

(16) Follow Brewer Road south approximately 1.8 miles to the intersection with U.S. Route 20/State Route 5;

(17) At the intersection of Brewer Road and U.S. Route 20/State Route 5, continue south approximately 0.1 miles, following an imaginary line to the south bank of the Seneca River;

(18) Follow the south bank of the Seneca River east approximately 0.1 miles to the mouth of the Kendig Creek;

(19) Continue south following the Kendig Creek approximately 3.3 miles to the Creek's intersection with Yellow Tavern Road on the Geneva South, N.Y. map;

(20) Follow Yellow Tavern Road west approximately 0.1 miles, to its intersection with Post Road;

(21) Follow Post Road south approximately 1.4 miles to its junction with State Route 96A;

(22) Then follow State Route 96A south 17.5 miles across the Dresden, N.Y., Ovid, N.Y., and Lodi, N.Y. maps to the village of Lodi;

(23) In Lodi, continue south where State Route 96A changes to S. Main Street and then changes to an unnamed medium duty road (known locally as Center Road-Country Road 137);

(24) Continue south on Center Road-Country Road 137 for approximately 4.9 miles to the Seneca/Schuyler County Line;

(25) Then proceed west 0.5 miles on the county line to Logan Road;

(26) Then proceed 8.6 miles south on Logan Road to State Route 227 (identified by the petitioner as State Route 79) on the Burdette, N.Y. map;

(27) Then proceed approximately 800 feet east on Route 227 to Skyline Drive;

(28) Then proceed south on Skyline Drive for 2.5 miles to an unnamed stream;

(29) Follow the unnamed stream west approximately 0.6 miles to its intersection with State Route 414; and

(30) Continue west on State Route 414 approximately 0.5 miles to the beginning point on the bridge over the New York State Barge Canal.

Dated: May 14, 2003.

Arthur J. Libertucci,
Administrator.

Approved: June 4, 2003.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).

[FR Doc. 03-16703 Filed 7-2-03; 8:45 am]

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Filing Appeals to Regional Directors' Refusal To Issue, or Reissue, Complaint

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The General Counsel of the National Labor Relations Board is amending regulations concerning the procedures for filing an appeal to the General Counsel from a Regional Director's dismissal of an unfair labor practice charge. The revisions, which reflect the actual practice under existing regulations, relieve persons seeking review from being required to file a complete and separate statement apart from the Appeal Form (Form 4767) to perfect an appeal before the Office of Appeals.

DATES: Effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, 202-273-1067.

SUPPLEMENTARY INFORMATION: Section 102.19(a) of the National Labor Relations Board's rules provides that if a Regional Director declines to issue a complaint, or after withdrawing a complaint refuses to reissue it, the person making the charge may obtain review of the action by filing an appeal (or seeking an extension of time in which to file an appeal) within 14 days of being notified in writing by the Regional Director of the reasons for the decision. Significantly, Section 102.19(a) instructed that the appeal "shall" contain a complete statement setting forth the facts and reasons upon which it is based.

Despite the seemingly mandatory language of Section 102.19(a), the Office of Appeals has, for many years, accepted the "Appeal" form (Form 4767) attached to the Regional Director's dismissal letter as an appeal and sent acknowledgement to the parties based on a timely filing of such form. The policy was developed in response to the reality that many individual appellants do not have the language skills to perfect a more traditional appeal. Quite often, individuals without benefit of counsel have merely sent the form as indicative of an intent to appeal. These individuals apparently believe that they have perfected an appeal by sending in the form officially attached to the Region's dismissal letter. Since seeking review is the last recourse for a charging party

