forth their comments, advice, and recommendations regarding the preliminary proposed fees. The report is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx>. The USPTO considered and analyzed all comments, advice, and recommendations received from TPAC before publishing this NPRM. See Part IV: Rulemaking Goals and Strategies for further discussion of the TPAC Report.

### III. Estimating Aggregate Costs and Revenue

Section 10 provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs with respect to such trademark fees. The following is a description of how the agency estimates aggregate costs and revenue.

#### Step 1: Estimating Aggregate Costs

Estimating prospective aggregate costs is accomplished primarily through the annual budget formulation process. The annual budget is a five-year plan for carrying out base programs and new initiatives to deliver on the USPTO's statutory mission and implement the agency's strategic goals and objectives.

First, the USPTO projects the level of demand for trademark services, which depends on many factors that are subject to change, including domestic

and global economic activity. The agency also considers non-US trademark-related activities, policies, and legislation, and known process efficiencies. The number of trademark application filings (*i.e.*, incoming work to the USPTO) drives examination costs, which make up the largest share of trademark operating costs. The USPTO looks at indicators including the expected growth in real gross domestic product (RGDP), a leading indicator of incoming trademark applications, to estimate prospective workloads. RGDP is reported by the Bureau of Economic Analysis ([www.bea.gov](http://www.bea.gov)) and forecasted each February by the Office of Management and Budget (OMB) ([www.omb.gov](http://www.omb.gov)) in the Economic and Budget Analyses section of the Analytical Perspectives, and twice annually by the Congressional Budget Office (CBO) ([www.cbo.gov](http://www.cbo.gov)) in the Budget and Economic Outlook.

The expected production workload is then compared to the current examination production capacity to determine any required staffing and operating costs (*e.g.*, salaries, workload processing contracts, and publication) adjustments. The agency uses a trademark pendency model that estimates trademark production output based on actual historical data and input assumptions, such as incoming trademark applications, number of examining attorneys on board, and overtime hours. Key statistics regarding pendency, filing and application metrics, and current inventory used to inform the model can be viewed on the data visualization center section of the USPTO website at <https://www.uspto.gov/dashboard/trademarks>.

Next, the USPTO calculates budgetary spending requirements based on the prospective aggregate costs of trademark operations. First, the agency estimates the costs of status quo operations (base requirements), then adjusts that figure for anticipated pay increases and inflationary increases for the budget year and four out years. The USPTO then estimates the prospective costs for expected changes in production workload and new initiatives over the same period. The agency then reduces

cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. A detailed description of budgetary requirements, aggregate costs, and related assumptions for the Trademarks program is available in the FY 2025 Budget.

The USPTO estimates that trademark operations will cost \$594 million in FY 2025, including \$293 million for trademark examining; \$24 million for trademark trials and appeals; \$50 million for trademark information resources; \$22 million for activities related to intellectual property (IP) protection, policy, and enforcement; and \$204 million for general support costs necessary for trademark operations (*e.g.*, the trademark share of rent, utilities, legal, financial, human resources, other administrative services, and agency-wide information technology (IT) infrastructure and support costs). See Appendix II of the FY 2025 Budget. In addition, the agency will transfer \$280 thousand to the Department of Commerce, Inspector General, for audit support for the Trademarks program.

Table 1 below provides key underlying production workload projections and assumptions from the FY 2025 Budget used to calculate aggregate costs. Table 2 (see Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2025 through FY 2029 and the estimated collections and operating reserve balances that would result from the proposed adjustments contained in this NPRM. These projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in outyear budgetary requirements. There are risks that could materialize over the next several years (*e.g.*, adjustments to examination capacity, time allotted to examining attorneys and other personnel to perform their work, recompletions of contracts, changes in workload, and inflationary increases, etc.) that could increase the USPTO's budgetary requirements in the short- to medium-term. These estimates are refreshed annually during the formulation of USPTO's budget.

TABLE 1—TRADEMARK PRODUCTION WORKLOAD PROJECTIONS, FY 2025–2029

Production measures	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Applications .....	774,000	817,000	863,000	912,000	964,000
Application growth rate .....	4.6%	5.5%	5.6%	5.7%	5.7%
Balanced disposals .....	1,552,600	1,680,000	1,740,000	1,850,000	1,930,000
Unexamined trademark application backlog .....	463,756	442,627	418,438	402,622	401,645
Examination capacity** .....	806	841	876	913	948
Performance measures:					
Avg. first action pendency (months) .....	7.5	6.3	5.9	5.5	4.9

TABLE 1—TRADEMARK PRODUCTION WORKLOAD PROJECTIONS, FY 2025–2029—Continued

Production measures	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Avg. total pendency (months) .....	13.5	11.3	10.9	9.5	8.9

\* In this table, examination capacity is the number of examining attorneys on board at end of year, as described in the FY 2025 Budget.

*Step 2: Estimating Prospective Aggregate Revenue*

As described above in Step 1, the USPTO’s prospective aggregate costs (as presented in the FY 2025 Budget) include budgetary requirements related to planned production, anticipated initiatives, and a contribution to the trademark operating reserve required for the agency to maintain trademark operations and realize its strategic goals and objectives for the next five years. Prospective aggregate costs become the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To estimate aggregate revenue, the USPTO references production models used to estimate aggregate costs and analyzes relevant factors and indicators to calculate prospective fee workloads (e.g., number of applications and requests for services and products).

The same economic indicators used to forecast incoming workloads also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-registration decisions to maintain trademark protection. When developing fee workload forecasts, the USPTO also considers other factors including fraud and scams impacting trademark filings, overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

The USPTO collects fees for trademark-related services and products at different points in time within the application examination process and over the life of the pending trademark application and resulting registration. Trademark application filings are a key driver of trademark fee collections, as initial filing fees account for more than half of total trademark fee collections. Changes in application filing levels immediately impact current year fee collections because fewer application filings mean the USPTO collects fewer fees to devote to production-related costs. The resulting reduction in production activities also creates an outyear revenue impact because less production output in one year leads to fewer ITU and maintenance fee payments in future years. Historically, fee collections from ITU and maintenance fees account for about one third of total trademark fee collections, which the agency uses to subsidize costs for filing and examination activities not fully covered by initial filing fees.

The USPTO’s five-year estimated aggregate trademark fee revenue (see Table 2) is based on, for each fiscal year, the number of trademark applications it expects to receive, work it expects to process (an indicator of the ITU fee workloads), expected examination and process requests, and the expected number of post-registration filings to maintain trademark registrations. The USPTO forecasts the same number of

future year applications filed under the proposed fee schedule compared to the current fee schedule because outside research suggests that demand for trademark applications is inelastic. The USPTO does anticipate a larger share of filers will take measures to avoid the proposed surcharges compared to the share of filers that take advantage of the TEAS Plus option under the current fee schedule. The USPTO’s Office of the Chief Economist periodically conducts economic studies and may, in the future, develop trademark fee price elasticity estimates for use in rulemakings.

Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on cost and policy decisions, estimates the effective dates of new fee rates, and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee. In the aggregate revenue estimates presented below, the agency assumes that all proposed fee rates will become effective on November 15, 2024. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (see Table 2). The aggregate revenue estimate also includes collecting \$10 million annually in other income associated with recoveries and reimbursements from other Federal agencies (offsets to spending).

TABLE 2—TRADEMARK FINANCIAL OUTLOOK, FY 2025–2029

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
	Dollars in millions				
Projected fee collections .....	583	640	666	694	721
Other income .....	10	10	10	10	10
Total projected fee collections and other income .....	593	650	676	704	731
Budgetary requirements .....	594	611	635	664	690
Funding to (+) and from (–) operating reserve .....	(1)	40	40	40	41
End-of-year operating reserve balance .....	85	125	165	205	246
Over/(under) minimum level .....	(52)	(16)	19	52	87
Over/(under) optimal level .....	(212)	(181)	(153)	(127)	(99)

**IV. Rulemaking Goals and Strategies**

*A. Fee Setting Strategy*

The strategy of this proposed rule is to establish a fee schedule that generates sufficient multi-year revenue to recover

the aggregate costs of maintaining USPTO trademark operations. The overriding principles behind this strategy are to operate within a sustainable funding model that supports the USPTO’s strategic goals and

objectives, such as optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to

the trademark system for all stakeholders.

