FOR FURTHER INFORMATION CONTACT: Anna Chauvet, Assistant General Counsel, by email at achau@loc.gov, or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: Section 709 of the Copyright Act (title 17, United States Code) addresses the situation where the “general disruption or suspension of postal or other transportation or communications services” prevents the timely receipt by the Office of “a deposit, application, fee, or any other material.” In such situations, and “on the basis of such evidence as the Register may by regulation require,” the Register of Copyrights may deem the receipt of such material to be timely, so long as it is actually received “within one month after the date on which the Register determines that the disruption or suspension of such services has terminated.” 17 U.S.C. 709. In addition, section 702 of the Copyright Act authorizes the Register to “establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title.” 17 U.S.C. 702. The Copyright Office’s regulations implementing section 709 can be found in 37 CFR 201.8. When the U.S. Copyright Office first promulgated these regulations, many of the Office’s current electronic systems did not exist, and the regulations were not amended to specifically address outages of such systems. In 2015, the Office’s online system used to register initial copyright claims was disrupted for over a week due to an equipment failure, highlighting the need for the Office to update its regulations to address the effect of a disruption or suspension of any Copyright Office electronic system on the Office’s receipt of applications, fees, deposits, or other materials, and the assignment of a constructive date of receipt to such materials. The proposed rule would also make various revisions to the existing portions of the rule for usability and readability. In addition, the proposed rule would specify how the Office will assign effective dates of receipt when a specific submission is lost in the absence of a declaration of disruption, as might occur during the security screening procedures used for mail that is delivered to the Office.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on April 3, 2017.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at https://copyright.gov/rulemaking/outages. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

In addition, certain filings may be submitted to the Office only in electronic form. See 37 CFR 201.38 (online service providers must designate an agent to receive notifications of claimed copyright infringement through the Copyright Office’s Web site).

The proposed rule accordingly makes several updates to 37 CFR 201.8 to account for electronic outages. Among other things, the proposed rule allows the Register to assign, as the date of receipt, the date on which she determines the material would have been received but for the disruption or suspension of the electronic system. Ordinarily, when a person submits materials through a Copyright Office electronic system, those materials are received in the Copyright Office on the date the submission was made. In cases where a person attempts to submit materials, but is unable to do so because of a disruption or suspension of a Copyright Office electronic system, the proposed rule will allow the Register to use the date that the attempt was made as the date of receipt. In cases where it is unclear when the attempt was made, the proposed rule provides the Register with discretion to determine the effective date of receipt on a case-by-case basis.

In addition, the proposed rule makes several changes to update the rule to account for more recent practices, and improve the usability and readability of the regulation. For instance, the proposed rule comprehensively updates paragraph (c) of section 201.8, which specifies the deadline for requesting an adjustment of the date of receipt in cases where a person attempted to submit material to the Office but was unable to do so due to the suspension or disruption of a Copyright Office electronic system. In the past, most materials were submitted to the Office on paper. Permitting the submission of requests prior to the issuance of the certificate of registration or recordation would have imposed unacceptable burdens on the Office due to difficulties in locating the pending applications or submissions to which the requests pertained. Now that the Office has implemented electronic systems, it is easier to make date adjustments, such as correcting the effective date of registration or date of recordation, while the application or submission is still pending. Accordingly, the Office proposes that persons seeking to adjust the date of receipt of any material that could not be submitted electronically due to a disruption or suspension of an Office electronic system could be permitted to submit a request up to one year after the date on which the
disruption or suspension has terminated under section 201.8(a).

Finally, the proposed rule adds sections 201.8(b)(2) and (c)(2), which address a related issue. On occasion, a person may deliver or attempt to deliver material to the Office, but the Office may have no record of having received such material or may have lost or misplaced that material after it was received. Although such situations are rare, they do occur occasionally as mail delivered to the Copyright Office must go through extensive security screening. If the person provides satisfactory evidence that he or she sent that material to the Office, the proposed rule would allow the Register to assign, as the date of receipt, the date on which the material would have been received. Such a request must be made no later than one year after the person delivered or attempted to deliver the application, fee, deposit, or other material to the Copyright Office. As a technical matter, these provisions do not implement section 709, which pertains to a general disruption of postal or other services; rather, the Office is implementing these provisions as an exercise of its general regulatory authority under section 702 of the Copyright Act.