whose charge has been dismissed, the Office of Appeals has maintained a policy that reflects a liberal exercise of discretion in order to afford appeal rights to the broadest population. Although an appeal is more effective if the party seeking review explains the basis for the disagreement with the Region's disposition, failure to include such a statement has not been considered by the Office of Appeals a basis for rejecting an otherwise timely filed appeal. In *Grand Rapids Gravel Company, JD-114-02* (issued November 22, 2002),¹ an administrative law judge specifically rejected the assumption "that the filing of a notice of appeal is legally tantamount to the filing of the actual appeal." Skip op. p.20. In order to avoid future challenges concerning the viability of an appeal based only on a notice, the rules and regulations and related forms are being revised to reflect the actual practice. Because of the obvious utility of such a statement, the General Counsel believes most charging parties will continue to submit them, even if it is not mandatory. Once a case is appealed, the same level of review is afforded despite the brevity of an appeal. Because the current practice is fairer to individual, unrepresented charging parties, the language applicable to the procedures of filing an appeal has been revised to reflect that practice and to make the public aware of the actual practice.

For these reasons, the General Counsel is eliminating the requirement that a complete and separate statement must be submitted in order to constitute an appeal from the Regional Director's refusal to issue, or reissue, a complaint.

Administrative Procedure Act

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish for comment under Section 553 of the Administrative Procedure Act (5.U.S.C. 553).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes

¹ Cases No. 7-CA-44094 and 7-CA-44211. The Board adopted the decision on February 27, 2003, without exceptions being filed.

merely codify the actual practice under the existing rules.

Small Business Regulatory Enforcement Fairness Act

Because the rule relates to Agency procedure and practice and merely modifies the agency's existing filing procedure, the General Counsel has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

Paperwork Reduction Act

This part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). sections 102.143 through 102.155 also issued under Section 5034(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.19(a) is revised to read as follows:

§ 102.19 Appeal to the general counsel from refusal to issue or reissue.

(a) If, after the charge has been filed, the Regional Director declines to issue a complaint or, having withdrawn a complaint pursuant to § 102.18, refuses to reissue it, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing the "Appeal Form" with the General Counsel in Washington, DC, and filing a copy of the "Appeal Form" with the Regional Director, within 14 days from the service of the notice of such refusal to issue or reissue by the Regional Director, except as a shorter period is provided by § 102.81. If an appeal is taken the person doing so should notify all other parties of his action, but any failure to give such notice shall not affect the validity of the appeal. The person may also file a statement setting

forth the facts and reasons upon which the appeal is based. If such a statement is timely filed, the separate "Appeal Form" need not be served. A request for extension of time to file an appeal shall be in writing and be received by the office of General Counsel, and a copy of such request filed with the Regional Director, prior to the expiration of the filing period. Copies of the acknowledgement of the filing of an appeal and of any ruling on a request for an extension of time for filing the appeal shall be served on all parties. Consideration of an appeal untimely filed is within the discretion of the General Counsel upon good cause shown.

* * * * *

Dated: Washington, DC, June 25, 2003.

By direction of the Board.

Lester A. Heltzer,

Executive Secretary.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 2001-1 CARP DSTR2A]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002 through December 31, 2007.

DATES: *Effective Date:* August 4, 2003.

Applicability Date: The regulations apply to the license period January 1, 2002 through December 31, 2007.

FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives

a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services to make digital transmissions of a sound recording under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by preexisting services, the Copyright Office published a notice in the **Federal Register** on January 9, 2001. 66 FR 1700 (January 9, 2001). This notice initiated a six-month negotiation period the purpose of which was to provide an opportunity for interested parties to set rates and terms for use of the section 114 license as it applied to both the preexisting subscription services and the preexisting satellite digital audio radio services. Unfortunately, no agreement was reached by the end of that period and petitions were filed requesting that the Librarian of Congress convene a Copyright Arbitration Royalty Panel ("CARP") to determine the rates and terms for both categories of preexisting services.

On January 17, 2003, the Copyright Office received notification of a settlement among the parties contesting rates and terms for preexisting services and a joint petition requesting the Librarian to publish their proposed rates and terms in accordance with § 251.63(b) of the CARP rules, 37 CFR, which provides that—

[i]n the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding. 37 CFR 251.63(b).

On January 30, 2003, the Copyright Office published a Notice of Proposed Rulemaking ("NPRM") in the **Federal Register** announcing the settlement and proposing the rates and terms for preexisting services. 68 FR 4744 (January 30, 2003). The NPRM specified that—