The USPTO assessed this proposed rule's alignment with four key fee setting policy factors that promote a particular aspect of the U.S. trademark system. (1) Promoting innovation strategies seeks to ensure barriers to entry into the U.S. trademark system remain low, encourage high-growth and innovation-based entrepreneurship, and incentivize innovation and entrepreneurship by issuing registrations to stimulate additional entrepreneurial activity. (2) Aligning fees with the full costs of products and services recognizes that some applicants may use particular services in a more costly manner than other applicants (e.g., trademark applications cost more and take longer to examine when identifications of goods and services include thousands of characters), and charges those applicants appropriately rather than sharing the costs among all applicants. (3) Facilitating the effective administration of the trademark system seeks to encourage efficient prosecution of trademark applications, reducing the time it takes to obtain a registration. (4) Offering application processing options provides multiple paths, where feasible, in recognition that trademark prosecution is not a one-size-fits-all process. The reasoning for setting and adjusting individual fees is described in Part V: Individual Fee Rationale.

### B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the USPTO reviewed in developing the proposed trademark fee schedule: (1) historical cost of providing individual services; (2) the balance between projected costs and revenue to meet the USPTO's operational needs and strategic goals; (3) ensuring sustainable funding; and (4) TPAC's comments, advice, and recommendations on the USPTO's initial fee setting proposal. Collectively, these considerations informed the USPTO's chosen rulemaking strategy.

#### 1. Historical Cost of Providing Individual Services

The USPTO sets individual fee rates to further key policy considerations while considering the cost of a particular service. For instance, the USPTO has a longstanding practice of setting application filing fees below the actual cost of processing and examining applications to encourage brand owners to take advantage of the protections and rights offered by trademark registration.

The USPTO considers unit cost data provided by its Activity Based

Information (ABI) program to decide how to best align fees with the full cost of products and services. Using historical cost data, the USPTO can align fees to the costs of specific trademark products and services. When the USPTO implements a new process or service, historical activity-based information (ABI) data is typically not available. However, the USPTO will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

The document entitled "USPTO Setting and Adjusting Trademark Fees During Fiscal Year 2025—Activity Based Information and Trademark Fee Unit Expense Methodology," available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, provides additional information on the agency's costing methodology in addition to the last three years of historical cost data. Part V: Individual Fee Rationale of this proposed rule describes the reasoning and anticipated benefits for setting some individual fees at cost, below cost, or above cost such that the USPTO recovers the aggregate cost of providing services through fees.

#### 2. Balancing Projected Costs and Revenue

In developing the proposed trademark fee schedule, the USPTO considered its current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet its strategic goals, as found in the FY 2025 Budget and the Strategic Plan. The USPTO's strategic goals include: (1) driving inclusive U.S. innovation and global competitiveness; (2) promoting the efficient delivery of reliable IP rights; (3) promoting the protection of IP against new and persistent threats; (4) bringing innovation to impact; and (5) generating impactful employee and customer experiences by maximizing agency operations. The following subsections provide details regarding updated revenue and cost estimates, cost saving efforts taken by the USPTO, and planned strategic improvements.

##### a. Updated Revenue and Cost Estimates

Projected revenue from the current fee schedule is insufficient to meet future budgetary requirements (costs) due largely to lower-than-expected demand for trademark services compared to prior forecasts and higher-than-expected inflation in the broader U.S. economy that has increased the USPTO's operating costs. Consequently, aggregate operating costs will exceed aggregate revenue for the Trademarks program

under the current schedule. Absent the proposed increase in fees or an unsustainable reduction in operating costs, the USPTO would deplete its operating reserves and significantly increase financial risk.

Forecasts for aggregate revenue using current demand estimates are lower than prior forecasts. This lower-than-expected demand has coincided with changes to trademark owners' filing and renewal patterns, resulting in some imbalances in the overall fee structure. The USPTO sets application filing fees below its examination costs to maintain a low barrier to entry into the trademark registration system and relies on fees collected for post-registration maintenance and ITU extensions to subsidize the agency's losses on each application examined. However, changes in the mix of filers and their preferences have upset the traditional balance of the trademark fee structure. The share of applicants filing ITU applications is declining. Also, the percentage of registrants that choose to maintain their trademark registration is declining as a larger share of filers are groups that are historically less likely to renew their registrations at a rate that would be sufficient to recover examination costs. The USPTO believes these changes in the mix of filers are systemic and will continue.

Following an unprecedented application surge in FY 2021, trademark application filings declined and began returning to historic filing levels in FY 2022, in line with the USPTO's expectations. Application filings were largely unchanged in FY 2023. Given the current economic outlook for the broader economy and filing activity over the past two years, the USPTO projects trademark application filings to decline slightly in FY 2024 and increase in line with historic growth rates in FY 2025.

Higher-than-expected inflation starting in 2021 in the broader U.S. economy increased the USPTO's operating costs above previous estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Salaries and benefits comprise about two-thirds of all trademark-related costs, and employee pay raises enacted across all U.S. government agencies in FY 2023–24—including the USPTO—were much larger than previously budgeted. Federal General Schedule (GS) pay was raised by 4.6% in 2023 and 5.2% in 2024; before 2023 the last time GS pay was raised by at least 4% was in 2004. The FY 2025 Budget includes an estimated 2.0% civilian pay raise planned in calendar year (CY) 2025 and assumed 3.0% civilian pay raises in CY 2026–29,

as well as inflationary increases for other labor and nonlabor activities.

#### b. Cost-Saving Measures

The USPTO recognizes that fees cannot simply increase for every improvement deemed desirable. The USPTO has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. Likewise, the USPTO recognizes its obligation to reduce spending when appropriate.

The USPTO's FY 2025 Budget submission includes cost reducing measures such as releasing leased space in Northern Virginia and a moderate reduction in overall IT spending. In FY 2025, the USPTO estimates \$4,569 million in total spending for patent and trademark operations. This is a \$122 million net increase from the agency's FY 2024 estimated spending level of \$4,447 million. The net increase includes a \$224 million upward adjustment for prescribed inflation and other adjustments, and a \$102 million downward adjustment in program spending and other realized efficiencies. This estimate builds on the \$40 million in annual real estate savings assumed in the FY 2024 Budget submission to include additional annual cost savings of \$12 million through releasing more leased space in Northern Virginia. The combined reduction in real estate space amounts to almost 1 million square feet and an estimated annual cost savings of approximately \$52 million. Also, the USPTO is actively pursuing IT cost containment. The FY 2025 budget includes a relatively flat IT spending profile despite upward pressure from inflation, supply chain disruptions, and government-wide pay raises; ongoing IT improvements that offer business value to fee-paying customers; and data storage costs increasing proportionally with the USPTO's forecasted growth in patent and trademark applications. The USPTO will achieve this cost containment goal via modern equipment in a new data center that will cost less to maintain and by retiring legacy IT systems. These cost containment measures will also improve the USPTO's cybersecurity posture and increase system resiliency.

#### c. Efficient Delivery of Reliable IP Rights: Quality, Backlog, and Pendency

The USPTO's strategic goal to "promote the efficient delivery of reliable IP rights" recognizes the importance of innovation as the foundation of American economic growth and global competitiveness. Toward this end, the USPTO is

committed to continuously improving trademark quality, as well as the accuracy and reliability of the trademark register. The agency will continue equipping trademark examining attorneys with updated tools, procedures, and clarifying guidance to effectively examine all applications. The USPTO will also retire legacy systems and integrate the use of emerging technologies to streamline work processes for greater efficiencies; adjust staffing levels; and refine core duties to ensure its ability to meet significant changes in filing volumes and a variety of improper filing behaviors.

The USPTO is also committed to improving trademark application pendency. The agency recognizes that applying for trademark registration is a key step for creators, entrepreneurs, and established brand owners as they move from generating ideas for new products and services to commercializing the resulting innovations in the marketplace. The USPTO is focused on incentivizing creativity and product innovation by removing unnecessary impediments or delays in securing IP rights, thereby bringing goods and services to impact for the public good more quickly.

The agency's recent trademark pendency challenge is the result of several years of sustained increases in trademark application filings punctuated by an unprecedented, year-long influx during FY 2021 that created a significant examination backlog. In addressing these challenges, the USPTO will: (1) reevaluate its operating posture to maximize efficiency; (2) set data-driven pendency goals; (3) realign the trademark workforce to maintain stability during workload fluctuations and optimize pendency goals; and (4) use available technology solutions to streamline and automate trademark work processes.

The agency is working diligently to balance timely examination with trademark quality. Improvements include the deployment of a new browser-based, end-to-end examination system (TM Exam) designed to improve examination quality and efficiency, and establishment of a dedicated Trademark Academy to improve the training experience for new examiners.

The USPTO is also developing and implementing several strategies to combat IP violations and protect the Trademark Register via legislation, IT enhancements, and tactical management programs. For example, the agency is implementing robotic process automation to validate trademark application addresses against the U.S. Postal Service's database, mitigating a

key fraud risk. In addition, the USPTO recently formed the Register Protection Office (RPO), a new organization within the Office of the Deputy Commissioner for Trademark Examination Policy dedicated to register protection through efforts like scam education and prevention.