List of Subjects in 37 CFR Part 201
Copyright.

Proposed Regulations
For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

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


§ 201.8 [Amended]
2. Amend § 201.8 as follows:

a. Revise paragraphs (a), (b) and (c);

b. In paragraph (d), add “Return of certificate” before “In cases”, remove “in which” and add in its place “where”, and add “under paragraph (b)” after “along with the request”.

c. Revise paragraph (e) introductory text.

d. In paragraph (e)(1), add a comma after “Priority Mail”.

e. In paragraph (e)(2), add a semicolon after “Copyright Office”.

f. In paragraph (e)(2)(ii), remove “2” and add in its place “two”.

g. Revise paragraphs (e)(3) and (e)(4);

h. Revise paragraph (f) introductory text.

i. In paragraph (f)(4), remove the period at the end of the sentence and replace it with a semicolon.

j. Add paragraph (f)(5).

k. Remove paragraph (g).

l. Add authority citation to the end of the section.

The revisions and additions read as follows:

§ 201.8 Disruption of postal or other transportation or communication services.

(a) Declaration of disruption. For purposes of 17 U.S.C. 709, when the Register has determined that there is or has been a general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, that has delayed the receipt by the Copyright Office of applications, fees, deposits, or any other materials, the Register shall publish an announcement stating the date on which the disruption or suspension commenced. The announcement may, if appropriate, limit the means of delivery that are subject to relief pursuant to section 709. Following the cessation of the disruption or suspension of services, the Register shall publish an announcement stating the date on which the disruption or suspension has terminated, and may provide specific instructions on how to make a request under paragraph (b)(1).

(b) Request for earlier filing date due to disruption. (1) When the Register has declared a disruption. When the Register has made a declaration of disruption under paragraph (a) of this section, any person who, in compliance with any instructions provided by the Register, provides satisfactory evidence as described in paragraph (e) of this section that he or she attempted to deliver an application, fee, deposit, or other material to the Copyright Office, but that receipt by the Copyright Office was delayed due to a general disruption or suspension of postal or other transportation or communications services announced under paragraph (a), shall be assigned, as the date of receipt of the application, fee, deposit, or other material, the date on which the Register determines the material would have been received but for the disruption or suspension of services, so long as the application, fee, deposit, or other material was actually received in the Copyright Office within one month after the date the Register identifies pursuant to paragraph (a) of this section that disruption or suspension of services has terminated. Such requests should be mailed to the address specified in § 201.1(c)(1), or through any other delivery method specified by the Copyright Office.

(c) Timing. (1) A request under paragraph (b)(1) of this section shall be made no earlier than the date on which the Register publishes the announcement under paragraph (a) declaring that the disruption or suspension has terminated, and no later than one year after the publication of that announcement.

(2) A request under paragraph (b)(2) of this section shall be made no later than one year after the person delivered or attempted to deliver the application, fee, deposit, or other material to the Copyright Office.

* * * * *

(e) Satisfactory evidence. In all cases the Register shall have discretion in determining whether materials submitted with a request under paragraph (b) of this section constitute satisfactory evidence. For purposes of paragraph (b) of this section, satisfactory evidence may include:

* * * * *

(3) A statement under penalty of perjury, pursuant to 28 U.S.C. 1746, from a person with actual knowledge of the facts relating to the attempt to deliver the material to the Copyright Office, setting forth with particularity the facts which satisfy the Register that in the absence of the general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, or but for the misdelivery, misplacement, or loss of the materials sent to the Copyright Office, the material would have been received by the Copyright Office by a particular date; or

(4) Other documentary evidence which the Register deems equivalent to the evidence set forth in paragraphs (e)(1) and (e)(2) of this section.
I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted to states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Through this action, EPA is proposing to conditionally approve the prong 4 portions of Tennessee’s infrastructure SIP submissions for the 2010 1-hour NO₂, 2010 1-hour SO₂, and 2012 annual PM₂.₅ NAAQS.