

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

[Docket No.: PTO-P-2018-0031]

RIN 0651-AD31

## Setting and Adjusting Patent Fees During Fiscal Year 2020

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

**ACTION:** Final rule; delay of effective date and final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) published a final rule in the **Federal Register** on August 3, 2020, that includes a fee for patent applications that are not filed in DOCX format, except for design, plant, or provisional applications. This new fee was scheduled to become effective on January 1, 2022. Through this final rule, the USPTO is delaying the effective date of this fee until January 1, 2023.

**DATES:** As of November 22, 2021, the effective date of amendatory instruction 2.i. (affecting 37 CFR 1.16(u)), published at 85 FR 46932 on August 3, 2020, is delayed until January 1, 2023. This final rule is effective January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Mark O. Polutta, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7709; or Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7727. You can also send inquiries by email to [patentpractice@uspto.gov](mailto:patentpractice@uspto.gov).

**SUPPLEMENTARY INFORMATION:** On August 3, 2020, the USPTO published a final rule in the **Federal Register** that included a new fee set forth in § 1.16(u) with an effective date of January 1, 2022. *See* Setting and Adjusting Patent Fees in Fiscal Year 2020, 85 FR 46932. As specified in § 1.16(u), the fee is due for any application filed on or after January 1, 2022, under 35 U.S.C. 111 for an original patent—except design, plant, or provisional applications—where the specification, claims, and/or abstract do not conform to the USPTO requirements for submission in DOCX format. Therefore, the fee is due for nonprovisional utility applications filed under 35 U.S.C. 111, including continuing applications, that are not filed in DOCX format.

The USPTO conducted two pilot programs for filing applications in DOCX format. The eMod Text Pilot Program was conducted between August 2016 and September 2017. The USPTO

then expanded the ability to file patent applications in DOCX format in EFS-Web to all users in September 2017. In 2018, the USPTO launched Patent Center and conducted the Patent Center Text Pilot Program from June 2018 through April 2020. All applicants have been able to file applications in DOCX format in Patent Center since April 2020. Information about Patent Center is available at [www.uspto.gov/patents/apply/patent-center](http://www.uspto.gov/patents/apply/patent-center). In addition, the USPTO has held many discussions with stakeholders to ensure a fair and reasonable transition to the DOCX format.

The USPTO is delaying the effective date of the fee set forth in § 1.16(u) until January 1, 2023. The delay will enable the USPTO to provide enhanced testing of its information technology systems as more users file in DOCX. The delay also will give applicants more time to adjust to filing patent applications in DOCX format.

Applicants are strongly encouraged to begin filing patent applications in DOCX format before the new effective date of the fee. Applicants are also reminded that they can file test submissions through Patent Center training mode to practice filing in DOCX. In addition, prior to the new effective date of the fee, the USPTO plans to provide an additional testing opportunity for applicants to file patent applications in DOCX format to encourage more applicants to acclimate to the process. Details of the opportunity will be announced in a forthcoming notice. Furthermore, applicants who have not yet taken advantage of the DOCX training sessions hosted by the USPTO are strongly encouraged to do so. Information on filing application documents in DOCX and a link to the DOCX training sessions are available at [www.uspto.gov/patents/docx](http://www.uspto.gov/patents/docx).

**Rulemaking Requirements**

*A. Administrative Procedure Act:* This final rule revises the effective date of a final rule published on August 3, 2020, implementing a non-DOCX filing surcharge fee, and is a rule of agency practice and procedure pursuant to 5 U.S.C. 553(b)(A). *See JEM Broad. Co. v. F.C.C.*, 22 F.3d 32 (D.C. Cir. 1994) (“[T]he ‘critical feature’ of the procedural exception [in 5 U.S.C. 553(b)(A)] ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.’” (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980))); *see also Bachow*

*Comm’n Inc. v. F.C.C.*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the change to the effective date of § 1.16(u) in this final rule without prior notice and an opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. The change to the effective date will provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the DOCX format before the new fee is effective. Delay of this provision to provide prior notice and comment procedures is also impracticable because it would allow § 1.16(u) to go into effect before the public is ready for the DOCX format. In addition, the Director finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this rule. Immediate implementation of the delay in effective date of the fee is in the public interest because it will provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the DOCX format before the new fee in § 1.16(u) is effective.

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

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The USPTO has determined that there are no new

requirements for information collection associated with this final rule.

