

We are especially interested in responses to the following questions:

- Need—Is there still a need for the regulation? Is the problem that the regulation was originally intended to solve still a problem?
- Technical Accuracy—Has the regulation kept pace with the technological, economic, environmental, or other relevant conditions? Would any particular changes make it more effective in achieving its intended goal?
- Cost/Benefit—What are the costs, or other burdens or adverse effects, including impacts on use of energy, of the regulation? What are the benefits of the regulation in terms of personal safety or other values? Do the benefits outweigh the costs?
- Problems—Are there any problems or complaints in understanding or complying with the regulation?
- Alternative—Are there any nonregulatory ways to achieve the goal of the regulation at a lower cost, lower burden, or adverse effect?

We will summarize all comments received in response to this request during the comment period and will provide a copy of the summary to the NBSAC members for their consideration before the April 2002 meeting. We will consider all relevant comments in the formulation of any changes to the boating safety regulations that may result from this review stage.

Dated: August 22, 2001.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 01-21718 Filed 8-29-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 010126026]

RIN 0651-AB31

Electronic Submission of Applications for Registration and Other Documents

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; Notice of hearing.

SUMMARY: The United States Patent and Trademark Office (Office) proposes to amend its rules to make electronic filing of trademark documents mandatory. Subject to certain exceptions for individuals either without access to the

Trademark Electronic Application System (TEAS) or without the technical capability to use TEAS, and persons described in 15 U.S.C. 1126(b), all documents for which an electronic form is available in TEAS, will have to be filed through TEAS rather than through the mail or by hand delivery. In addition, the Office proposes to amend its rule concerning the use of U.S. Postal Service "Express Mail Post Office to Addressee" service, (Express Mail), to eliminate the filing of any document by Express Mail for which an electronic form is currently available in TEAS.

DATES: Comments must be received by October 29, 2001 to ensure consideration. A public hearing will be held at 10 a.m., October 12, 2001, in Room 911, Crystal Park 2, 2121 Crystal Drive, Arlington, VA. Submit requests to present oral testimony on or before October 5, 2001.

ADDRESSES: Mail comments to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, attention Craig Morris; fax comments to (703) 872-9279, attention Craig Morris; or e-mail comments to tmefiling@uspto.gov. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202-3513, from 8:30 a.m. until 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Craig Morris, Office of the Commissioner for Trademarks, (703) 308-8910, extension 136; or e-mail to tmefiling@uspto.gov.

SUPPLEMENTARY INFORMATION: The Office proposes to amend §§ 1.4, 1.10, 2.21, 2.56, 2.76, 2.88, 2.89, 2.161, 2.166, 2.167 and 2.168 to make electronic filing through the Trademark Electronic Application System (TEAS) mandatory. TEAS is a collection of electronic forms for commonly filed trademark documents. Each document can be easily completed by the trademark applicant or attorney and filed with the Office at the click of a button. The system is available at www.uspto.gov 24 hours a day, seven days a week, and can be used by anyone with NETSCAPE NAVIGATOR® (version 3.0 or higher) or MICROSOFT INTERNET EXPLORER® (Version 4.0 or higher). During the hours between 11:00 p.m. EST, Saturday and 6:00 a.m. EST, Sunday TEAS is available but credit card payments cannot be processed; therefore, no documents requiring fees can be filed during that time period. In addition, to file an initial application for a stylized or design mark, or if a specimen is being

filed, the filer must be able to attach a black-and-white GIF or JPG image file.

The Office proposes to require electronic filing of all documents for which forms are currently available in TEAS: applications for registration of marks; amendments to allege use; statements of use; requests for extensions of time to file a statement of use; affidavits of continued use or excusable nonuse under 15 U.S.C. 1058 (§ 8 affidavits); affidavits of incontestability under 15 U.S.C. 1065 (§ 15 affidavits); combined affidavits under 15 U.S.C. 1058 and 1065 (§§ 8 and 15 affidavits) and combined filings under 15 U.S.C. 1058 and 1059 (combined §§ 8 and 9 filings). In the future, after appropriate notice, the Office may require the filing of other trademark-related documents when the appropriate electronic form is available in TEAS. There will be two exceptions to the requirement that trademark documents be filed electronically: first, if the *pro se* applicant or registrant, or an attorney for applicant or registrant, verifies in an affidavit or declaration under § 2.20 that he or she does not have access to TEAS or does not have the technical capability to use TEAS, the *pro se* applicant or registrant, or an attorney for applicant or registrant, will not be required to file its trademark documents using TEAS; and second, if the applicant or registrant is a person described in 15 U.S.C. 1126(b), then the applicant or registrant will not be required to file its trademark documents using TEAS.

