

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507, *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 26, 2007.

Len Meier,

Acting Regional Director, Mid-Continent Region.

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BILLING CODE 4310-05-P

LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 201**

[Docket No. RM 2008-1]

Recordation of Notices of Termination of Transfers and Licenses; clarifications

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Copyright Office is proposing to make clarifications to its regulations governing the recordation of notices of termination and certain related provisions. This notice seeks public comment on the proposed amendments, which would communicate the Office's practices as to notices of termination that are untimely filed; clarify the fact that a notice of termination is not legally sufficient simply because it has been recorded; update the legibility requirements for all recorded documents, including notices of termination; make minor explanatory edits to the fee schedule for multiple titles within a document (adding notices of termination as an example); and create a new mailing address to which notices of termination should be sent.

DATES: Written comments are due February 22, 2008. Reply comments are due March 24, 2008.

ADDRESSES: If hand delivered by a private party, an original and five copies of any comment should be brought to Room LM-401 of the James Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, First and Independence Avenue, SE, Washington, DC 20559-6000.

If hand delivered by a commercial courier, an original and five copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE, Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be

addressed as follows: Office of the General Counsel, U.S. Copyright Office, Room LM-403, James Madison Memorial Building, First and Independence Avenue, SE, Washington, DC 20559-6000.

If sent by mail, an original and five copies of any comment should be addressed to: Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service or DHL, due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone (202) 707-8380. Fax (202) 707-8366.

SUPPLEMENTARY INFORMATION:**Background**

In addition to its legal, regulatory and policy responsibilities, the Copyright Office is an office of public record which receives and records documents that pertain to copyright. Such documents include notices of termination, which may be served by authors (and some heirs of authors) to extinguish certain exclusive or nonexclusive grants of transfers or licenses of copyright or the divisible rights thereunder.

The termination provisions are set forth in Sections 304(c), 304(d) and 203 of the 1976 Copyright Act, Title 17 of the United States Code. The provisions have an equitable function; they exist to allow authors or their heirs a second opportunity to share in the economic success of their works. The House Report accompanying the 1976 Copyright Act states that the provisions are "needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited." H.R. Rep. No. 94-1476, at 124 (1976). The law provides for termination according to the time table and prescription set forth in each respective section, including mandatory, timely recordation with the Copyright Office.¹

Section 304(c) governs any work in which the copyright was subsisting in its first or renewal term as of January 1, 1978, and provides for termination of a grant at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured. Section 304(d) provides a termination right for a subset of works for which the termination right

¹The provisions exclude grants made by will and works for hire.

expired on or before the effective date (October 27, 1998) of the "Sonny Bono Copyright Term Extension Act," which extended the copyright term by 20 years. Section 304(d) allows an author, or certain heirs and successors, to terminate the grant of a transfer or license of the renewal copyright or any right under it, at anytime during a five year period beginning at the end of 75 years from the date copyright was originally secured.² Section 203 governs works created on or after January 1, 1978. The author, or certain heirs and successors, may terminate any grant made on or after this date at any time during a period of five years beginning at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier. In contrast to the provisions of Section 304, termination under Section 203 is possible only if the author executed the grant.

The termination provisions are not self-executing. On the contrary, they are formalistic and include several conditions precedent. For example, the provisions require that the author (or if the author is deceased, the author's widow, widower, children or other heirs specified by statute) serve the notice of termination in writing on a grantee or the grantee's successor in title prior to the effective date of termination which, as referenced above, must fall within a five-year window prescribed by the statutory section. Moreover, the notice must state the effective date of the termination and must be served not less than two or more than ten years before the effective date. And, as a condition of the termination taking effect, a copy of the notice of termination must be recorded with the Copyright Office prior to the effective date of termination. 17 U.S.C. 304(c)(4); 304(d)(1); 203(a)(4).

The process and other formal requirements for submitting a copy of the notice to the Copyright Office for recordation are prescribed by regulation and addressed herein. In short, the regulations require the recording party to submit a complete and exact duplicate of the notice that he or she served on the grantee or grantee's successor-in-title. The copy must include either actual signatures or reproductions of signatures, a statement setting forth the date the notice was served, an indication of the manner of service, and submission of the appropriate filing fee. The Copyright

Office reviews for each of the above-referenced elements and may refuse recordation in the event any one element is missing. 37 CFR 201.10(f).

The requirements of the Copyright Office with respect to document legibility, fee schedule and mailing address are also prescribed by regulation and addressed herein. 37 CFR 201.4(c)(3); 201.3; 201.1.

Summary of Proposed Amendments Timeliness of Notices of Termination

Under the law, the failure to file a notice of termination in a timely manner is a fatal mistake that cannot be construed as an immaterial, harmless error. 37 CFR 201.10(e). Thus, before recording a notice, the Copyright Office looks for confirmation that the relevant statutory deadlines have been met. Because the Office's practice in this regard is not currently stated in the regulations, the proposed amendments would introduce a new, explanatory paragraph.

In summary, if in the judgment of the Office the document is untimely, the Office will take one of two actions. If the notice is premature, the Office will return it with an explanation, so that it may be resubmitted within the proper statutory window. On the other hand, if the document is late, the Office will offer only to record and index the document as a "document pertaining to copyright." 17 U.S.C. 205(a); 37 CFR 201.4(a)(2). It will not accept the document as a "notice of termination," meaning that it will not be specially indexed as such. Whether such general recordation by the Copyright Office will be sufficient in any particular instance to effect termination as a matter of law is an issue that only the courts may resolve.

Recordation as Distinguished from Legal Sufficiency

By way of clarification, the fact that the Office has recorded a document as a notice of termination does not necessarily mean that the notice is legally sufficient to effect termination. In fact, recordation is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met. This denotation already appears in the regulations, but the proposed amendment would rephrase the existing language to provide greater clarity.