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

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

For the reasons stated in the preamble, the Office amends 37 CFR part 1 as follows:

#### 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(b)(2), unless otherwise noted.

##### § 1.16 [Amended]

■ 2. Amend § 1.16 in paragraph (u) introductory text by removing “January 1, 2022” and adding “January 1, 2023” in its place.

**Andrew Hirshfeld,**

*Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2021–25368 Filed 11–19–21; 8:45 am]

**BILLING CODE 3510–16–P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Parts 1, 73, and 74

[GEN Docket No. 12–268; FCC 21–111; FR ID 56167]

#### Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts several rule updates to reflect the conclusion of the incentive auction and post-incentive auction transition period. First, the Commission adopts a revised Table of Allotments (Table) to reflect changes to full power television channel allotments contained in the 2018 Post-Transition Table of DTV Allotments to codify Commission actions taken over the past several years that modified the DTV channel allotments reflected in the 2018 Table, primarily actions related to the incentive auction and repacking process authorized by the Spectrum Act. The Order also deletes or revises

Commission rules that no longer have any practical effect given the conclusion of the incentive auction and post-incentive auction transition period, or that are otherwise obsolete or irrelevant.

**DATES:** Effective December 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kevin Harding, Media Bureau, at (202) 418–7077 or [Kevin.Harding@fcc.gov](mailto:Kevin.Harding@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Order*, in Gen Docket No. 12–268; FCC 21–111, adopted on October 22, 2021 and released on October 25, 2021. The full text of this document is available for download at <https://docs.fcc.gov/public/attachments/FCC-21-111A1.pdf>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

#### Synopsis

Channel allotments for full power television stations in the United States, its territories, and possessions are listed and codified in 47 CFR part 73 of the Commission’s rules, and applicants for full power television stations may only apply to construct on the channels designated in the codified Table of Allotments and only in the communities listed therein. To accommodate the analog to digital television transition, in 1997 the Commission allotted a paired DTV channel to analog television licensees and permittees. All full power stations terminated analog operations on June 12, 2009 (with minor and temporary exceptions) and thereafter broadcast solely on its allotted digital channel. In 2012, Congress passed the Spectrum Act that required the Commission to reorganize the ultra-high frequency (UHF) band using a two-sided incentive auction that reallocated broadcast television spectrum for mobile broadband services, which included a repacking process that reorganized and assigned new channels to full power and Class A broadcast TV stations that would remain on the air after the auction. In implementing the Spectrum Act, the Commission decided, after seeking comment on the issue, that it would not use a codified Table or rulemaking procedures to implement channel changes resulting from the repacking process, instead determining that the Table would be amended to codify all new full power channel assignments after completion of the repacking and channel substitution process.

As a result of the incentive auction, 145 broadcast stations accepted incentive payments to relinquish their spectrum rights and either go off the air or, in some cases, continue broadcasting through a channel sharing arrangement. In addition, as a result of the repacking process, 987 full power and Class A stations were reassigned to new channels, and twenty-four winning channel sharing bidders filed applications to change their station’s community of license. After the incentive auction, the Media Bureau opened two filing windows for stations that were repacked. These windows permitted certain reassigned stations or band changing stations to seek alternate channels. A total of 49 stations applied for an alternate channel during these two windows and received a construction permit for a new channel.

With the incentive auction and 39-month post-incentive auction transition period completed in July 2019, the Media Bureau lifted a number of filing freezes, effective November 2020, that pertained to the 2018 Table. Specifically, the Media Bureau lifted freezes on:

- Petitions for rulemaking to change channels in the Table of Allotments.
- Petitions for rulemaking for new allotments.
- Petitions for rulemaking to change communities of license.

The Bureau received almost 50 petitions, primarily to substitute a UHF channel for a VHF channel, to change a station’s community of license, or to allot a new channel. The majority have been acted on and the changes effective, and the effective channel or community changes are reflected in the new Table. All the petitions were subject to a Notice of Proposed Rulemaking seeking comment on the proposed rule changes and all were adopted through a Report and Order, pursuant to the Administrative Procedure Act, and published in the **Federal Register**.

*The Post-Transition Table of Allotments.* The Order adopts a Table that reflects all previously approved changes since the last table of allotments update in 2018. Specifically, the new Table reflects the following actions by the Commission, described above: (1) The incentive auction and television repacking process authorized by the Spectrum Act; (2) channel changes requested by stations assigned to new channels as part of the incentive auction repacking process; and (3) changes adopted after lifting the freeze in November 2020 on the filing of rulemaking petitions to change the 2018 Table. In the Order, the Commission found good cause to make these