The USPTO is also leveraging Trademark Modernization Act (TMA) cancellation provisions to help clear the Trademark Register of registrations not in use. See Public Law 116-260. The agency implemented the TMA nonuse cancellation provisions in December 2021, and in December 2022, implemented additional provisions that shortened the applicant response period for office actions from six to three months. See Changes To Implement Provisions of the Trademark Modernization Act of 2020, 86 FR 64300 (Nov. 17, 2021). The USPTO will finish implementing the TMA in spring or early summer 2024, when additional provisions to shorten the period for registrants to respond to post-registration office actions from six to three months take effect. See Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date, 88 FR 62463 (Sep. 12, 2023).

The USPTO is also committed to generating impactful employee and customer experiences by maximizing agency operations. The USPTO strives to be a model employer through its diversity, equity, inclusion, and accessibility (DEIA) practices. The agency will build upon its existing diversity and foster greater inclusion to empower the USPTO workforce to serve the IP community successfully. To accomplish this, the USPTO will research and implement leading-edge practices related to hiring, development, advancement, accessibility, and retention, based on behavioral science research and data, to better integrate DEIA practices throughout the agency.

The USPTO recognizes that its core operating costs may increase in future years as the agency works to reduce trademark pendency, improve examination processes, enhance trademark quality and accuracy, and protect entrepreneurs and innovators from fraud.

#### 3. Sustainable Funding

The USPTO's five-year forecasts of aggregate trademark costs, aggregate trademark revenue, and the trademark operating reserve are inherently uncertain. The Government Accountability Office (GAO) recommends operating reserves as a best practice for fee-funded agencies like the

USPTO, and the trademark operating reserve allows the agency to align long-term fees and costs and manage fluctuations in actual fee collections and spending.

The USPTO manages the trademark operating reserve within a range of acceptable balances and assesses options when projected balances fall either below or above the range. The agency develops minimum planning targets to address immediate, unplanned changes in the economic or operating environment as the reserve builds toward the optimal level. The USPTO reviews both its minimum and optimal planning targets every three years to ensure the reserve's operating range mitigates an array of financial risks. Based on the current risk environment, including various factors such as economic and funding uncertainty and the Trademarks program's high percentage of fixed costs, the agency recently established a minimum operating reserve planning level at 23% of total spending—about three months' operating expenses (estimated at \$137 million and \$159 million from FY 2025 through FY 2029)—and an optimal long-range target of 50% of total spending—about six months' operating expenses (estimated at \$297 million and \$345 million from FY 2025 through FY 2029).

Based on cost and revenue assumptions in the FY 2025 Budget, the USPTO forecasts that aggregate trademark costs will exceed aggregate trademark revenue during FY 2024. The agency will finance the shortfall in trademark operations via the trademark operating reserve. The USPTO projects that the fee proposals contained in this NPRM will increase trademark fee collections to sufficiently recover budgeted spending requirements; modest fee collections above budgeted spending requirements will replenish and grow the operating reserve each year from FY 2025 to FY 2029.

These projections are point-in-time estimates and subject to change. For example, the FY 2025 Budget includes assumptions regarding filing levels, renewal rates, federally mandated employee pay raises, workforce productivity, and many other factors. A change in any one of these variables could have a significant cumulative impact on the trademark operating reserve balance. As shown in Table 2, presented in Part III: Estimating Aggregate Costs and Revenue, the operating reserve balance can change significantly over a five-year planning horizon. This highlights the agency's financial vulnerability to various risk factors and the importance of its fee setting authority.

The USPTO will continue assessing the trademark operating reserve balance against its target balance annually, and at least every three years, the agency will evaluate whether the minimum and optimal target balances remain sufficient to provide stable funding. Per USPTO policy, the agency will consider fee reductions if projections show the operating reserve balance will exceed its optimal level by 25% for two consecutive years. In addition, the USPTO will continue to regularly review its operating budgets and long-range plans to ensure the prudent use of trademark fees.

#### 4. Comments, Advice, and Recommendations From TPAC

In its report prepared in accordance with the AIA fee setting authority, TPAC conveyed overall support for the USPTO's efforts to secure adequate revenue to recover the aggregate estimated costs of trademark operations. Specifically, the report states, “[w]e [TPAC] have no doubt that overall increases are needed to ensure that the USPTO complies with its statutory mandate to set fees at a level commensurate with anticipated aggregate costs.” TPAC Report at 3. TPAC also expressed general support for the USPTO's stated goals and methods for achieving aggregate cost recovery but was concerned about some individual fee adjustments and their potential impacts on trademark applicants and owners. This NPRM includes additional information that addresses these comments and additional feedback from the public.

TPAC expressed support for the proposed adjustments to application filing fees but noted that many public comments centered on proposed surcharges. TPAC asked the USPTO to consider how it will implement any surcharges and whether entity discounts may be possible. To address these concerns, the USPTO includes in this NPRM: (1) information on specific deficiencies that will trigger the insufficient information surcharge; (2) additional details that explain the agency's rationale for the Custom ID proposal; and (3) additional details regarding the ID character limit proposal. See Part V: Individual Fee Rationale for additional details. With respect to entity discounts, section 10(a) of the AIA authorizes the Director to set or adjust any fee established, authorized, or charged under the Trademark Act but, but it does not include the authority to provide entity discounts for trademark fees.

TPAC supported proposed fee increases for filing an amendment to

allege use (AAU) and statement of use (SOU) but recommended that the USPTO modify the initial proposal to make the AAU fee less than the SOU fee to “better align incentives for efficiency, because fewer resources are required to process an AAU.” TPAC Report at 5. Based on this recommendation, the USPTO proposes setting the fees for both an AAU and SOU at \$150. While the agency incurs different processing costs for these services, they have historically had identical fee rates; maintaining this symmetry will alleviate potential confusion among stakeholders and future USPTO customers.

TPAC did not support increased fees for fourth and fifth extensions of time to file an SOU. The committee stated that filers in highly regulated industries with long product launch timelines, as well as resource-constrained startups and small businesses, often need additional extensions. Weighing the need for timely ITU decisions against potential adverse impacts on innovators and small filers, the USPTO has opted to not further pursue this proposal.

TPAC expressed a general lack of support for increasing fees for renewals, declarations of use, and declarations of incontestability. TPAC is concerned the proposed increases could discourage registrants from maintaining their registrations and will likely lead to more common law investigations and higher clearance costs for many trademark owners. The USPTO acknowledges these concerns. However, the agency has an obligation to recover the aggregate costs of trademark operations through user fees, and above-cost post-registration maintenance fees recover costs incurred by the USPTO during examination. The share of applications from groups that have been historically less likely to maintain their registrations has increased. Therefore, the balance between aggregate revenue derived from application fees and post-registration maintenance fees must be adjusted to sustain low barriers to filing new applications.

Although TPAC did not favor higher maintenance fees in general, the committee offered support for increased fees for foreign and international registrants under sections 66, 44, and 71, noting that “[o]wners of these registrations have not been required to prove use prior to registration” and “are more likely to describe an excessive list of goods and services, to offer suspect specimens and declarations, and to require auditing.” TPAC Report at 6. TPAC recognized that such a proposal could “implicate many factors, including compliance with international treaty obligations.” TPAC Report at 6.

The USPTO decided not to charge foreign or international registrants a higher fee than domestic registrants for these services. The agency notes that proposed and existing fees address some TPAC concerns regarding foreign and international registrants. All applications and registrants are subject to fees for deleting goods, services, and/or classes following a post-registration audit and would be subject to the proposed surcharge for each additional group of 1,000 characters.

TPAC supported the proposals for petitions to revive and petitions to the Director as justified and appropriate.

TPAC expressed support for the USPTO directly recovering a larger portion of the cost associated with processing letters of protest but objected to the size of the proposed fee increase, noting that most public commenters were opposed. TPAC recommended a smaller increase, given the perceived value of meritorious letters in the examination process and as a cost-effective mechanism for members of the public to provide information to examining attorneys. In response, the USPTO has revised the proposed letter of protest fee downward to \$150. See Part V: Individual Fee Rationale for additional details.

In summary, the USPTO appreciates the overall support and advice provided by TPAC and stakeholders to increase trademark fees to recover aggregate cost. After careful consideration of the comments, concerns, and advice provided in the TPAC Report, and keeping in mind the goals of this proposed rule, the USPTO elected to adjust two fee proposals and drop one proposal. The proposed fee structure will allow the USPTO to maintain trademark operations and pursue the goals and objectives outlined in its Strategic Plan. The agency looks forward to receiving additional feedback on this revised proposal during the public comment period.

*C. Summary of Rulemaking Goals and Strategies*

The USPTO estimates that the proposed trademark fee schedule will produce sufficient aggregate revenue to recover the aggregate costs of trademark operations and ensure financial sustainability for effective administration of the trademark system. This proposed rule aligns with the USPTO’s four key fee setting policy factors and supports the agency’s mission-focused strategic goals.

