

contents for § 1.1366-2(a)(5)(i), (a)(5)(ii) and (a)(5)(iii) to read as follows:

§ 1.1366-0 Table of contents.

* * * * *

§ 1.1366-2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) * * *
(5) * * *

(i) *In general.*

(ii) *Exceptions for transfers of stock under section 1041(a).*

(iii) *Examples.*

■ **Par. 9.** Section 1.1366-2(a)(5) is amended by:

■ 1. Redesignating paragraph (a)(5) as (a)(5)(i).

■ 2. Adding a heading and revising the first sentence of paragraph (a)(5)(i).

■ 3. Adding paragraphs (a)(5)(ii) and (a)(5)(iii).

The revisions and additions read as follows:

§ 1.1366-2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) *In general.* * * *

(5) *Nontransferability of losses and deductions—(i) In general.* Except as provided in paragraph (a)(5)(ii) of this section, any loss or deduction disallowed under paragraph (a)(1) of this section is personal to the shareholder and cannot in any manner be transferred to another person. * * *

(ii) *Exceptions for transfers of stock under section 1041(a).* If a shareholder transfers stock of an S corporation after December 31, 2004, in a transfer described in section 1041(a), any loss or deduction with respect to the transferred stock that is disallowed to the transferring shareholder under paragraph (a)(1) of this section shall be treated as incurred by the corporation in the following taxable year with respect to the transferee spouse or former spouse. The amount of any loss or deduction with respect to the stock transferred shall be determined by prorating any losses or deductions disallowed under paragraph (a)(1) of this section for the year of the transfer between the transferor and the spouse or former spouse based on the stock ownership at the beginning of the following taxable year. If a transferor claims a deduction for losses in the taxable year of transfer, then under paragraph (a)(4) of this section, if the transferor's pro rata share of the losses and deductions in the year of transfer exceeds the transferor's basis in stock and the indebtedness of the corporation to the transferor, then the limitation must be allocated among the transferor

spouse's pro rata share of each loss or deduction, including disallowed losses and deductions carried over from the prior year.

(iii) *Examples.* The following examples illustrates the provisions of paragraph (a)(5)(ii) of this section:

Example 1. A owns all 100 shares in X, a calendar year S corporation. For X's taxable year ending December 31, 2006, A has zero basis in the shares and X does not have any indebtedness to A. For the 2006 taxable year, X had \$100 in losses that A cannot use because of the basis limitation in section 1366(d)(1) and that are treated as incurred by the corporation with respect to A in the following taxable year. Halfway through the 2007 taxable year, A transfers 50 shares to B, A's former spouse in a transfer to which section 1041(a) applies. In the 2007 taxable year, X has \$80 in losses. On A's 2007 individual income tax return, A may use the entire \$100 carryover loss from 2006, as well as A's share of the \$80 2007 loss determined under section 1377(a) (\$60), assuming A acquires sufficient basis in the X stock. On B's 2007 individual income tax return, B may use B's share of the \$80 2007 loss determined under section 1377(a) (\$20), assuming B has sufficient basis in the X stock. If any disallowed 2006 loss is disallowed to A under section 1366(d)(1) in 2007, that loss is prorated between A and B based on their stock ownership at the beginning of 2008. On B's 2008 individual income tax return, B may use that loss, assuming B acquires sufficient basis in the X stock. If neither A nor B acquires any basis during the 2007 taxable year, then as of the beginning of 2008, the corporation will be treated as incurring \$50 of loss with respect to A and \$50 of loss with respect to B for the \$100 of disallowed 2006 loss, and the corporation will be treated as incurring \$60 of loss with respect to A and \$20 with respect to B for the \$80 of disallowed 2007 loss.

Example 2. Assume the same facts as *Example 1*, except that during the 2007 taxable year, A acquires \$10 of basis in A's shares in X. For the 2007 taxable year, A may claim a \$10 loss deduction, which represents \$6.25 of the disallowed 2006 loss of \$100 and \$3.75 of A's 2007 loss of \$60. The disallowed 2006 loss is reduced to \$93.75. As of the beginning of 2008, the corporation will be treated as incurring half of the remaining \$93.75 of loss with respect to A and half of that loss with respect to B for the remaining \$93.75 of disallowed 2006 loss, and if B does not acquire any basis during 2007, the corporation will be treated as incurring \$56.25 of loss with respect to A and \$20 with respect to B for the remaining disallowed 2007 loss.

