

noise and fragments from such a detonation.

**DATES:** Effective April 26, 2023.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or via email at [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** In response to a request by the United States Air Force (USAF), Pacific Air Command (PACAF), and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers (Corps) is amending its restricted area regulations to establish a permanent restricted area in the navigable waters of Knik Arm adjacent to JBER, Alaska. The restricted area will allow the USAF PACAF 673rd Air Base Wing to prevent all vessels and individuals from entering the explosive arc area of the Six Mile MSA at JBER at all times, except for authorized vessels and individuals engaged in support of military training and management activities. This restricted area will be in place as a precautionary measure to protect the public from entering or being within the explosive arc during an inadvertent detonation, and encountering hazardous noise and fragments from such a detonation.

The proposed rule was published in the **Federal Register** on July 13, 2022 (87 FR 41637). The *regulations.gov* docket number was COE-2022-0005. Concurrently, a local public notice for the proposed restricted area was sent out from the Alaska District. No comments were received in response to the proposed rule.

#### Procedural Requirements

a. *Regulatory Planning and Review.* This final rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The restricted area is located in Knik Arm, adjacent to JBER, within the explosive arc area of the Six Mile MSA and the restricted area is necessary to protect public safety. Small entities can continue to utilize navigable waters outside of the restricted area. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared for the establishment of this restricted area. The Corps has concluded that the establishment of the restricted area will not have a significant impact to the quality of the human environment and, therefore, preparation of an EIS is not required. The final EA and Finding of No Significant Impact may be reviewed at the Alaska District Office, 2204 3rd Street, JBER, Alaska 99506.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found that under Section 203 of the Act, small governments will not be significantly and uniquely affected by this rulemaking.

e. *Congressional Review Act.* The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, including a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1303 to read as follows:

**§ 334.1303 Navigable waters of Knik Arm within the explosive arc of the Six Mile Munitions Storage Area off the northeastern side of Joint Base Elmendorf-Richardson; restricted area.**

(a) *The area.* The restricted area consists of the waters with an area defined as beginning at a point on shore at latitude 61°17'35" N, longitude 149°50'3" W; thence northward in an arc to the mid-arc point at latitude 61°18'19" N, longitude 149°50'6" W; continuing northward in an arc to the end point on shore at latitude 61°18'36" N, longitude 149°49'1" W. The datum for these coordinates is NAD-83.

(b) *The regulation.* The restricted area described in paragraph (a) of this section is permanently closed for public use at all times. No persons, watercrafts, or vessels shall enter, or remain, in the area except for those authorized by the enforcing agency.

(c) *Enforcement.* This regulation will be enforced by USAF PACAF 673rd Air Base Wing.

**Thomas P. Smith,**

*Chief, Operations and Regulatory Division.*

[FR Doc. 2023-06242 Filed 3-24-23; 8:45 am]

BILLING CODE 3720-58-P

## 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 the DOCX format, except for design, plant, or provisional applications. The effective date of this new fee was most recently delayed in a

final rule published in the **Federal Register** on December 29, 2022 and was scheduled to become effective on April 3, 2023. Through this final rule, the USPTO is delaying the effective date of this fee until June 30, 2023.

**DATES:** This final rule is effective June 30, 2023. As of March 27, 2023, the effective date of amendatory instruction 2.i. (affecting 37 CFR 1.16(u)), published at 85 FR 46932 on August 3, 2020, and delayed at 86 FR 66192, November 22, 2021, and at 87 FR 80073, December 29, 2022, and as further amended at 88 FR 17147, March 22, 2023, is further delayed until June 30, 2023. The change to 37 CFR 1.16(u) in amendatory instruction 2.i., published at 85 FR 46932 on August 3, 2020, is applicable only to nonprovisional utility applications filed under 35 U.S.C. 111 for an original patent on or after June 30, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Mark O. Polutta, Senior Legal Advisor, Office of Patent Legal Administration, 571-272-7709; or Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, 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 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 the 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 the DOCX format.

The USPTO conducted two pilot programs for filing applications in the 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 the DOCX format in EFS-Web to all users in September 2017. In 2018, the USPTO launched the 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 the DOCX format in the Patent Center since April 2020. Information about the Patent Center is available at [www.uspto.gov/PatentCenter](http://www.uspto.gov/PatentCenter). The USPTO continues to

hold many discussions and training sessions 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 June 30, 2023. The further delay will give applicants more time to adjust to filing patent applications in the DOCX format.

Applicants are strongly encouraged to begin filing patent applications in the DOCX format before the new effective date of the fee. Applicants are also reminded that they can file test submissions through the Patent Center training mode to practice filing in DOCX. 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 Commc’ns 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). 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. 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. In § 1.16, amend paragraph (u) introductory text by removing “April 3,

2023” and adding “June 30, 2023” in its place.