**V. Individual Fee Rationale**

Where unit cost data is available, the USPTO sets some fees at, above, or below their unit costs to balance the agency’s four key fee setting policy factors as described in Part IV: Rulemaking Goals and Strategies. The USPTO does not maintain individual historical cost data for all fees, and therefore some fees are set solely based on the policy factors. For example, the USPTO sets initial filing fees below unit cost to promote innovation strategies by reducing barriers to entry for applicants. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above unit cost in areas less likely to impact entrepreneurship (e.g., renewal fees). By setting fees at particular levels to facilitate effective administration of the trademark system, the USPTO aims to foster an environment where examining attorneys can provide, and applicants can receive, prompt, high-quality examination decisions while recovering costs for workload-intensive activities.

This proposed rule maintains existing cost differentials for all paper filings; their processing is generally more costly than electronic submissions, and current fees do not recover these costs.

*1. Trademark Application Filing Fees*

TABLE 3—TRADEMARK APPLICATION FILING FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Application (paper), per class .....	\$750	\$850 .....	\$100	13	\$1,526
Base application (electronic), per class .....	n/a	350 .....	n/a	n/a	n/a
Base application filed with WIPO (§ 66(a)), per class .....	n/a	350 .....	n/a	n/a	n/a
Base application filed with WIPO (§ 66(a)) (subsequent designation), per class.	n/a	350 .....	n/a	n/a	n/a
Application (TEAS Plus), per class .....	250	Discontinue ..	n/a	n/a	373
Application (TEAS Standard), per class .....	350	Discontinue ..	n/a	n/a	504
Fee for failing to meet TEAS Plus requirements, per class	100	Discontinue ..	n/a	n/a	3
Application fee filed with WIPO (§ 66(a)), per class .....	500	Discontinue ..	n/a	n/a	852
Subsequent designation fee filed with WIPO (§ 66(a)), per class.	500	Discontinue ..	n/a	n/a	819

The USPTO is proposing changes to application filing fees to incentivize more complete and timely filings and improve prosecution. Trademark applicants currently have two filing options via the Trademark Electronic Application System (TEAS): TEAS Plus and TEAS Standard. TEAS Plus is the lowest-cost filing option currently provided by the USPTO but comes with more stringent initial filing requirements. These applications reduce manual processing and potential for data entry errors, making them more efficient and complete for both the filer and the agency. The USPTO incurs

fewer costs and impediments during their examination, thereby expediting processing and reducing pendency. About half of all trademark applications are filed using TEAS Plus. TEAS Standard fees are higher than those for TEAS Plus and offer applicants more options during filing; the higher fees relate to the higher costs incurred by the USPTO in processing and examining the application.

The USPTO proposes implementing a single electronic application filing option with most of the same requirements as TEAS Plus and eliminating TEAS Standard. In effect, the proposed fee schedule would

discontinue both TEAS Plus and TEAS Standard filing fees, as well as fees for failing to meet the requirements of a TEAS Plus application, replacing them with a single electronic filing option. Similar to TEAS, applicants willing to comply with the proposed requirements in their initial filing (comparable to TEAS Plus) will pay the lowest fees under the proposed fee schedule, compared to applicants who fail to meet all of those requirements (comparable to TEAS Standard). The USPTO does not anticipate the total number of applications filed each year will change under the proposed schedule compared



to the current schedule. The USPTO does anticipate that a larger share of applicants will take measures to avoid the proposed surcharges compared to the share of applicants who use the TEAS Plus option under the current fee schedule. Applications that do not meet all requirements for the lowest cost electronic filing option are discussed below.

The proposed fee schedule sets the fee for a base application, filed electronically, at \$350, \$100 more than a TEAS Plus application, to help the agency recover its costs. The USPTO proposes increasing the paper

application fee by \$100 to maintain the existing cost differential between a paper filing and the lowest cost electronic application.

The USPTO proposes discontinuing current fees for filing an application under section 66(a) (Madrid Protocol) of the Trademark Act and setting new fees at \$350 per class, as paid in Swiss francs to the World Intellectual Property Organization (WIPO), in line with the proposed base application fee under the new single electronic application filing option.

The USPTO proposes administrative revisions to the regulatory text in 37

CFR to incorporate the proposed base application fee and discontinuation of TEAS application fees. These proposed revisions include replacing references to “TEAS” and “ESTTA” with “electronically” in sections 2.6 and 7.6 to reflect the discontinuation of TEAS fees under this proposed rule. These generalized references for electronic filings are more dynamic and will more easily accommodate any future changes to the USPTO’s electronic filing system.

2. Trademark Application Filing Surcharge Fees

TABLE 4—TRADEMARK APPLICATION FILING SURCHARGE FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Fee for insufficient information (§§ 1 and 44), per class .....	n/a	\$100	n/a	n/a	n/a
Fee for using the free-form text box to enter the identification of goods/services (§§ 1 and 44), per class .....	n/a	200	n/a	n/a	n/a
For each additional group of 1,000 characters beyond the first 1,000 (§§ 1 and 44), per class .....	n/a	200	n/a	n/a	n/a
Fee for insufficient information (§ 66(a)), per class .....	n/a	100	n/a	n/a	n/a
Fee for using the free-form text box to enter the identification of goods/services (§ 66(a)), per class .....	n/a	200	n/a	n/a	n/a
For each additional group of 1,000 characters beyond the first 1,000 (§ 66(a)), per class .....	n/a	200	n/a	n/a	n/a

The USPTO also proposes surcharges to the base application filing fee to enhance the quality of incoming applications, encourage efficient application processing, ensure additional examination costs are paid by those submitting more time-consuming applications, and reduce pendency. Only those applicants submitting applications that do not comply with the base filing requirements would pay the proposed surcharges. Compared to the current TEAS Standard fee that is charged for applications when one or more TEAS Plus requirements are not met, the proposed system would impose individual surcharges when certain requirements are not met.

(i) Insufficient Information Fee

Trademark applications that include the information listed below allow for more efficient prosecution. Accordingly, applicants who submit more complete applications benefit from the proposed fee schedule by avoiding this proposed surcharge, as the USPTO and its stakeholders benefit from efficient delivery of reliable IP rights. This proposed rule would impose a \$100 fee per class, in addition to the base fee, on applications that do not include required information at the time of filing. The information required for a base application is similar to current TEAS Plus requirements and therefore

applicants are not expected to expend more than a de minimis amount of additional resources compared to the current TEAS system. The USPTO proposes reordering and retitling these as “Requirements for a base application,” as provided in 37 CFR 2.22:

- (1) The applicant’s name and domicile address;
- (2) The applicant’s legal entity;
- (3) The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;
- (4) If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;
- (5) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;
- (6) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;
- (7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

- (8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);
- (9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);
- (10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;
- (11) If the mark is in standard characters, a mark comprised only of characters in the Office’s standard character set, typed in the appropriate field of the application;
- (12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;
- (13) If the mark is not in standard characters, a description of the mark;
- (14) If the mark includes non-English wording, an English translation of that wording;
- (15) If the mark includes non-Latin characters, a transliteration of those characters;
- (16) If the mark includes an individual’s name or likeness, either (i) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of

the individual, or (ii) a statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42;

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant’s representative, pursuant to § 2.11(a), and include the attorney’s name, postal address, email address, and bar information; and

(20) Correctly classified goods and/or services, with an identification of goods and/or services from the Office’s Acceptable Identification of Goods and Services Manual within the electronic form.

See Part VI: Discussion of Specific Rules for more information.

The agency will not impose this fee on applications denied a filing date for failure to satisfy the requirements under 37 CFR 2.21.

(ii) Entering Identifications of Goods and/or Services in the Free-Form Text Field Fee

Applicants may choose goods and/or services identifications by selecting them directly from the Trademark Next Generation ID Manual (ID Manual) in the electronic application or enter them manually in a free-form text box. The USPTO proposes a \$200 fee per class for

descriptions of goods and services entered in the free-form text field.

Generally, examining attorneys do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application form. Conversely, examining attorneys must carefully consider identifications entered in a free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. Examining attorneys must review each entry to determine its acceptability, even in situations where an applicant types or pastes the ID Manual identification, because they do not know if wording in the free-form text field came from the ID Manual.

Identifying an applicant’s goods and/or services with sufficient specificity is necessary to provide adequate notice to third parties regarding the goods and/or services in connection with which the applicant intends to use, or is using, the mark. It also ensures the applicant pays the corresponding fee for each class of goods and/or services. Examining attorneys often spend substantial time reviewing identifications provided in the free-form text field and may initiate multiple communications with the applicant before determining an acceptable identification and collecting the appropriate fees. The proposed surcharge would help recover the additional costs associated with these more extensive reviews.