* * * * *

■ **Par. 10.** Section 1.1366-5 is amended by adding a new sentence at the end to read as follows:

§ 1.1366-5 Effective/applicability date.

* * * Sections 1.1366-2(a)(5)(i), (ii) and (iii) are effective on August 14, 2008.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 11.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 12.** Section 602.101, paragraph (b) is amended by adding the entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|----------------------------------------------------|-------------------------|
| * * * * * | * * * * * |
| 1.1361-1 | 1545-2114 |
| * * * * * | * * * * * |

Sherri L. Brown,

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 5, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-18782 Filed 8-13-08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2008-0789]

RIN 1625-AA08

Special Local Regulation; Cape Fear Dragon Boat Festival, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Cape Fear Dragon Boat Festival will take place on the Cape Fear River in Wilmington, North Carolina on September 27, 2008. This event will consist of four 45 foot long Dragon boats racing a 250 meter course.

DATES: This rule is effective from 8 a.m. to 6 p.m. on September 27, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0789 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of

Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and at Commander, Coast Guard Sector North Carolina, 2301 East Fort Macon Rd., Atlantic Beach, North Carolina 28512 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call the Marine Event Coordinator at Coast Guard Sector North Carolina, C. D. Humphrey at (252) 247-4570. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because a delay in publication would be contrary to the public interest since immediate action is needed to protect the maritime public during the event. In order to ensure the safety of life on navigable waters during this event, the Coast Guard is establishing a special local regulation. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction and on scene Coast Guard and Coast Guard Auxiliary vessels will also provide additional notice to mariners.

Background and Purpose

On September 27, 2008, the Cape Fear Dragon Boat Club will sponsor the "Cape Fear River Dragon Boat Festival." This festival will include four 45 foot long Dragon Boats racing a straight line course 250 meters in length. The races will take place on the Cape Fear River in front of the Wilmington River Walk, approximately 0.5 nautical miles north of the Cape Fear River Memorial Bridge. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict

vessel traffic in the event area during the races.

Discussion of Rule

The Coast Guard is establishing a special local regulation on specified waters of the Cape Fear River, Wilmington, North Carolina. The special local regulation includes all waters from shoreline to shoreline, bound by the following position latitude 34°14'24" N, longitude 77°57'08" W thence south along the east bank of the river to latitude 34°14'00" N, longitude 77°56'58" W, thence west to latitude 34°14'00" N, longitude 77°57'05" W, thence north along the west bank to latitude 34°14'24" N, longitude 77°57'21" W, thence east back to the point of origin. All coordinates reference Datum NAD 1983. The special local regulation will be in effect from 8 a.m. to 6 p.m. on September 27, 2008. The effect will be to restrict general navigation in the regulated area during the races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting a portion of the Cape Fear River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so

mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on the maritime public yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Cape Fear River from 8 a.m. to 6 p.m. on September 27, 2008. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons:

- (i) Although the regulated area will apply to the section of the Cape Fear River approximately 0.5 nautical miles north of the Cape Fear Memorial Bridge, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander;
- (ii) the Patrol Commander will allow non-participating vessels to transit the event area between races;
- (iii) the minimal size of the zone; and
- (iv) before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them 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 by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 will 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

We have 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the

Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2-1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Checklist" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

■ Accordingly, the Coast Guard temporarily amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T-05-0789 to read as follows:

§ 100.35T-05-0789 Special Local Regulation, Cape Fear Dragon Boat Festival.

(a) *Regulated area.* All waters of the Cape Fear River, adjacent to Wilmington, North Carolina, approximately 0.5 nautical miles north of the Cape Fear Memorial Bridge, starting from position latitude 34°14'24" N, longitude 77°57'08" W thence south along the east bank of the river to latitude 34°14'00" N, longitude 77°56'58" W, thence west to latitude 34°14'00" N, longitude 77°57'05" W, thence north along the west bank to latitude 34°14'24" N, longitude 77°57'21" W, thence east back to the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the "Cape Fear Dragon Boat Festival" under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized

by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be effective from 8 a.m. to 6 p.m. on September 27, 2008.