A person described in 15 U.S.C. 1126(b) is a person who has citizenship, domicile or a real and effective industrial or commercial establishment in a country other than the United States and whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law.

The number of trademark applications and other trademark documents filed in the Office has increased substantially in the last few years, and filings are expected to continue to increase dramatically in the next few years. The Office received over 295,000 trademark applications in fiscal year 1999 and over 375,000 applications in 2000—an increase each year of 27% over the prior year. In fiscal year 2001, filings are currently forecast to be 25% higher than 2000, which means the Office is likely to receive over 300,000 new applications and over 150,000 application and registration-related

filings this year. Although the Office has made substantial changes in an attempt to keep up with the increased filings, the Office believes that it must make further changes in its business practices to ensure that every applicant and registrant receives a high level of customer service.

Currently, parties may file paper documents via mail or hand delivery, or file electronically using TEAS. It is now possible to file essentially all trademark-related documents electronically over the Internet, at <http://www.uspto.gov>.

The Office now maintains both paper files and electronic databases of critical application and registration data. Processing paper is extremely labor-intensive and subject to error and misfiling. A new application must undergo multiple steps before it is ready for examination, including fee processing, minimum filing requirement review, capture of data into automated databases, and paper file jacket assembly. In addition to processing new applications, the Office must sort through several thousand documents that are received on a daily basis. These documents must be delivered to the appropriate work unit, matched with the paper file, and entered into the file jacket and the automated systems.

To expedite processing of trademark documents and to improve the quality of data capture, the Office proposes to require that all trademark documents available in TEAS be filed electronically. Mandatory electronic filing will increase efficiency, improve the accuracy of the information in the Office's automated systems, and eliminate delays caused by mailing, manual data capture and paper processing. It will also result in fewer lost and misdirected papers. Electronic forms contain standardized data that is tagged to permit transfer into the Office's databases.

Better Service for Customers

Electronic filing benefits the public as well as the Office. TEAS is available for the filing of trademark documents 24 hours a day, seven days a week at <http://www.uspto.gov>. During the hours between 11:00 p.m. EST, Saturday and 6:00 a.m. EST, Sunday TEAS is available but credit card payments cannot be processed. Therefore, during that time period, documents that must be accompanied by a fee cannot be filed. When a document is filed electronically, the Office receives it within seconds after filing, and immediately issues a confirmation of filing via e-mail. This confirmation is evidence of filing should any question arise as to the filing date of the document. Under § 1.6(a)(4),

trademark-related correspondence filed via TEAS is considered to have been filed on the date the Office receives the transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. Thus by using TEAS applicants, registrants and their attorneys can ensure a "date certain" for any filing made using TEAS. This benefit eliminates the need for the filing of applications by Express Mail.

Electronically filed applications are processed much faster than their paper counterparts. Filing receipts for TEAS applications are sent via e-mail the same day of filing, while filing receipts for paper applications are mailed about 14 days after filing; critical data concerning TEAS applications (e.g., mark, goods and services, owner, etc.) are entered into the automated systems (and therefore made available to anyone searching Office records for conflicting marks) within 10 days, while data concerning paper applications are entered and made available to the public approximately 14–15 days after filing; and TEAS applications are received in the e-Commerce law offices and available for review in 20 days, while paper application files are assembled and delivered to law offices approximately 70 days after filing.

Continued increases in trademark application filings dictate that the Office change its business approach for serving the Office's customers. Electronic filing and communication allows us to provide more customers with better quality, using fewer resources. Electronic filing improves the quality and accuracy of the information that is submitted to and processed by the Office. Customers have greater assurance that the content of the electronic application is complete, because the information provided by the customer is loaded directly into the Office's automated systems. By requiring that everyone, with few exceptions, file electronically, all of the Office's customers will receive better service, because electronic filing provides a level of consistency, accuracy, and predictability that a paper-based process cannot.

The results of customer surveys clearly indicate that customers who file electronically are far more satisfied than customers who file paper applications. All of the Office's electronic customers stated that they were satisfied with the ease of access and use of the filing system and the time it took to receive a filing receipt, and 94 percent of the Office's electronic customers were satisfied with the accuracy of the filing receipt. Customers who filed paper

applications were less satisfied: only 44 percent were satisfied with the accuracy of the filing receipt, and only 27 percent were satisfied with the time it took to receive it.

In their first annual report to the President, the Secretary of Commerce, and the Judiciary Committees of the United States Senate and House of Representatives, the Trademark Public Advisory Committee (TPAC) endorsed mandatory electronic filing for trademark applications. The TPAC concluded that the Office should take immediate steps to maximize the use of technology in fulfilling its mission by mandating electronic filing, to the extent allowed by law, and by replacing paper-based processes and information with electronic processes.

On December 17, 1999, the President issued a Memorandum, "Electronic Government," which called on Federal agencies to use information technology to ensure that the American people can easily access governmental services and information. The Government Paperwork Elimination Act (GPEA), Title XVII, §§ 1701–1710, Pub. L. 105–277, 112 Stat. 2681–749 (44 U.S.C. 3504), was signed into law on October 21, 1998. GPEA requires Federal agencies, by October 21, 2003, to provide individuals or entities that deal with agencies the option to submit information or transact with the agency electronically, and to maintain records electronically, when practicable. GPEA is an important tool to improve customer service and governmental efficiency through the use of information technology. This improvement involves transacting business electronically with Federal agencies and widespread use of the Internet and the World Wide Web and thus furthers the goals of the GPEA.

Discussion of Specific Rules Changed or Added

The Office proposes to add a new § 1.4(h), providing that if any form required to be filed under any provision of this section is available for filing using TEAS, the form must be filed electronically, unless § 2.22 applies.

The Office proposes to amend § 1.10(a) to prohibit the use of Express Mail for any correspondence for which an electronic form exists.

The Office proposes to amend § 2.21 to add a new subsection (a)(1), requiring that an application for registration of a mark be filed using TEAS to receive a filing date, unless § 2.22 applies. Applications filed on paper will be returned and not given a filing date, unless filed with an affidavit or declaration under § 2.20 that meets the

requirement of § 2.22. The Office further proposes to redesignate §§ 2.21(a)(1) through (a)(5) as §§ 2.21(a)(2)(i) through (a)(2)(v).

The Office proposes to add new § 2.22 to provide two exceptions to the requirement that trademark documents be filed electronically: first, if the *pro se* applicant or registrant, or an attorney for applicant or registrant, verifies in an affidavit or declaration under § 2.20 that it does not have access to TEAS or does not have the technical capability to use TEAS, the *pro se* applicant or registrant, or an attorney for applicant or registrant, will not be required to file his or her trademark documents using TEAS; and second, if the applicant or registrant is a person described in 15 U.S.C. 1126(b), then the applicant or registrant will not be required to file its trademark documents using TEAS.

The Office proposes to revise § 2.76(b) to require that an amendment to allege use be filed using TEAS, unless § 2.22 applies.

The Office proposes to remove § 2.76(d), which now provides that the title "Amendment to allege use under § 2.76" should appear at the top of the first page of an amendment to allege use. This requirement is no longer necessary.

The Office proposes to redesignate § 2.76(e) as § 2.76(d), and to add a new § 2.76 (d)(1) to state that filing electronically is a minimum requirement that must be met before an amendment to allege use can be referred to an examining attorney for examination, unless § 2.22 applies.

The Office proposes to redesignate §§ 2.76(f) and (g) as §§ 2.76(e) and (f), and to revise them to update cross-references. The Office proposes to redesignate §§ 2.76(h) through (j) as §§ 2.76(g) through (i).

The Office proposes to revise § 2.88(b) to require that a statement of use be filed using TEAS, unless § 2.22 applies.

The Office proposes to remove § 2.88(d), which now provides that the title "Statement of use under § 2.88" should appear at the top of the first page of a statement of use. This requirement is no longer necessary.

The Office proposes to redesignate § 2.88(e) as § 2.88(d), and to add a new § 2.88(d)(1) to state that filing electronically is a minimum requirement that must be met before a statement of use can be referred to an examining attorney for examination, unless § 2.22 applies.

The Office proposes to redesignate §§ 2.88(f) and (g) as §§ 2.88(e) and (f), and to revise them to update cross-references. The Office proposes to

redesignate §§ 2.88(h) through (l) as §§ 2.88(g) through (k).

The Office proposes to amend §§ 2.89(a) and (b) to require that a request for an extension of time to file a statement of use be filed using TEAS, unless § 2.22 applies.

The Office proposes to amend § 2.161 by redesignating paragraphs (a) through (h) as (b) through (i), adding a new paragraph (a) to require § 8 affidavits be filed using TEAS, unless § 2.22 applies, and to revise the redesignated § 2.161(f)(1) to update a cross-reference.