(iii) Each Additional 1,000 Characters Beyond 1,000, per Class Fee

In addition to entering identifications in the free-form text field, some

applicants submit extensive lists of goods and/or services. In more egregious cases, a list may comprise multiple pages and include goods and services in multiple classes. To ensure that applicants who submit lengthy identifications pay the costs of reviewing them, the USPTO proposes a fee of \$200 for each additional group of 1,000 characters beyond the first 1,000 characters in the free-form text field, including punctuation and spaces. The fee would also apply to amended identifications that exceed the character limit in a response to an office action. Approximately 9% of trademark applications contain identifications of goods and/or services that exceed 1,000 characters per class. Applicants who enter identifications directly from the ID Manual within the electronic application would not incur this fee, even if the identification exceeds 1,000 characters.

The USPTO selected a character-based limit for operational efficiency, as the electronic application system can perform character counts in real time and alert the applicant when the limit has been exceeded. A limit based on other criteria, such as a count of separate goods and/or services, would require examiner review, as automating such counts is not technologically feasible. Such reviews by an examining attorney would increase the cost of examination, counteracting the purpose of the proposed fee, which is to ensure that applicants who submit lengthy identifications pay the costs of reviewing them.

3. Amendment To Allege Use and Statement of Use Fees

TABLE 5—AAU AND SOU FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Amendment to allege use (AAU), per class (paper) .....	\$200	\$250	\$50	25	n/a
Statement of use (SOU), per class (paper) .....	200	250	50	25	n/a
Amendment to allege use (AAU), per class (electronic) .....	100	150	50	50	\$117
Statement of use (SOU), per class (electronic) .....	100	150	50	50	240

The USPTO proposes a \$50 fee increase for AAUs and SOUs (from \$100 to \$150 per class for electronic filings and \$200 to \$250 per class for paper

filings). The agency has not adjusted AAU and SOU fees since 2002, even as processing costs increased during the subsequent two decades. This proposal

improves cost recovery and helps rebalance the fee structure.

4. Post-Registration Maintenance Fees

TABLE 6—POST-REGISTRATION MAINTENANCE FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
§ 9 registration renewal application, per class (paper) .....	\$500	\$550	\$50	10	\$106
§ 8 declaration, per class (paper) .....	325	400	75	23	152
§ 15 declaration, per class (paper) .....	300	350	50	17	152

TABLE 6—POST-REGISTRATION MAINTENANCE FEES—Continued

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
§ 71 declaration, per class (paper) .....	325	400	75	23	n/a
§ 9 registration renewal application, per class (electronic) ..	300	350	50	17	24
§ 8 declaration, per class (electronic) .....	225	300	75	33	25
§ 15 declaration, per class (electronic) .....	200	250	50	25	25
§ 71 declaration, per class (electronic) .....	225	300	75	33	6
Renewal fee filed at WIPO .....	300	350	50	17	n/a

The percentage of trademark registrants choosing to maintain their registrations is declining. The USPTO expects this trend to continue due to anticipated growth in application submissions from groups historically

less likely to maintain a registration. Given these changes in demand and filing behaviors, the agency proposes rebalancing aggregate revenue derived from renewals and other post-registration maintenance fees, including

declarations of use and incontestability, to keep barriers to entry low for new applicants.

5. Letter of Protest Fee

TABLE 7—LETTER OF PROTEST FEE

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Letter of protest .....	\$50	\$150	\$100	200	\$312

The USPTO proposes a \$100 fee increase for filing a letter of protest (from \$50 to \$150). The proposed fee is less than half the agency’s cost of processing a letter of protest, which allows a third party to bring evidence to the USPTO on the registrability of a mark in a pending application without filing an opposition with the Trademark Trial and Appeal Board (TTAB). The letter of protest procedure is not a substitute for the statutory opposition and cancellation procedures available to third parties who believe they would be damaged by registration of the involved mark. Instead, it is intended to assist examination without causing undue delay or compromising the integrity and objectivity of the ex parte examination

process, which involves only the applicant and the USPTO. The USPTO’s costs for reviewing and processing each letter of protest are more than six times the current fee. This imbalance between the fee collected and the cost to perform the service are compounded by a substantial increase in letters of protest forwarded to the USPTO each year, which have risen from about 2,300 in FY 2016 to nearly 4,000 in FY 2023. The agency estimates this volume will grow to more than 5,000 letters annually by FY 2029, further increasing the USPTO’s overall associated costs. When viewed in the context of USPTO actions because of letters of protest, the agency’s costs are

considerable, while the letters have a minor impact on examination outcomes. During FY 2022, the USPTO decided 4,557 letters of protest, of which 1,433 (31%) were not in compliance with 37 CFR 2.149 and therefore not included in the record of examination. Of the letters entered into the record, examining attorneys issued a refusal based on the asserted ground(s) in 1,213 cases (27% of letters decided). Examining attorneys likely would have issued a refusal in these cases even without a letter of protest. The USPTO only identified 27 (0.59%) letters in FY 2022 that corresponded to an error in publishing a mark for opposition, similar to historical shares of letters decided each year.

TABLE 8—LETTERS OF PROTEST FILED AND LETTERS CORRESPONDING TO SITUATIONS WHERE THE USPTO PUBLISHED A MARK FOR OPPOSITION IN ERROR, BY FISCAL YEAR

Fiscal year	Letters of protest decided	Letters corresponding to a mark published in error	Share of total letters decided (%)
2016 .....	2,258	17	0.75
2017 .....	2,726	13	0.48
2018 .....	3,386	28	0.83
2019 .....	4,106	43	1.05
2020 .....	3,534	22	0.62
2021 .....	3,756	39	1.04
2022 .....	4,557	27	0.59

In accordance with the USPTO’s fee setting policy factors, this proposal

recovers more of the costs associated

with letters of protest, although the fee remains below the agency’s full costs.

6. Other Petition Fees

TABLE 9—OTHER PETITION FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Petition to the Director (paper) .....	\$350	\$500	\$150	43	n/a
Petition to revive an application (paper) .....	250	350	100	40	n/a
Petition to the Director (electronic) .....	250	400	150	60	886
Petition to revive an application (electronic) .....	150	250	100	67	94

Optional petitions are a valuable, though costly, part of the trademark registration process, and other trademark fees subsidize the USPTO's processing costs. The proposed fee schedule would recover more costs associated with the extensive and lengthy review these services require, while also encouraging more timely and efficient filing behaviors.

**VI. Discussion of Specific Rules**

The following section describes the changes proposed in this rulemaking, including all proposed fee amendments, fee discontinuations, and changes to the regulatory text.

*Section 2.6*

Section 2.6 is proposed to be amended by revising paragraph (a), to set forth trademark process fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 2.6 are shown in Table 10.

The USPTO proposes to revise the text to (a)(1)(iii) to provide for filing “an application electronically” rather than filing “a TEAS Standard application.”

The USPTO proposes to revise (a)(1)(iv) to provide for the proposed surcharge for insufficient information.

The USPTO proposes to revise (a)(1)(v) to provide for the proposed surcharge for adding goods and/or services in the free-form text field.

The USPTO proposes adding (a)(1)(vi) to provide for the proposed surcharge for each additional 1,000 characters.

The USPTO proposes to revise the text to (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(ii), (a)(10)(ii), (a)(11)(ii), (a)(12)(ii) and (iv), (a)(13)(ii), (a)(14)(ii), (a)(15)(ii) and (iv), (a)(16)(ii), (a)(17)(ii), (a)(18)(ii), (v), and (vii), (a)(19)(ii), (a)(20)(ii), (a)(21)(ii), (a)(22)(ii), (a)(23)(ii), (a)(27), and (a)(28)(ii) and by replacing references to “TEAS” or “ESTTA” with “electronically.”

To clarify fees paid for services provided by the TTAB, the USPTO proposes to revise the text to (a)(18)(i) and (a)(18)(ii) by removing references to the TTAB and adding references to the TTAB to (a)(16), (a)(17), and (a)(18).