Dated: August 4, 2008.

F.M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard, District Five Commander.

[FR Doc. E8-18789 Filed 8-13-08; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. PTO-C02008-0004]

RIN 0651-AC21

Revision of Patent Fees for Fiscal Year 2009

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is adjusting certain patent fee amounts for fiscal year 2009 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business. In addition, the Office is correcting the addresses for maintenance fee payments and correspondence, and deposit account replenishments.

DATES: *Effective Date:* October 2, 2008.

FOR FURTHER INFORMATION CONTACT:

Walter Schlueter by e-mail at Walter.Schlueter@uspto.gov, by telephone at (571) 272-6299, or by fax at (571) 273-6299.

SUPPLEMENTARY INFORMATION: The Office is adjusting certain patent fee amounts in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act (Pub. L. 108-447,

118 Stat. 2809 (2004)). In addition, this final rule changes the addresses for maintenance fee payments and correspondence, and deposit account replenishments. The addresses are being changed to reflect the current addresses that should be used.

Background:

Statutory Provisions: Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103-465, § 532(a)(2), 108 Stat. 4809, 4985 (1994)), and section 4506 of the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501, 1501A-565 (1999)). 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(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(f) of title 35, United States Code, provides that fee amounts 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(g) of title 35, United States Code, provides that new fee amounts established by the Director under 35 U.S.C. 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

The fiscal year 2005 Consolidated Appropriations Act (section 801 of Division B) provided that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. See Public Law 108-447, 118 Stat. 2809, 2924-30 (2004). The patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act were extended through September 30, 2008, by subsequent legislation. See Public Law 110-161, 121 Stat. 1844 (2007), Public

Law 110-149, 121 Stat. 1819 (2007), Public Law 110-137, 121 Stat. 1454 (2007), Public Law 110-116, 121 Stat. 1295 (2007), Public Law 110-92, 121 Stat. 989 (2007), Public Law 110-5, 121 Stat. 8 (2007), Public Law 109-383, 120 Stat. 2678 (2006), Public Law 109-369, 120 Stat. 2642 (2006), and Public Law 109-289, 120 Stat. 1257 (2006).

Legislation is pending before Congress which, if enacted, would extend the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through fiscal year 2009 (through September 30, 2009). See S. 3182, 110th Cong. (2008).

Fee Adjustment Level: The patent statutory fee amounts established by 35 U.S.C. 41(a) and (b) are adjusted to reflect fluctuations occurring during the twelve-month period from October 1, 2007, through September 30, 2008, correspondingly, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised that in calculating these fluctuations, the Office should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, the Office bases this fee adjustment on the Administration's CPI-U for the twelve-month period ending September 30, 2008.

The Office published a notice proposing to adjust the patent fees charged under 35 U.S.C. 41(a), (b), and (d)(1) for fiscal year 2009 to reflect fluctuations in the CPI. See *Revision of Patent Fees for Fiscal Year 2009*, 73 FR 31655 (June 3, 2008), 1331 *Off. Gaz. Pat. Office* 97 (June 24, 2008) (proposed rule). While the proposed rule specified fee amounts based upon a projected CPI-U of 4.0 percent, the proposed rule indicated that the fee amounts adopted in a final rule may be based upon the actual fluctuations in the CPI-U as determined by the Secretary of Labor. See *Revision of Patent Fees for Fiscal Year 2009*, 73 FR at 31656, 1331-4 *Off. Gaz. Pat. Office* at 98. After the date the proposed rule was published, the projected CPI-U for the twelve-month period prior to the enactment of the fee amount adjustments has increased from 4.0 percent to 5.0 percent. Thus, this final rule adjusts the patent fees charged under 35 U.S.C. 41(a), (b), and (d)(1) by 5.0 percent based upon the current projected fluctuation in the CPI-U.

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