

(c) *Regulations.* (1) The general regulations contained in § 165.23 and § 165.20 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or designated personnel. U.S. Coast Guard representatives of the Captain of the Port include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by U.S. Coast Guard personnel or an U.S. Coast Guard vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, ME.

Dated: May 15, 2000.

**R.A. Nash**

*Commander, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 00-13042 Filed 5-23-00; 8:45 am]

**BILLING CODE 4910-15-U**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No.: 99100008272-0123-02]

**RIN 0651-AB07**

#### Changes to Permit Payment of Patent and Trademark Fees by Credit Card

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is amending the rules of practice to provide for the payment of any patent process or trademark process fee by credit card. The Office previously limited payment by credit card to the fees required for information products or for an electronic submission of or in a trademark application. The Office will now accept payment of any patent process fee, trademark process fee, or information product fee by credit card.

**EFFECTIVE DATES:** The amendment to § 1.21 is effective July 24, 2000. Section 1.23 is effective June 5, 2000.

#### FOR FURTHER INFORMATION CONTACT:

*Concerning this final rule:* Robert W. Bahr, by telephone at (703) 308-6906, or by facsimile to (703) 308-6916 marked to the attention of Robert W. Bahr.

*Concerning the payment of fees (by credit card or otherwise) in general:* Matthew Lee, by telephone at (703) 305-8051, by e-mail at [matthew.lee@uspto.gov](mailto:matthew.lee@uspto.gov), or by facsimile

at (703) 305-8007 marked to the attention of Matthew Lee.

**SUPPLEMENTARY INFORMATION:** It has been the practice of the United States Patent and Trademark Office (Office) to accept payment of fees for information products by credit card, but not to accept patent process fees or trademark process fees by credit card. The Office recently revised 37 CFR 1.23 to expressly permit payment of fees by credit card "in an electronically filed trademark application or electronic submission in a trademark application." *See Trademark Law Treaty Implementation Act Changes*, Final Rule, 64 FR 48989, 48917 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* 103, 120 (September 23, 1999) (TLTIA Final Rule). As explained in the TLTIA Final Rule:

Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.

Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.

Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge "all required fees" or "the filing fee" to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the "required fee" or the applicable "filing fee") within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (e.g., certain debit cards or check cards).

Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

*See Trademark Law Treaty Implementation Act Changes*, 64 FR at 48906-07 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* at 110.

The Office is now amending the rules of practice to permit payment of any patent process fee, trademark process fee, or information product fee by credit card, subject to actual collection of the fee. The Office will provide a Credit Card Payment Form (PTO-2038) for use when paying a patent process or trademark process fee (or the fee for an information product) by credit card. The Office will not require customers to use this form when paying a patent process or trademark process fee by credit card. If, however, a customer provides a credit card charge authorization in another form or document (e.g., a communication relating to the patent or trademark), the credit card information may become part of the record of an Office file that is open to public inspection. Information concerning fees in general is posted on the Office's Web site at <http://www.uspto.gov>, and information on completing the Credit Card Payment Form will be posted on the Office's Web site.

The Office will not include the Credit Card Payment Form (PTO-2038) among the records open to public inspection in the file of a patent, trademark registration, or other proceeding. The Credit Card Payment Form (PTO-2038) is the only form the Office uses to collect credit card information during a patent, trademark, or other proceeding. The Credit Card Payment Form (PTO-2038) is the only form the Office will not make available to the public as part of the file of a patent, trademark, or other proceeding. As discussed above, failure to use the Credit Card Payment Form (PTO-2038) when submitting a credit card payment may result in your credit card information becoming part of the record of an Office file that is open to public inspection. If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the Office will not be liable in the event that the credit card number becomes public knowledge.

35 U.S.C. 42(d) and § 1.26 (which concern refund of patent and trademark fees) also apply to requests for refund of fees paid by credit card. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. The Office will not refund a fee paid by credit card by Treasury check, electronic funds transfer, or credit to a deposit account (§ 1.25).

Finally, any payment of a patent process or trademark process fee by credit card must be in writing (*see* § 1.2), preferably on the Credit Card Payment Form (PTO-2038). If a Credit Card Payment Form or other document authorizing the Office to charge a patent

process or trademark process fee to a credit card does not contain the information necessary to charge the fee to the credit card, the customer must submit a revised Credit Card Payment Form or document containing the necessary information. Office employees will not accept oral (telephonic) instructions to complete the Credit Card Payment Form or otherwise charge a patent process or trademark process fee (as opposed to information product or service fees) to a credit card.

### Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

*Section 1.21:* Section 1.21(m) is amended to make the \$50.00 fee for processing a check returned "unpaid" by a bank applicable to any payment refused or charged back by a financial institution. The burden of processing any payment refused or credit card transaction charged back by a financial institution is the same as the burden of processing a check returned "unpaid" by a bank. The phrase "payment refused \* \* \* by a financial institution" includes a check returned "unpaid" by a bank but also applies to the refusal by a financial institution of a payment by other means.

*Section 1.23:* Section 1.23(a) is amended to add the phrase "national bank notes" in the first sentence. This phrase was inadvertently deleted in the TLTIA Final Rule.

Section 1.23(b) is amended by revising the first sentence to eliminate the restriction that the payment of money required for United States Patent and Trademark Office fees by credit card be limited to fees "in an electronically filed trademark application or electronic submission in a trademark application."

### Response to Comments

The Office published a notice (Notice of Proposed Rulemaking) proposing changes to the rules of practice to implement payment of patent and trademark fees by credit card. *See Changes to Permit Payment of Patent and Trademark Office Fees by Credit Card*, Notice of Proposed Rulemaking, 64 FR 59701 (November 3, 1999), 1228 *Off. Gaz. Pat. Office* 163 (November 23, 1999). The Office received fifteen written comments in response to the Notice of Proposed Rulemaking. Most of the comments supported changing the rules of practice to permit payment of all patent and trademark fees by credit card. Other comments and the Office's responses to the comments follow.

*Comment (1):* One comment suggested that the Office revise § 1.23 to permit customers to designate their deposit account as overdraft protection for check and credit card payments. The comment further suggested that the charge in § 1.21(m) should be less for those customers designating their deposit account as overdraft protection for check and credit card payments.

*Response:* Section 1.25 currently permits customers to provide a general authorization to charge fees to a deposit account. Therefore, no change to § 1.23 is necessary to permit customers to authorize the charging of any fee deficiency (e.g., due to a returned check or refused charge) to a deposit account. Since the Office's cost of processing the returned check (or refused charge) is not decreased because a customer has authorized the charging of the fee deficiency resulting from the returned check or refused charge to a deposit account, the Office is not providing a lower fee for processing a returned check or refused charge in such a situation. Nevertheless, customers may still wish to provide an authorization to charge fee deficiencies (e.g., due to a returned check or refused charge) to a deposit account to avoid the adverse results of non-payment of a fee (e.g., loss of a filing date in a trademark application or abandonment of a patent or trademark application).

*Comment (2):* One comment suggested that the Office permit use of direct bank debit cards.

*Response:* The Office currently does not accept payment by bank debit cards, since these cards usually require the use of a personal identification number (or PIN). The Office will add other methods of payment (including bank debit cards) as soon as the systems and procedures for implementing them have been developed.

*Comment (3):* Another comment suggested that the Office permit the use of a "re-chargeable" credit card (i.e., a card having a pre-applied balance against which charges may be made).

*Response:* A "re-chargeable" credit card program would operate in a manner similar to the existing deposit account program. Thus, a "re-chargeable" credit card program in addition to the current deposit account program does not have sufficient benefit to justify the administrative burden of maintaining these two duplicative programs.

*Comment (4):* Several comments suggested that the Office permit use of an AMERICAN EXPRESS® card because it has no upper limit. Another comment suggested that the Office permit use of all major credit cards, including

AMERICAN EXPRESS® cards and DINER'S CLUB® cards. Another comment suggested that if the Office intends to accept AMERICAN EXPRESS® cards, the language of § 1.23 must be changed since AMERICAN EXPRESS does not consider its card to be a credit card.

*Response:* The Office desires to maximize convenience to its customers and is committed to adding additional credit cards and other methods of payments as soon as the systems and procedures for implementing them have been developed. In the meantime, the Office currently accepts charges to the following credit cards: AMERICAN EXPRESS®, DISCOVER®, MASTER CARD®, and VISA®. The Office considers each of these cards to be a "credit card" within the meaning of § 1.23.