TABLE 10—CFR 2.6 FEE CHANGES

CFR section	Fee code	Description	Paper or electronic	Current fee	Proposed fee
2.6(a)(1)(i) .....	6001 .....	Application (paper), per class	Paper .....	\$750	\$850.
2.6(a)(1)(ii) .....	7931 .....	Application fee filed with WIPO (§ 66(a)), per class.	Electronic .....	500	Discontinue.
2.6(a)(1)(ii) .....	7933 .....	Subsequent designation fee filed with WIPO (§ 66(a)), per class.	Electronic .....	500	Discontinue.
2.6(a)(1)(ii) .....	New .....	Base application filed with WIPO (§ 66(a)), per class.	Electronic .....	n/a	\$350.
2.6(a)(1)(ii) .....	New .....	Base application filed with WIPO (§ 66(a)) (subsequent designation), per class.	Electronic .....	n/a	\$350.
2.6(a)(1)(iii) .....	7009 .....	Application (TEAS Standard), per class.	Electronic .....	350	Discontinue.
2.6(a)(1)(iii) .....	New .....	Base application, per class .....	Electronic .....	n/a	\$350.
2.6(a)(1)(iv) .....	7007 .....	Application (TEAS Plus), per class.	Electronic .....	250	Discontinue.
2.6(a)(1)(iv) .....	New .....	Fee for insufficient information (§§ 1 and 44), per class.	Paper .....	n/a	\$100.
2.6(a)(1)(iv) .....	New .....	Fee for insufficient information (§§ 1 and 44), per class.	Electronic .....	n/a	\$100.
2.6(a)(1)(iv) .....	New .....	Fee for insufficient information (§ 66(a)), per class.	Electronic .....	n/a	\$100.
2.6(a)(1)(v) .....	6008 .....	Fee for failing to meet TEAS Plus requirements, per class.	Paper .....	100	Discontinue.
2.6(a)(1)(v) .....	7008 .....	Fee for failing to meet TEAS Plus requirements, per class.	Electronic .....	100	Discontinue.
2.6(a)(1)(v) .....	New .....	Fee for using the free-form text box to enter the identification of goods/services (§§ 1 and 44), per class.	Paper .....	n/a	\$200.
2.6(a)(1)(v) .....	New .....	Fee for using the free-form text box to enter the identification of goods/services (§§ 1 and 44), per class.	Electronic .....	n/a	\$200.

TABLE 10—CFR 2.6 FEE CHANGES—Continued

CFR section	Fee code	Description	Paper or electronic	Current fee	Proposed fee
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (§ 66(a)), per class.	Electronic	n/a	\$200.
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (§§ 1 and 44), per class (paper).	Paper	n/a	\$200.
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (§§ 1 and 44), per class.	Electronic	n/a	\$200.
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (§ 66(a)), per class.	Electronic	n/a	\$200.
2.6(a)(2)(i)	6002	Amendment to allege use (AAU), per class.	Paper	200	\$250.
2.6(a)(2)(ii)	7002	Amendment to allege use (AAU), per class.	Electronic	100	\$150.
2.6(a)(3)(i)	6003	Statement of use (SOU), per class.	Paper	200	\$250.
2.6(a)(3)(ii)	7003	Statement of use (SOU), per class.	Electronic	100	\$150.
2.6(a)(5)(i)	6201	§ 9 registration renewal application, per class.	Paper	500	\$550.
2.6(a)(5)(ii)	7201	§ 9 registration renewal application, per class.	Electronic	300	\$350.
2.6(a)(12)(i)	6205	§ 8 declaration, per class	Paper	325	\$400.
2.6(a)(12)(ii)	7205	§ 8 declaration, per class	Electronic	225	\$300.
2.6(a)(13)(i)	6208	§ 15 declaration, per class	Paper	300	\$350.
2.6(a)(13)(ii)	7208	§ 15 declaration, per class	Electronic	200	\$250.
2.6(a)(15)(i)	6005	Petition to the Director	Paper	350	\$500.
2.6(a)(15)(ii)	7005	Petition to the Director	Electronic	250	\$400.
2.6(a)(15)(iii)	6010	Petition to revive an application.	Paper	250	\$350.
2.6(a)(15)(iv)	7010	Petition to revive an application.	Electronic	150	\$250.
2.6(a)(25)	7011	Letter of protest	Electronic	50	\$150.

### Section 2.22

Section 2.22 is proposed to be amended by revising the section heading and paragraph (a) to set forth the requirements for a base application fee.

The USPTO proposes to revise the section heading to read “Requirements for base application fee.”

The USPTO proposes to revise the introductory text to paragraph (a) to reflect the requirements for an application for registration under section 1 or section 44 of the Act that meet the requirements for a filing date under § 2.21 to pay the base application fee.

The USPTO proposes to remove paragraph (a)(7) and redesignate paragraphs (a)(8) through (a)(20) as paragraphs (a)(7) through (a)(19).

The USPTO proposes to revise the text to redesignated paragraph (a)(11) by replacing the reference to “TEAS Plus form” with “application.”

The USPTO proposes to revise the text in paragraph (17) introductory text and (17)(ii) by replacing references to “portrait” with “likeness” to maintain consistency within the paragraph.

The USPTO proposes adding paragraph (a)(20) which establishes the requirement of using correctly classified goods and/or services from the ID Manual.

The USPTO proposes to revise paragraph (b) to provide that an applicant must pay the proposed fee for insufficient information, per class if the application fails to satisfy any of the requirements in paragraph (a)(1) through (19) of this section.

The USPTO proposes to revise paragraph (c) to provide that an applicant must pay the proposed fee for using the free-form text box to enter the identification of goods/services, per class if the application fails to satisfy the requirements of paragraph (a)(20) of this section.

The USPTO proposes to revise paragraph (d) to provide that an applicant must pay the proposed fee for each additional group of 1,000 characters beyond the first 1,000, per class, if the application fails to satisfy the requirements of paragraph (a)(20) of this section, and the identification of goods and/or services in any class exceeds 1,000 characters.

### Section 2.71

Section 2.71 is proposed to be amended by revising the introductory text and paragraph (a) to set forth amendments to correct informalities.

The USPTO proposes to revise the introductory text by replacing the period at the end of the paragraph with a colon.

The USPTO proposes to revise paragraph (a) by redesignating paragraph (a) as paragraph (a)(1). The USPTO proposes adding paragraph (a)(2) to provide that amendments to the identification of goods and/or services

that result in the identification exceeding 1,000 characters in any class will be subject to the proposed fee for each additional 1,000 characters beyond the first 1,000, per class.

*Section 7.6*

Section 7.6 is proposed to be amended by revising paragraph (a) to set forth the schedule of U.S. process fees as authorized under section 10 of the

AIA. The changes to the fee amounts indicated in § 7.6 are shown in Table 11.

The USPTO proposes to revise the text to (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (a)(6)(ii) and (iv) and replace references to “TEAS” or “ESTTA” with “electronically.”

TABLE 11—CFR SECTION 7.6 FEE CHANGES

CFR section	Fee code	Description	Paper or electronic	Current fee	Proposed fee
7.6(a)(6)(i) .....	6905	§ 71 declaration, per class ....	Paper .....	\$325	\$400
7.6(a)(6)(ii) .....	7905	§ 71 declaration, per class ....	Electronic .....	225	300

**VII. Rulemaking Considerations**

*A. America Invents Act*

This proposed rule seeks to set and adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act. Section 10(a) 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 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services.

Section 10(e) 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.

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, the AIA requires the Director to provide TPAC with the proposed fees at least 45 days prior to publishing them in the **Federal Register**. 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. 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 is required to consider and analyze any comments, advice, or recommendations received from TPAC before finally setting or adjusting fees.

Consistent with this framework, on May 8, 2023, the Director notified TPAC of the USPTO’s intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. TPAC held a public hearing at the USPTO’s headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given the opportunity to provide oral testimony. A transcript of the hearing is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf>. Members of the public were also given the opportunity to submit written comments for TPAC to consider, and these comments are available on *Regulations.gov* at <https://www.regulations.gov/docket/PTO-T-2023-0016>. On August 14, 2023, TPAC issued a written report setting forth in detail its comments, advice, and recommendations regarding the preliminary proposed fees. The TPAC Report is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx>. The USPTO considered and analyzed all comments, advice, and recommendations received from TPAC before publishing this NPRM. Further discussion of the TPAC Report can be found in the section titled “Fee Setting Considerations.”

*B. Regulatory Flexibility Act (RFA)*

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the RFA (5 U.S.C. 601 *et seq.*) to examine the impact of the USPTO’s proposed changes to trademark fees on small entities and to

seek the public’s views. 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 an IRFA, 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). This IRFA incorporates discussion of the proposed changes in Part VI: Discussion of Proposed Rule Changes above.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the USPTO considered, as specified in 5 U.S.C. 603(c).

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

Section 10 of the AIA authorizes the Director of the USPTO to set or adjust by rule any trademark fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the USPTO. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs for processing, activities, services, and materials relating to trademarks, including USPTO administrative costs with respect to such trademark fees. The proposed fee schedule will recover the aggregate costs of trademark operations while enabling the USPTO to predictably finance the agency’s daily operations and mitigate financial risks.