The Office proposes to amend § 2.166 to require that combined §§ 8 and 9 filings be filed using TEAS unless § 2.22 applies.

The Office proposes to redesignate §§ 2.167(a) through (g) as §§ 2.167(b) through (h), and to add a new § 2.167(a) to require that § 15 affidavits be filed using TEAS, unless § 2.22 applies.

The Office proposes to amend § 2.168(a) to require that §§ 8 and 15 affidavits be filed using TEAS, unless § 2.22 applies.

Rulemaking Requirements

The Office has determined that the proposed rule changes have no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The rule will not significantly impact any businesses. As a result, an initial regulatory flexibility analysis was not prepared.

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The proposed changes have been determined to be significant for purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. This rule contains collections of information requirements that have been approved by OMB under OMB Control Number 0651-0009. The public reporting burden for this collection of information is estimated to

average as follows: seventeen minutes for applications to obtain registrations based on an intent to use the mark under 15 U.S.C. 1051(b), if completed using paper forms; fifteen minutes for applications based on 15 U.S.C. 1051(b), if completed using electronic forms; twenty-three minutes for applications to obtain registrations based on use of the mark in commerce under 15 U.S.C. 1051(a), if completed using paper forms; twenty-one minutes for applications to obtain registrations based on 15 U.S.C. 1051(a), if completed using electronic forms; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under 15 U.S.C. 1126(d), if completed using paper forms; nineteen minutes for applications to obtain registrations based on 15 U.S.C. 1126(d), if completed using electronic forms; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under 15 U.S.C. 1126(e), if completed using paper forms; eighteen minutes for applications to obtain registrations based on 15 U.S.C. 1126(e), if completed using electronic forms; thirteen minutes for allegations of use of the mark under §§ 2.76 and 2.88 if completed using paper forms; twelve minutes for allegations of use under §§ 2.76 and 2.88 if completed using electronic forms; ten minutes for requests for extensions of time to file statements of use under § 2.89 if completed using paper forms; nine minutes for requests for extensions of time to file statements of use if completed using electronic forms; eleven minutes for § 8 affidavits if completed using paper forms; ten minutes for § 8 affidavits if completed using electronic forms; fourteen minutes for combined §§ 8 and 9 filings if completed using paper forms; thirteen minutes for combined §§ 8 and 9 filings if completed using electronic forms; fourteen minutes for combined §§ 8 and 15 affidavits if completed using paper forms; thirteen minutes for combined §§ 8 and 15 affidavits if completed using electronic forms; eleven minutes for § 15 affidavits if completed using paper forms; and ten minutes for § 15 affidavits if completed using electronic forms. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the

agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503 (Attn: PTO Desk Officer).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Trademarks.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 41, as amended, the Office proposes to amend parts 1 and 2 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

2. Amend § 1.4 to add a new paragraph (h), to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(h) If any form required to be filed under any provision of this section is available for filing using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), the form must be filed using TEAS, unless § 2.22 of this chapter applies.

3. Revise § 1.10(a) to read as follows:

§ 1.10 Filing of correspondence by "Express Mail."

(a) Any correspondence received by the Patent and Trademark Office (Office), except for correspondence available for filing using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS.

* * * * *

PART 2—RULES APPLICABLE TO TRADEMARK CASES

4. The authority citation for part 2 continues to read as follows:

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

5. Revise § 2.21(a) to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application if:

(1) The application is filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies; and

(2) The application contains all of the following:

- (i) The name of the applicant;
- (ii) A name and address for correspondence;
- (iii) A clear drawing of the mark;
- (iv) A listing of the goods or services; and
- (v) The filing fee for at least one class of goods or services, required by § 2.6.

* * * * *

6. Add § 2.22 to read as follows:

§ 2.22 Exceptions to mandatory electronic filing.

Notwithstanding any other provision of this section, filing through the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>) is not required in the following two cases:

(a) The pro se applicant or registrant, or an attorney for applicant or registrant, who verifies in an affidavit or declaration under § 2.20 that he or she does not have access to TEAS or does not have the technical capability to use TEAS, will not be required to file its trademark documents using TEAS. Such affidavit or declaration must accompany the relevant document.

(b) The applicant or registrant who is a person described in 15 U.S.C. 1126(b) will not be required to file its trademark documents using TEAS.

7. Amend § 2.76 by removing paragraph (d), revising paragraph (b) introductory text, redesignating paragraphs (e) through (j) as (d) through (i) and revising them to read as follows:

§ 2.76 Amendment to allege use.