*Comment (5):* One comment suggested that the Office should retain the Credit Card Form (PTO-2038) in the file of the patent or trademark proceeding (simply redacting the credit card number) so that third parties may determine whether the proper fee was actually authorized and paid.

*Response:* The Office file of a patent or trademark proceeding in which a fee was paid by credit card will contain a printout from the Office's Revenue Accounting and Management (RAM) system of the fee authorized and paid. When a fee is paid by check in a patent or trademark proceeding, the Office file includes only a printout from the RAM system of the fee paid and an indication that it was paid by check. A copy of the check used to pay the fee is not retained in the file for review by third parties. There is no need to have a different practice for credit card payments.

*Comment (6):* One comment suggested that the proposed change to permit patent and trademark payments by credit card is an excellent idea, especially if the Office permits the Credit Card Form (PTO-2038) to be submitted by facsimile.

*Response:* Credit card payments by facsimile will be permitted except in situations in which facsimile submission of correspondence is not permitted in § 1.6(d). Customers will be responsible for transmitting the credit card form to the correct organization within the Office by use of the correct facsimile number.

*Comment (7):* One comment suggested that the Office should permit a general authorization to charge fees to a credit card, rather than requiring customers to specify an exact amount. Another comment suggested that the Office permit customers to specify a charge

amount of "up to and including XX" (the top estimated fee due).

*Response:* The Office currently does not have systems and procedures in place to accept authorization to charge an unspecified amount to a credit card. However, the Office desires to maximize convenience to its customers and is looking into ways for customers to pay by credit card without specifying the exact dollar amount.

*Comment (8):* One comment suggested that if a customer uses his or her own form containing the same information as the Credit Card Form (PTO-2038), the Office should accept and treat such information with the same liability as with the Credit Card Form (PTO-2038).

*Response:* When a customer uses his or her own form containing the same information as the Credit Card Form (PTO-2038) in a patent or trademark proceeding, the Office will attempt to redact the credit card number (except for the last four digits) from the form before it is placed in the file of the patent or trademark proceeding. Nevertheless, the Office strongly encourages customers to use the Office's Credit Card Form (PTO-2038) when paying fees by credit card. The Office will not accept liability for release of credit card information when a customer chooses to use his or her own form rather than the Office's Credit Card Form (PTO-2038).

*Comment (9):* One comment suggested that the Office could avoid including credit card information in a file open to public inspection (as an alternative to the Credit Card Form (PTO-2038)) by assigning a number or other identifier to a credit card and permitting the customer/cardholder to charge fees to that credit card by reference to the pre-assigned number or identifier.

*Response:* The Office currently does not store credit card information within any financial systems or databases for access by fee-processing personnel. The Office desires to maximize convenience to its customers and is looking into ways to assign and maintain numbers or identifiers for each credit card number. The Office will implement such a practice as soon as the necessary systems and procedures have been developed.

*Comment (10):* One comment suggested that the fees charged by credit card institutions for use of a credit card should be borne solely by customers who pay fees by credit card. The comment specifically suggested that the Office impose a surcharge in excess of the given patent or trademark fee on all credit card payments.

*Response:* Merchant fees charged for credit card transactions are paid by the

Department of the Treasury. Processing credit card transactions results in lower costs to the Federal Government when compared to processing payments made by checks. Therefore, there is no need to impose a surcharge for credit card transactions.

*Comment (11):* One comment suggested that the Office does not always properly expunge information that should not be part of a record open to public inspection, so the Office should inform the public of its expected compliance rate in another notice of proposed rulemaking before adopting a final rule change. Alternatively, the comment suggests that the Office should accept liability for any erroneous disclosure of credit card information included on the Credit Card Form (PTO-2038).

*Response:* In view of the overwhelming support for the proposed change to permit payment of patent and trademark fees by credit card (and for the prompt adoption of such change), the Office considers it to be contrary to the public interest to delay the adoption of this final rule. The incidental situations in which confidential information was inadvertently released to the public do not warrant delay particularly since use of a credit card is optional.

#### Classification

##### *Administrative Procedure Act*

Pursuant to the authority at 5 U.S.C. 553(d)(1), the amendment to § 1.23 is excepted from the thirty-day advance publication requirement of 5 U.S.C. 553(d) because it relieves a restriction.

##### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The Office did not previously permit patent or trademark fees (except in an electronically filed trademark application or electronic submission in a trademark application) to be paid by credit card. The changes in this final rule will permit small entities as well as non-small entities the option of paying any patent or trademark fee by credit card. Small entities as well as non-small entities will continue to have the option of paying any patent or trademark fee by check, treasury note, national bank note, money order, or charge to a deposit account. Based upon the number of

small entities who pay fees to the Office each year and the percentage of fee payments that are by credit card (where currently permitted), the Office expects 16,000 small entities to pay a patent or trademark fee by credit card each year. Thus, the changes in this final rule will not have a significant economic impact on any business.

##### *Executive Order 13132*

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

##### *Executive Order 12866*

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

##### *Paperwork Reduction Act*

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office has submitted an information collection package to OMB for its review and approval. The title, description, and respondent description for this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*OMB Number:* 0651-0043.

*Title:* United States Patent and Trademark Office Fees.

*Form Number:* PTO-2038.

*Type of Review:* Approved through January of 2003.

*Affected Public:* Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

*Estimated Number of Respondents:* 100,000 responses per year.

*Estimated Time Per Response:* 12 minutes.

*Estimated Total Annual Respondent Burden Hours:* 20,000 hours per year.

*Needs and Uses:* Persons submitting fees to the Office need to provide information concerning the purpose for the fee so that the Office is able to: (1) apply the fee to the particular application, patent, trademark registration, or other proceeding, service or product; and (2) determine whether

the person has submitted the fee(s) required by law or regulation. The Credit Card Form provides the public with a convenient manner of paying a patent application or service fee, trademark application or service fee, or information product fee by credit card.

Interested persons are requested to send comments regarding the burden estimate or any other aspects of the information requirements, including suggestions for reducing the burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.21 is amended by revising paragraph (m) to read as follows:

##### § 1.21 Miscellaneous fees and charges.

\* \* \* \* \*

(m) For processing each payment refused (including a check returned "unpaid") or charged back by a financial institution—\$50.00.

\* \* \* \* \*

3. Section 1.23 is revised to read as follows:

##### § 1.23 Methods of payment.

(a) All payments of money required for United States Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of a cashier's or certified

check, Treasury note, national bank notes, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for United States Patent and Trademark Office fees may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

Dated: May 15, 2000.

**Q. Todd Dickinson,**

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

[FR Doc. 00-12992 Filed 5-23-00; 8:45 am]

BILLING CODE 3510-16-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[NM39-1-7462; FRL-6703-8]

##### Approval and Promulgation of Implementation Plans; State of New Mexico; Approval of Revised Maintenance Plan and Motor Vehicle Emissions Budgets; Albuquerque/Bernalillo County, New Mexico; Carbon Monoxide

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the Albuquerque/Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP) under the Federal Clean Air Act as Amended in

1990 (the Act). On February 4, 1999, the Governor requested EPA approval of a revision to the CO maintenance plan and motor vehicle emissions budgets covering 1996 to 2006, and the establishment of a CO motor vehicle emissions budget for the year 2010. The EPA initiated the approval process in two rule makings, the first for revisions to the CO maintenance plan and motor vehicle emissions budgets covering 1996 to 2006, and the second action to establish a CO motor vehicle emissions budget for the year 2010. This action is a final approval of both actions; revisions to the CO maintenance plan, and the CO Motor Vehicle Emissions Budget for 1996, 1999, 2002, 2005, 2006, and 2010. These CO Motor Vehicle Emissions Budgets are for transportation conformity purposes.

**EFFECTIVE DATE:** This rule is effective on May 24, 2000.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matthew Witosky of the EPA Region 6 Air Planning Section, at (214) 665-7214, or WITOSKY.MATTHEW@EPA.GOV.

##### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

##### 1. What Action Is EPA Taking?

The EPA is promulgating final approval of revisions to the Albuquerque CO maintenance plan. The original plan was approved in 1996 (61 FR 29970). In a document published December 20, 1999, the EPA published a direct final approval of revisions to the CO maintenance plan and related conformity budgets (64 FR 71027), with a companion proposed rule (64 FR 71086). The companion proposed rule was published in the event we received adverse comments, which we did. The direct final rule was withdrawn on February 14, 2000 (65 FR 7290). That document indicated that final action would be forthcoming.

The EPA also proposed approval of a Motor Vehicle Emissions Budget