2. The Objectives of, and Legal Basis for, the Proposed Rule

The policy objectives of this proposed rule are to: (1) recover aggregate costs to finance the mission, strategic goals, and priorities of the USPTO; (2) enable financial sustainability; (3) better align fees with costs of provided services; (4) improve processing efficiencies; (5) enhance the quality of incoming

applications; and (6) offer affordable processing options to stakeholders. Additional information on the USPTO's goals and operating requirements may be found in the "USPTO FY 2025 President's Budget Request," available on the USPTO website at <https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information>. The legal basis for this proposed rule is section 10 of the AIA, as amended, which provides authority for the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act. See also section 31 of the Trademark Act, 15 U.S.C. 1113.

### 3. A Description of and, Where Feasible, an Estimate of the Number of Affected Small Entities to Which the Proposed Rule Will Apply

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

This proposed rule would apply to any entity filing trademark documents with the USPTO. The USPTO estimates, based on the assumptions in the FY 2025 Budget, that during the first full fiscal year under the fees as proposed (FY 2026), the USPTO would collect approximately \$144 million more in trademark processing and TTAB fees compared to projected fee collections under the current fee schedule. The USPTO would receive an additional \$99 million in application filing fees, including applications filed through the Madrid Protocol and application surcharges; \$4 million more from petitions, letters of protest, and requests for reconsideration; \$7 million more from SOU and AAU fees; and \$35 million more for post-registration maintenance fees, including sections 9 and 66 renewals and sections 8, 71, and 15 declarations.

The USPTO collects fees for trademark-related services at different points in the trademark application examination process and over the registration life cycle. In FY 2023, application filing fees made up about 54% of all trademark fee collections. Fees for proceedings and appeals before the TTAB comprised 3% of revenues. Fees from other trademark activities, petitions, assignments and certifications, and Madrid processing totaled approximately 5% of revenues. Fees for post-registration and intent-to-use filings, which subsidize the costs of filing, search, examination, and the TTAB, comprised 38%.

The USPTO bases its five-year estimated aggregate trademark fee revenue on the number of trademark applications and other fee-related filings it expects for a given fiscal year; work it expects to process in a given fiscal year (an indicator of fees paid after the agency performs work, such as SOU fees); expected examination and process requests in a given fiscal year; and the expected number of post-grant decisions to maintain trademark protection in a given fiscal year. Within its 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 aggregate revenue. Additional details about the USPTO's aggregate revenue, including projected workloads by fee, are available on the fee setting section of the USPTO website at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

### 4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed 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

This proposed rule imposes no new reporting or recordkeeping requirements. The main purpose of this proposed rule is to set and adjust trademark fees.

### 5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules

This proposed rule would not duplicate, overlap, or conflict with any other Federal rules.

### 6. A Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

The USPTO considered four alternatives, based on the assumptions found in the FY 2025 Budget, before recommending this proposal: (1) the adjustments included in this proposal; (2) fees set at the unit cost of providing individual services based on FY 2022 costs; (3) an across-the-board fee adjustment of 27%; and (4) no change to the baseline of current fees. The four alternatives are explained here with

additional information regarding the development of each proposal and aggregate revenue estimate. A description of the Aggregate Revenue Estimating Methodology is available on the fee setting section of the USPTO website at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

#### a. Alternative 1: Proposed Alternative—Set and Adjust Trademark Fees

The USPTO proposes to set and adjust trademark fees codified in 37 CFR parts 2 and 7. This proposal adjusts fees for all application filing types (*i.e.*, paper applications, electronic applications, and requests for extension of protection under section 66(a) of the Trademark Act (15 U.S.C. 1141f)), including new surcharge fees. The USPTO also proposes to increase other trademark fees to promote effective administration of the trademark system, including fees for post-registration maintenance under sections 8, 9, and 71, certain petitions to the Director, and filing a letter of protest.

The USPTO chose the alternative proposed in this rule because it will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative proposed here finances the USPTO's objectives for meeting its goals outlined in the Strategic Plan. These goals include optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to the trademark system for all stakeholders. The proposed alternative will benefit all applicants and registrants by allowing the agency to grant registrations sooner and more efficiently. All trademark applicants should benefit from the efficiencies realized under the proposed alternative.

The USPTO anticipates that the impact of an increased fee on letter of protest filers would be small. The proposed fee of \$150 is set at a level low enough to enable the filing of relevant, well-supported letters, but high enough to recover some additional processing costs. The USPTO enacted the current fee for letters of protest on November 17, 2020 (85 FR 73197) and implemented it on January 2, 2021. Despite this fee, the USPTO received almost 4,000 letters in each of the last two fiscal years and expects the volume will grow to more than 5,000 letters per year by FY 2029.

The proposed fee schedule for this alternative is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025—IRFA Tables.”

#### b. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1, the USPTO considered three other alternative approaches. The agency calculated proposed fees and the resulting revenue derived from each alternative scenario. The proposed fees and their corresponding revenue tables are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. Please note, only the fees outlined in Alternative 1 are proposed in this NPRM; other alternative scenarios are shown only to demonstrate the analysis of other options.

#### Alternative 2: Unit Cost Recovery

The USPTO considered an alternative that would set all trademark fees to recover 100% of unit costs associated with each service, based on historical unit costs. The USPTO uses the ABI to determine the unit costs of activities that contribute to the services and processes associated with 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. OMB Circular A–25, User Charges, 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 USPTO’s unit cost recovery alternative, fees are generally set in line with the FY 2022 costs of providing the service. The agency 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 outyears. However, the USPTO contends that FY 2022 data is the best available to inform this analysis.

This alternative does not align well with the strategic and policy goals of this proposed rule. It would produce a structure in which application and processing fees would increase significantly for all applicants, and post-registration maintenance filing fees would decrease dramatically when compared with current fees. The USPTO rejected this alternative because it does

not address improvements in fee design to accomplish the agency’s stated objectives of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners, as well as practices that improve process efficiency.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025—IRFA Tables.”

#### Alternative 3: Across-the-Board Adjustment

The USPTO considered a 27% across-the-board increase for all fees. This alternative would maintain the status quo structure of cost recovery, where processing and examination costs are subsidized by fees for ITU extensions and post-registration maintenance filings (which exceed the cost of performing these services), given that all fees would be adjusted by the same escalation factor. This fee schedule would continue to promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. This alternative would also generate sufficient aggregate revenue to recover aggregate operating costs.

The agency ultimately rejected this proposal. Unlike the proposed fee schedule, it would not enhance the efficiency of trademark processing and offer no new incentives for users to file more efficient and complete applications.

The proposed fee schedule for this alternative is available in the document titled “Initial Regulatory Flexibility Act Tables” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

#### Alternative 4: Baseline (Current Fee Schedule)

The final alternative the agency considered would leave all trademark fees as currently set. The USPTO rejected this alternative because, due to changes in demand for certain services and rising costs, a fee increase is necessary to meet future budgetary requirements as described in the FY 2025 Budget. Under this alternative, the USPTO would expect to collect sufficient revenue to continue executing only some, but not all, trademark priorities. This approach would not provide sufficient aggregate revenue to accomplish the USPTO’s rulemaking

goals as stated in Part IV: Rulemaking Goals and Strategies. Improvement activities, including better protecting the Trademark Register through legislation, enhanced IT, and tactical management programs would continue, but at a significantly slower rate as increases in core trademark examination costs crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its trademark operating reserve, leaving the agency vulnerable to fiscal and economic events. This alternative would expose core operations to unacceptable levels of financial risk and position the USPTO to return to making inefficient, short-term funding decisions.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025—IRFA Tables.”

#### C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be Significant for purposes of Executive Order (E.O.) 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023), Modernizing Regulatory Review.

#### D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The USPTO has complied with E.O. 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 this proposed rule; (2) tailored this proposed 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) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, 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.



*E. Executive Order 13132 (Federalism)*

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

*F. 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 E.O. 13175 (Nov. 6, 2000).

*G. Executive Order 13211 (Energy Effects)*

This rulemaking is not a significant energy action under E.O. 13211 because this proposed 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 E.O. 13211 (May 18, 2001).

*H. 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 E.O. 12988 (Feb. 5, 1996).

*I. Executive Order 13045 (Protection of Children)*

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

*J. Executive Order 12630 (Taking of Private Property)*

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

*K. 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 rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the GAO. The changes in this proposed rule are 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 proposed rule is a “major rule” as defined in 5 U.S.C. 804(2).

*L. Unfunded Mandates Reform Act of 1995*

The proposed 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.*

*M. National Environmental Policy Act*

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.*

*N. National Technology Transfer and Advancement Act*

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.

*O. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements which are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this proposed rule has been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, 0651–0056, 0651–0061, and 0651–0086.

Notwithstanding any other provision of law, no person is required to respond to nor shall any 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 displays a currently valid OMB control number.

*P. E-Government Act Compliance*

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to government information and services, and for other purposes.

