

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that

this rule does not have implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8:30 a.m. on July 17, 2003 through 7 p.m. on July 20, 2003 add a new temporary § 165.T09–235 to read as follows:

§ 165.T09–235 Safety Zone; Lake Michigan, Gary, Indiana.

(a) *Location.* The following is a safety zone: all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a radius of 5 nautical miles with its center in approximate position 41°37'25" N, 087°15'42" W (off of Miller Beach Ogden Dunes)(NAD 1983).

(b) *Enforcement periods.* This rule is effective from 8:30 a.m. on July 17, 2003, through 7 p.m. on July 20, 2003. This section will be enforced from 8:30 a.m. through 7 p.m. on July 18, 2003; from 8:30 a.m. through 7 p.m. on July 19, 2003; and again from 8:30 a.m. through 7 p.m. on July 20, 2003.

(c) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated on scene representative. Section 165.23 also contains other general requirements.

Dated: June 30, 2003.

Raymond E. Seebald,
Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–17724 Filed 7–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB60

Revision of Patent Fees for Fiscal Year 2004

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this document) is adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually in accordance with the CPI to recover the higher costs associated with doing business.

Legislation has also been introduced in the Congress that would alter our fees. If enacted, this legislation would supersede the fees identified in this final rule.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at matthew.lee@uspto.gov, by telephone at (703) 305-8051, or by fax at (703) 305-8007.

SUPPLEMENTARY INFORMATION: This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106-113). This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

Legislation has been introduced in the Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this final rule. If such changes occur, we will make corresponding rule changes by publication in the **Federal Register**. Customers may wish to refer to our official website at www.uspto.gov for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

A proposed rule notice was published at 68 FR 23092 on April 30, 2003, which requested comments by May 30, 2003. No comments were received.

Background*Statutory Provisions*

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the

requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be adjusted on October 1, 2003, to reflect fluctuations occurring during the twelve-month period from October 1, 2002, through September 30, 2003, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2003, which is 2.08 percent. Based on this projected CPI-U, patent statutory fees will be adjusted by 2.08 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103-465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the fee adjustment will be subject to the new fees then in effect. The amount of the

fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules*37 CFR 1.16 National Application Filing Fees*

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The final rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. We received roughly 111,000 patent applications (approximately 33 percent of total patent applications) last year from small entities. Since the average small entity fee will increase by less than \$10, with a minimum increase of \$1 and a maximum increase of \$35, there will not be a significant economic impact on a substantial number of small entities due to this final rule change.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Patents.

■ For the reasons set forth in the preamble, we are amending title 37 of the Code of Federal Regulations, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

■ 2. Section 1.16 is amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:

By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))	\$43.00
By other than a small entity	\$86.00

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(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))	\$145.00
By other than a small entity	\$290.00

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(f) Basic fee for filing each design application:

By a small entity (§ 1.27(a))	\$170.00
By other than a small entity	\$340.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a))	\$265.00
By other than a small entity	\$530.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a))	\$43.00
By other than a small entity	\$86.00

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■ 3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:

By a small entity (§ 1.27(a))	\$210.00
By other than a small entity	\$420.00

(3) For reply within third month:

By a small entity (§ 1.27(a))	\$475.00
By other than a small entity	\$950.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a))	\$740.00
By other than a small entity	\$1,480.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a))	\$1,005.00
By other than a small entity	\$2,010.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.27(a))	\$165.00
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By other than a small entity	\$330.00
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(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a))	\$165.00
By other than a small entity	\$330.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a))	\$145.00
By other than a small entity	\$290.00

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00

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(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))	\$665.00
By other than a small entity	\$1,330.00

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(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78)

	\$1,330.00
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■ 4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a))	\$665.00
By other than a small entity	\$1,330.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a))	\$240.00
By other than a small entity	\$480.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a))	\$320.00
By other than a small entity	\$640.00

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■ 5. Section 1.20 is amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

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(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a))	\$455.00
By other than a small entity	\$910.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a))	\$1,045.00
By other than a small entity	\$2,090.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a))	\$1,610.00
By other than a small entity	\$3,220.00

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■ 6. Section 1.492 is amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

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(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))	\$365.00
By other than a small entity	\$730.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))	\$540.00
By other than a small entity	\$1,080.00

(4) * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:

By a small entity (§ 1.27(a))	\$460.00
By other than a small entity	\$920.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))	\$43.00
By other than a small entity	\$86.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))	\$145.00
By other than a small entity	\$290.00

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Dated: July 7, 2003.

James Rogan,

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

[FR Doc. 03-17652 Filed 7-11-03; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[OPP-2003-0138; FRL-7311-6]****Aspergillus flavus AF36; Exemption from the Requirement of a Tolerance**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial antifungal agent *Aspergillus flavus* AF36, a non-aflatoxin-producing member of the naturally-occurring genus of fungi *Aspergillus*, in or on the food/feed commodity cotton, when the pesticide is used according to its label instructions as a prebloom application. The Interregional Research Project Number 4 (IR-4), on behalf of the Arizona Cotton Research and Protection Council, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36 in or on cotton and its food/feed commodities.

DATES: This regulation is effective July 14, 2003. Objections and requests for

hearings, identified by docket ID number OPP-2003-0138, must be received on or before September 12, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the

SUPPLEMENTARY INFORMATION.**FOR FURTHER INFORMATION CONTACT:**

Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this Action Apply to Me?**

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0138. The official public docket is intended to serve as a repository for materials (i.e., documents and other information) submitted to the Agency in connection with this action and/or relied upon by the Agency in