Legibility of Notices of Termination and Other Documents Pertaining to Copyright

With regard to legibility (an issue that affects not only notices of termination but all documents submitted for

recordation), the amendments would make a change that is relatively minor but which would nonetheless underscore the mission of the Copyright Office as an office of public record. The current legibility requirement has two prongs, one that applies to the content of the original document and one that applies to its technical quality: "a document must be legible and capable of being reproduced in legible microform copies." (Emphasis added.) 37 CFR 201.4(c)(3).

No change is proposed as to the first prong. When the Office records a document, it creates an index for the public that reflects the nature of the document and is searchable by certain key information contained in the document, e.g. the title of a work. If the content is indecipherable or difficult to read, the Office cannot create an accurate index. In addition, with respect to copyrighted works, a document that is recorded in the Office provides constructive notice as to the facts stated in the recorded document, provided that identification of the work is such that, after the document is indexed by the Office, it would be reasonably revealed under the title or registration number of the work; and provided that registration has been made for the work. 17 U.S.C. 205(c). Again, if the facts of the document are indecipherable, there can be no accurate indexing, thus preventing the possibility of constructive notice, nor will an illegible document prevail in the event of a conflicting claim of transfer. 17 U.S.C. 205(d).

As to the second prong, the amendment would make a small change by deleting the outdated reference to "microform copies" and replacing it with a broader, more flexible standard. If a document is faded, faint, or similarly difficult to see, the Office may be unable to successfully reproduce it for the public record. Thus, the amended regulation would require that documents be "legible and *capable of being imaged or otherwise reproduced in legible copies by the technology employed by the Office at the time of submission.*" (Emphasis added.)

Fee Requirements for Notices of Termination

With respect to fees, it is the Copyright Office's experience that parties who submit notices of termination for recordation sometimes miscalculate the amount due, especially where grants of rights in multiple works are being terminated by virtue of one document. The proposed amendment would add the notice of termination as an express example in the schedule of

²The provisions do not apply if the termination right under Section 304(c) was previously exercised.

fees under section 201.3(c)(16), specifying that the basic fee for recordation of a notice of termination containing a single title is \$95, and the fee for recordation of a notice of termination containing more than one title is an additional \$25 per group of 10 titles.

Mailing Address for Notices of Termination

Finally, because notices of termination are time-sensitive, a delay in processing may have serious consequences. The proposed amendment would create a special post office box at the Copyright Office, from which notices of termination could more easily be sorted and routed for recordation. This revision would also delete the address for the Copyright Arbitration Royalty Panel (CARP). All CARP proceedings were terminated in 2007 and the reference is no longer valid. 72 FR 45071 (August 10, 2007).

Conclusion

We hereby seek comment from the public as to the issues identified herein associated with certain requirements of the Copyright Office under Sections 201.1, 201.3, 201.4 and 201.10 of Chapter 37 of the Code of Federal Regulations.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes to amend part 201 of title 37 of the Code of Federal Regulations as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Revise § 201.1(b)(2) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(b) * * *

(2) *Notices of Termination.* Notices of termination submitted for recordation should be mailed to Copyright Office, Notices of Termination, P.O. Box 71537, Washington, DC 20024-1537.

§ 201.3 [Amended]

3. Amend § 201.3(c)(16) by removing the phrase, "Recordation of document, including a Notice of Intention to Enforce (NIE)(single title)," and adding in its place the phrase "Recordation of document (single title), e.g. a Notice of

Termination or a Notice of Intent to Enforce (NIE)".

4. Revise § 201.4(c)(3) to read as follows:

§ 201.4 Recordation of transfers and certain other documents.

* * * * *

(c) * * *

(3) To be recordable, the document must be legible and capable of being imaged or otherwise reproduced in legible copies by the technology employed by the Office at the time of submission.

* * * * *

5. Section 201.10(f) is amended as follows:

a. By adding paragraph (f)(1)(iii);
b. By redesignating paragraph (f)(4) as (f)(5);

c. By adding paragraph (f)(4);
d. By revising redesignated paragraph (f)(5) and

e. By adding paragraph (f)(6).

The revisions and additions to § 201.10 read as follows:

§ 201.10 Notices of termination of transfers and licenses.

* * * * *

(f) * * *

(1) * * *

(iii) The copy submitted for recordation must be legible per the requirements of § 201.4(c)(3) of this part.

* * * * *

(4) Notwithstanding anything to the contrary in this section, the Copyright Office reserves the right to refuse recordation of a notice of termination if, in the judgment of the Copyright Office, such notice of termination is untimely. If a document is submitted as a notice of termination after the statutory deadline has expired, the Office will offer to record the document as a "document pertaining to copyright" pursuant to § 201.4(c)(3) of this part, but the Office will not index the document as a notice of termination. Whether a document so recorded is sufficient in any instance to effect termination as a matter of law shall be determined by a court of competent jurisdiction.

(5) The mere fact that a notice of termination has been recorded does not mean that it is legally sufficient. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met.

(6) Notices of termination should be submitted to the address specified in § 201.1(b)(2) of this part.

Dated: January 14, 2008

Marybeth Peters,

Register of Copyrights.

[FR Doc. E8-888 Filed 1-22-08; 8:45 am]

BILLING CODE 1410-30-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R09-OAR-2007-1150; FRL-8518-9]

Disapproval of Plan of Nevada; Clean Air Mercury Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for action proposed on December 13, 2007 (72 FR 70812) concerning disapproval of the Nevada State Plan to address the requirements of EPA's Clean Air Mercury Rule (CAMR).

DATES: Any comments on this proposal must arrive by March 13, 2008.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2007-1150, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.