**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 set forth 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, 37 CFR parts 2 and 7 are proposed to be amended as follows:

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

■ 1. The authority citation for part 2 continues 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; Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Section 2.6 is amended by:

- a. Revising paragraphs (a)(1)(i) through (v);
- b. Adding paragraph (a)(1)(vi); and
- c. Revising paragraphs (a)(2)(i) and (ii), (3)(i) and (ii), (4)(ii), (5)(i) and (ii), (6)(ii), (7)(ii), (8)(ii), (9)(ii), (10)(ii), (11)(ii), (12)(i), (ii), and (iv), (13)(i) and (ii), (14)(ii), (15)(i) through (iv), (16) introductory text, (16)(ii), (17) introductory text, (17)(ii), (18) introductory text, (18)(i), (ii), (v), (vii), (19)(ii), (20)(ii), (21)(ii), (22)(ii), (23)(ii), (25), (27), and (28)(ii).

The revisions and additions read as follows:

**§ 2.6 Trademark fees.**

- (a) \* \* \*
- (1) \* \* \*
- (i) For filing an application on paper, per class—\$850.00.
- (ii) For filing an application under section 66(a) of the Act, per class—\$350.00.
- (iii) For filing an application electronically, per class—\$350.00.
- (iv) Additional fee under § 2.22(b), per class—\$100.00.
- (v) Additional fee under § 2.22(c), per class—\$200.00.

(vi) Additional fee under § 2.22(d) for each additional 1,000 characters in identifications of goods/services beyond the first 1,000 characters, per class—\$200.00.

(2) \* \* \*

(i) For filing an amendment to allege use under section 1(c) of the Act on paper, per class—\$250.00.

(ii) For filing an amendment to allege use under section 1(c) of the Act electronically, per class—\$150.00.

(3) \* \* \*

(i) For filing a statement of use under section 1(d)(1) of the Act on paper, per class—\$250.00.

(ii) For filing a statement of use under section 1(d)(1) of the Act electronically, per class—\$150.00.

(4) \* \* \*

(ii) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act electronically, per class—\$125.00.

(5) \* \* \*

(i) For filing an application for renewal of a registration on paper, per class—\$550.00.

(ii) For filing an application for renewal of a registration electronically, per class—\$350.00.

(6) \* \* \*

(ii) Additional fee for filing a renewal application during the grace period electronically, per class—\$100.00.

(7) \* \* \*

(ii) For filing to publish a mark under section 12(c), per class electronically—\$100.00.

(8) \* \* \*

(ii) For issuing a new certificate of registration upon request of registrant, request filed electronically—\$100.00.

(9) \* \* \*

(ii) For a certificate of correction of registrant’s error, request filed electronically—\$100.00.

(10) \* \* \*

(ii) For filing a disclaimer to a registration electronically—\$100.00.

(11) \* \* \*

(ii) For filing an amendment to a registration electronically—\$100.00.

(12) \* \* \*

(i) For filing an affidavit under section 8 of the Act on paper, per class—\$400.00.

(ii) For filing an affidavit under section 8 of the Act electronically, per class—\$300.00.

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

(13) \* \* \*

(i) For filing an affidavit under section 15 of the Act on paper, per class—\$350.00.

(ii) For filing an affidavit under section 15 of the Act electronically, per class—\$250.00.

(14) \* \* \*

(ii) Additional fee for filing a section 8 affidavit during the grace period electronically, per class—\$100.00.

(15) \* \* \*

(i) For filing a petition under § 2.146 or § 2.147 on paper—\$500.00.

(ii) For filing a petition under § 2.146 or § 2.147 electronically—\$400.00.

(iii) For filing a petition under § 2.66 on paper—\$350.00.

(iv) For filing a petition under § 2.66 electronically—\$250.00.

(16) Petition to cancel to the Trademark Trial and Appeal Board.  
\* \* \* \* \*

(ii) For filing a petition to cancel electronically, per class—\$600.00.

(17) Notice of opposition to the Trademark Trial and Appeal Board.  
\* \* \* \* \*

(ii) For filing a notice of opposition electronically, per class—\$600.00.

(18) Ex parte appeal to the Trademark Trial and Appeal Board.

(i) For filing an ex parte appeal on paper, per class—\$325.00.

(ii) For filing an ex parte appeal electronically, per class—\$225.00.  
\* \* \* \* \*

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

(vii) For filing an appeal brief electronically, per class—\$200.00.

(19) \* \* \*

(ii) Request to divide an application filed electronically, per new application created—\$100.00.

(20) \* \* \*

(ii) For correcting a deficiency in a section 8 affidavit via electronic filing—\$100.00.

(21) \* \* \*

(ii) For correcting a deficiency in a renewal application via electronic filing—\$100.00.

(22) \* \* \*

(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) electronically—\$200.00.

(23) \* \* \*

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

(25) *Letter of protest*. For filing a letter of protest, per subject application—\$150.00.  
\* \* \* \* \*

(27) Extension of time for filing a response to a non-final Office action under § 2.93(b)(1). For filing a request for extension of time for filing a response to a non-final Office action under § 2.93(b)(1) electronically—\$125.00.

(28) \* \* \*

(ii) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2) electronically—\$125.00.  
\* \* \* \* \*

■ 3. Section 2.22 is amended by:

- a. Revising the section heading; and
■ b. Revising paragraph (a) introductory text, and (a)(7) through (20), and (b) through (d).

The revisions read as follows:

§ 2.22 Requirements for base application fee.

(a) An application for registration under section 1 and/or section 44 of the Act that meets the requirements for a filing date under § 2.21 will be subject only to the filing fee under § 2.6(a)(1)(iii), and an application under section 66(a) of the Act will be subject only to the filing fee under § 2.6(a)(1)(ii), if it includes:

- (7) If the application contains goods and/or services in more than one class, compliance with § 2.86;
(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);
(9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office’s standard character set, typed in the appropriate field of the application;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual’s name or likeness, either (i) a statement that identifies the living

individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42;

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and

(20) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

(b) If an application fails to satisfy any of the requirements of paragraph (a)(1)-(19) of this section, the applicant must pay the fee required by § 2.6(a)(1)(iv).

(c) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, the applicant must pay the fee required by § 2.6(a)(1)(v).

(d) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, and the identification of goods and/or services in any class exceeds 1,000 characters, the applicant must pay the fee required by § 2.6(a)(1)(vi) for each affected class.

■ 4. Section 2.71 is amended by:

- a. Revising introductory text,
- b. Redesignating paragraph (a) as paragraph (a)(1); and
- c. Adding paragraph (a)(2).

The revisions read as follows:

#### § 2.71 Amendments to correct informalities.

The applicant may amend the application during the course of examination, when required by the Office or for other reasons:

(a)(1) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services or the description of the nature of the collective membership organization.

(2) An amendment to the identification of goods and/or services that results in the identification exceeding 1,000 characters in any class

is subject to payment of the fee required by § 2.6(a)(1)(vi) for each affected class.

\* \* \* \* \*

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

■ 1. The authority citation for 37 CFR part 7 continues to read as follows:

**Authority:** 15 U.S.C. 1123, 35 U.S.C. 2, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

■ 2. Section 7.6 is amended by revising paragraphs (a)(1)(ii), (2)(ii), (3)(ii), (4)(ii), (5)(ii), (6)(i), (ii) and (iv), (7)(ii), and (8)(ii) to read as follows:

#### § 7.6 Schedule of U.S. process fees.

(a) \* \* \*

(1) \* \* \*

(ii) For certifying an international application based on a single basic application or registration filed electronically, per class—\$100.00.

(2) \* \* \*

(ii) For certifying an international application based on more than one basic application or registration filed electronically, per class—\$150.00.

(3) \* \* \*

(ii) For transmitting a subsequent designation under § 7.21, filed electronically—\$100.00.

(4) \* \* \*

(ii) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24 filed electronically—\$100.00.

(5) \* \* \*

(ii) For filing a notice of replacement under § 7.28 electronically, per class—\$100.00.

(6) \* \* \*

(i) For filing an affidavit under section 71 of the Act on paper, per class—\$400.00.

(ii) For filing an affidavit under section 71 of the Act electronically, per class—\$300.00.

\* \* \* \* \*

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

(7) \* \* \*

(ii) Surcharge for filing an affidavit under section 71 of the Act during the grace period electronically, per class—\$100.00.

(8) \* \* \*

(ii) For correcting a deficiency in a section 71 affidavit filed electronically—\$100.00.

\* \* \* \* \*

**Katherine Kelly Vidal,**

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

[FR Doc. 2024–06186 Filed 3–25–24; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R09–OAR–2022–0526; FRL–10286–01–R9]

#### Air Quality Plans; California; Tehama County Air Pollution Control District; New Source Review

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of a revision to the Tehama County Air Pollution Control District's (TCAPCD or "District") portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or "the Act"). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before April 25, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0526 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web,