(a) * * *

(b) The amendment to allege use must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies. A complete amendment to allege use must include:

* * * * *

(d) The Office will review a timely filed amendment to allege use to

determine whether it meets the following minimum requirements:

(1) Is filed using TEAS, unless § 2.22 applies;

(2) Includes the fee for at least a single class, required by § 2.6;

(3) Includes one specimen of the mark as used in commerce; and

(4) Includes a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

(e) A timely filed amendment to allege use that meets the minimum requirements specified in paragraph (d) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

(f) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (d) of this section, applicant will be notified of the deficiency. The deficiency may be corrected if the mark has not been approved for publication. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication, the amendment to allege use will not be examined on the merits.

(g) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication.

(h) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(i) For the requirements for a multiple class application, see § 2.86.

8. Amend § 2.88 by removing paragraph (d), revising paragraph (b) introductory text, redesignating paragraphs (e) through (l) as (d) through (k) and revising them to read as follows.

§ 2.88 Filing statement of use after notice of allowance.

(a) * * *

(b) The statement of use must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies. A complete statement of use must include:

* * * * *

(d) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) Is filed using TEAS, unless § 2.22 applies;

(2) Includes the fee for at least a single class, required by § 2.6;

(3) Includes one specimen of the mark as used in commerce;

(4) Includes a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

(e) A timely filed statement of use that meets the minimum requirements specified in paragraph (d) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

(f) If the statement of use does not meet the minimum requirements specified in paragraph (d) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether it complies with paragraph (d) of this section.

(g) The failure to timely file a statement of use that meets the minimum requirements specified in paragraph (d) of this section shall result in the abandonment of the application.

(h)(1) The goods or services specified in a statement of use must conform to

those goods or services identified in the notice of allowance. An applicant may specify the goods or services by choosing the statement that "The applicant is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance;" or, if appropriate, choosing the statement that "The applicant is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance, except the goods and/or services listed below," and listing in the space provided the goods or services to be deleted.

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use.

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with § 2.71(b).

(i) The statement of use may be accompanied by a separate request to amend the drawing in the application, in accordance with §§ 2.51 and 2.72.

(j) If the statement of use is not filed within a reasonable time after the date it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(k) For the requirements for a multiple class application, see § 2.86.

9. Amend § 2.89 by revising paragraphs (a) introductory text, (a)(1), (b) introductory text, and (b)(1) to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the mailing date of the notice of allowance under section 13(b)(2) of the Act, and must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22

applies. The extension request must include the following:

(1) A request for an extension of time to file the statement of use;

* * * * *

(b) Before the expiration of the previously granted extension of time, the applicant may request further six-month extensions of time to file the statement of use. The extension request must be filed using TEAS unless § 2.22 applies, and must include the following:

(1) A request for an extension of time to file the statement of use;

* * * * *

10. Revise § 2.161 to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

(a) Be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies;

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

(c) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a). A person who is properly authorized to sign on behalf of the owner is:

(1) A person with legal authority to bind the owner; or

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

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner.

(d) Include the registration number;

(e)(1) Include the fee required by § 2.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by § 2.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If the required fee(s) are not submitted and

the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(f)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under paragraph (g)(2) of this section;

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(g)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

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

(h) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under paragraph (g)(2) of this section. The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of these services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen.

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long, if not submitted electronically. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper;

(i) If the registrant is not domiciled in the United States, the registrant must list the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served.

11. Revise § 2.166 to read as follows:

§ 2.166 Affidavit of continued use or excusable nonuse combined with renewal application.

An affidavit of declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined into a single document, provided that the document meets the requirements of both sections 8 and 9 of the Act. The combined document must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies.

12. Revise § 2.167 to read as follows:

§ 2.167 Affidavit or declaration under section 15.

The affidavit or declaration in accordance with § 2.20 provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12(c) of the Act (§ 2.153) must:

(a) Be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies;

(b) Be signed by the registrant;

(c) Identify the certificate of registration by the certificate number and date of registration;

(d) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

(e) Specify that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;

(f) Specify that there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of;

(g) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c). The registrant will be notified of the receipt of the affidavit or declaration.

(h) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient

fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

13. Amend § 2.168 by revising paragraph (a) to read as follows:

§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15. The document must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies.

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Dated: August 24, 2001.

Nicholas P. Godici,

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

[FR Doc. 01-21878 Filed 8-29-01; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA117-4132; FRL-7047-5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; One-Hour Ozone Attainment Demonstration Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). The intended effect of this action is to propose approval of a reasonably