**Katherine K. Vidal,**

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

[FR Doc. 2023-06289 Filed 3-24-23; 8:45 am]

**BILLING CODE 3510-16-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2022-0612; FRL-10300-02-R8]

### Approval and Promulgation of Implementation Plans; Colorado; Revisions to Code of Colorado Regulations; Regulation Number 3

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the majority of revisions to Regulation Number 3 of the Code of Colorado Regulations (CCR) submitted to the EPA by the State of Colorado on March 22, 2021. The revisions that the EPA is finalizing approval on include updated references to other sections of the CCR that were moved to a new location, as well as changes to Regulation 3 to reflect digitalization of public notice and comment procedures. The EPA is not finalizing approval of revisions that reflect changes made by Colorado to update dates of incorporation by reference (IBR) of sections of the Code of Federal Regulations (CFR) for the reasons outlined in section I of the preamble of this final rule. The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** This rule is effective on April 26, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2022-0612. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-6709, email address: [lang.matthew@epa.gov](mailto:lang.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

### I. Background

The background for this action is discussed in detail in our November 7, 2022 proposal.<sup>1</sup> In that document we proposed to approve a State Implementation Plan (SIP) revision submitted by Colorado which included changes to Regulation 3, Parts A, B, and C. The revisions to Regulation 3, Part A were originally intended to be finalized as an update to the date of IBR from November 29, 2013 to December 11, 2014 of Global Warming Potentials as codified in 40 CFR part 98, subpart A, table A-1. This date of IBR was meant to be added in both sections I.B.10 and I.B.44.b(i) of Part A. However, it was determined that the final version of Regulation 3, Part A, which was inserted into the CCR, only showed the removal of the November 29, 2013 date without its necessary replacement with the updated date of IBR. The EPA is not able to approve the revised date into the SIP since it was not formally included in Colorado’s regulations. Colorado is currently going through its state rulemaking process to add the revised date to section I.B.10 of Part A. Therefore, in order to prevent the deletion of the existing date of IBR without having a replacement date, the EPA will not take final action on the revisions to Regulation 3, Part A, section I.B.10 in this final rule. Further, while the revised date was properly included in the final version of section I.B.44 of Part A that was inserted into the CCR, the EPA will also not take final action on the revisions to section I.B.44 in this final rule in order to prevent conflicting dates of IBR between sections I.B.10 and I.B.44. Once Colorado has submitted revisions showing the revised date in section I.B.10 of Part A as having been formally inserted into the CCR, then the EPA will propose to take action on the revisions that update the dates of IBR in both sections I.B.10 and I.B.44.

In this action, the revisions to Regulation 3, Parts B and D are being

<sup>1</sup> Approval and Promulgation of Implementation Plans; Colorado; Revisions to Colorado Code of Regulations; Regulation Number 3, 87 FR 66985 (November 7, 2022).

finalized as proposed in our November 7, 2022 proposal. In that rule, we proposed to approve those revisions to Regulation 3, Parts B and D because they were prepared in accordance with the requirements in section 110 of the CAA.

The EPA held a 30-day comment period on the proposed rulemaking beginning on November 7, 2022 and closing on December 7, 2022. We received a comment on the proposal from one commenter. Our comment summary and response to the comment is below.

### II. Response to Comments

*Comment:* Commenter stated generally that any grammatical errors in Regulation 3, Part B should be corrected for clarity and offered their support of the digital availability of permit application materials.

*Response:* We thank the commenter and acknowledge their comments. We are not aware of, nor did the commenter specifically highlight, any grammatical errors in the submitted revisions to Regulation 3, Part B. Moreso, we are not aware of any grammatical errors that would change the meaning or substance of the submitted revisions. Therefore, the EPA is finalizing the proposed revisions to Regulation 3, Part B as proposed.

### III. Final Action

We are approving revisions to Regulation 3, Parts B, sections III.C, III.C.1.e, III.C.4, and III.D.1 as submitted by the State of Colorado on March 22, 2021. We are also approving revisions to Regulation 3, Part D, sections II.A.11.a(viii), IV, IV.A, IV.A.1, and IV.A.7 submitted by the State of Colorado on March 22, 2021. We are not finalizing approval of revisions to Regulation 3, Part A, sections I.B.10 and I.B.44.b(i) in this action as explained in section I of this preamble. The EPA intends to address Regulation 3, Part A, sections I.B.10 and I.B.44.b(i) in a future and separate rulemaking action.

### IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes IBR. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the IBR of Regulation 3, Parts B and D, which include updated references to other sections of the CCR and changes to Regulation 3 to reflect digitalization of public notice and comment procedures, as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA