temporary deviation for the Rock Island Railroad and Highway Drawbridge, mile 482.9, at Rock Island, Illinois across the Upper Mississippi to remain in the closed to navigation position as the drawbridge is part of the Annual Quad Cities Heart Walk. The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the annual event, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to remain in the closed-to-navigation position for two and one half hours from 8:30 a.m. until 10:30 a.m., May 16, 2009.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge shall return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 10, 2009.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. E9–6686 Filed 3–24–09; 8:45 am]

BILLING CODE 4910–15–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: Final rule.

SUMMARY: The Copyright Office is adopting amendments to its regulations governing the recordation of notices of termination and certain related provisions.

DATES: *EFFECTIVE DATE:* March 25, 2009.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Associate Register for Policy and International Affairs, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400. Telephone (202) 707–8380. Fax (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Office published a Notice of Proposed Rulemaking in the Federal Register on January 23, 2008 (73 FR 3898), seeking public comment on five proposed amendments to its regulations at §§ 201.1, 201.3, 201.4 and 201.10 of Chapter 37. These were: 1) an amendment communicating the Office's practices as to its receipt of notices of termination that are untimely; 2) an amendment clarifying that recordation of a notice of termination by the Office does not necessarily mean that the document is legally sufficient; 3) an amendment updating the legibility requirements for all recorded documents, including notices of termination; 4) an amendment making minor explanatory edits to the fee schedule for multiple titles within a document (adding ''*e.g.* a Notice of Termination'' as an example); and 5) an amendment establishing a new mailing address to which notices of termination should be sent. (For ease of explanation only, the amendments are herein referred to as amendments one through five.)

The Office received two comments, each on February 22, 2008, from Law Professor Daniel N. Ballard, University of the Pacific McGeorge School of Law, and from Terrie Bjorkland on behalf of the American Federation of Television and Radio Artists (AFTRA). Both commentators questioned the basis for, and the likely impact of, amendment number two. Mr. Ballard first suggested that there is no justification for the proposed language, and second suggested that rather than being neutral on its face, the language, as worded, might create ''an improper bias *against* the termination of copyright interests.'' Ms. Bjorkland observed that the proposal emphasizes the inconclusive impact of the filing of a notice, doing ''little to give artists a sense of comfort that the Copyright Office is facilitating the protection of their right of termination.'' In addition, she expressed opposition to amendment number one, questioning why the Office should make a determination that a notice is untimely, when ''it is incumbent upon the challenging party to contest the validity of the notice, if appropriate.'' After considering these comments, the Office is adopting all of the aforementioned amendments, but in doing so is rephrasing amendment number two.

Background

The Copyright Office is an office of public record which receives and records documents that pertain to copyright, including, specifically, notices of termination. Notices of termination may be served by authors (and certain heirs, beneficiaries or representatives of authors who are specified by statute) to extinguish the exclusive or nonexclusive grants of transfers or licenses of copyright or the divisible rights thereunder. 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 termination provisions are set forth in three sections of the law: Sections 304(c), 304(d) and 203 of the 1976 Copyright Act, Title 17 of the United States Code. The sections are similar, though not identical, and they govern distinct categories of works. (None of the sections applies to copyrights in works made for hire or grants made by will.)

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 the exclusive or nonexclusive grant of a transfer or license of the renewal copyright (or any right under it) executed before January 1, 1978. Termination may be exercised at any time during a five year period 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 under section 304(c) expired (and was not exercised) 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. It provides for termination of the exclusive or nonexclusive grant of a transfer or license of the renewal copyright (or any right under it) at any time during a five year period beginning at the end of 75 years from the date copyright was originally secured.

Section 203 is limited to grants executed by the author. It provides for termination of the exclusive or nonexclusive grant of copyright (or any right under copyright) executed on or after January 1, 1978 (regardless of whether the copyright was secured prior to 1978). Termination may be exercised 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 is earlier.

By all accounts, the termination provisions are dense and formalistic, particularly for a non–lawyer. In summary, the author (or if the author is deceased, the party specified by statute) must serve the notice of termination in writing on a grantee or the grantee's successor–in–title not less than two or more than ten years before the effective date, in a form and manner prescribed by regulation.[1]

A copy of the notice of termination must be recorded with the Copyright Office *before the effective date of termination*. 17 U.S.C. 304(c)(4)(A); 304(d)(1); 203(a)(4)(A). (Emphasis added.) The particulars of the recordation process are prescribed by regulation. In short, the copy must be legible and must include the following elements: 1) either actual signatures or reproductions of signatures 2) a statement setting forth the date the notice was served 3) an indication of the manner of service and 4) submission of the appropriate filing fee. 37 CFR 201.4(c)(3); 37 CFR 201.10(f).

A discussion of the amendments follows.

DISCUSSION OF PROPOSED AMENDMENTS

Timeliness of Notices of Termination

The Copyright Office cannot accept a notice of termination that is untimely because, under the law, lateness is a fatal mistake. (By contrast, see 37 CFR 201.10(e) for examples of forgivable, harmless errors.) Thus, before the Copyright Office records a notice, it reviews for timeliness. Specifically, it confirms that the notice has been served within the relevant statutory time frame (as derived from the facts stated in the notice), and has been received by the Office prior to the stated effective date of termination.

In practice, 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 the serving party may resubmit the notice to the Office at a later date (and, as necessary, resubmit the notice to the party being served). On the other hand, if the document is tardy, the Office will offer only to record and index the document according to its general recordation practices, 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.

Notwithstanding the objection expressed by AFTRA with respect to amendment one, the Office's practice is consistent with the statute. Moreover, since the amendment restates the longstanding practice of the Office (*i.e.* it does not introduce a new practice), the Office maintains that the amendment is merely educative, and may prove helpful to interested parties who are looking for guidance.

Recordation as Distinguished from Legal Sufficiency

Under amendment two, the Office states a truism: the fact that the Office has accepted a document and recorded it as a notice of termination does not mean, necessarily, that the notice is sufficient to effect termination under the law. As proposed in the Notice of Proposed Rulemaking, the following sentence would have been introduced at the top of the paragraph: ''The mere fact that a notice of termination has been recorded does not mean that it is legally sufficient.'' The remainder of the paragraph would have followed and remained unchanged: ''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.''

On this issue, the Office does not find the stated concerns of the commentators to be entirely plausible. Recordation is a required act under the law but, once completed, it carries no legal presumption that termination has been properly effected. If authors or their representatives believe otherwise, it is all the more important that this fact be clearly and accurately stated. The reality is that the Office, aside from its review for timeliness (discussed above), does not confirm the validity of the alleged facts that are reported in each notice. To do so would be an impossible exercise. This means that the Office may accept and record a notice of termination even though any number of elements may ultimately prove to be wrongly stated and invalid under the law, from the named authors, to the designation of beneficiaries, to the date or characterization of the grant. In instances where termination has not been perfected in the first place, recordation of the notice is of no consequence. The proposed amendment would not have changed this result —– only confirmed it for clarity's sake.

Nevertheless, the Office is not wedded to the particular formulation of the point as originally proposed. In his comments, Mr. Ballard objected, in particular, to use of the phrase ''mere fact,'' which he saw as ''loaded language'' that would, in practice, undermine the termination process by favoring grantees over authors. In response, the Office has removed ''mere fact'' and constructed a new formulation, which in part repeats the operative language of the statute. It reads as follows: ''A copy of the notice of termination shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect. However, the fact that the Office has recorded the notice does not mean that it is otherwise sufficient under the law.'' The existing sentence will follow: ''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.''

Legibility of Notices of Termination and Other Documents Pertaining to Copyright

Amendment three is relatively minor, but nonetheless underscores the mission of the Copyright Office as an office of public record. It updates the legibility requirement by replacing the reference to ''microform copies'' with a broader, more flexible reference to technology. As revised, a 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.''* (Emphasis added.) The Office received no objections to this revision.

Fee Requirements for Notices of Termination

With respect to fees, it is the Copyright Office' 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

[1] If the author executed the grant but is no longer living, the termination interest is owned and may be exercised by the author's widow or widower and any children or grandchildren on a *per stirpes* basis (subject to certain conditions concerning the disposition of partial interests of multiple authors and heirs), or if the aforementioned are deceased, by the author' executor, administrator, personal representative, or trustee. 17 U.S.C. 203(a)(1)–(2); 17 U.S.C. 304 (c)(1)–(2); 17 U.S.C. 304(d)(1). Moreover, under Sections 304(c) and 304 (d), if the author is no longer living and the grant has been executed by one or more persons designated by statute, termination may be exercised by the surviving person or persons who executed it. 17 U.S.C. 304(c); 17U.S.C. 304(d); 17 U.S.C. 304(a)(1)(c). Note that this is not true of Section 203, which applies only to grants executed by authors. 17 U.S.C. 203(a).

terminated by virtue of one document. Amendment four adds the notice of termination as an express example in the schedule of 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. The Office received no objections to this revision.

Mailing Address for Notices of Termination

Finally, because notices of termination are time–sensitive, a delay in processing may have serious consequences. Amendment five officially activates the special post office box at the Copyright Office, from which notices of termination can more easily be sorted and routed for recordation. This revision also deletes the address for the now–defunct Copyright Arbitration Royalty Panel (CARP). *See* 72 FR 45071 (August 10, 2007). The Office received no objections to this revision.

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulations

For the reasons set forth above, the Copyright Office amends 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.Section 201.1 is amended by revising paragraph (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 Intent 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.Amend § 201.4 by revising paragraph (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.

follows:

a. By adding paragraph (f)(1)(iii);

b. By redesignating paragraph (f)(4) as (f)(5);

c. By adding a new 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).

* * * * *

(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), 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)A copy of the notice of termination shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect. However, the fact that the Office has recorded the notice does not mean that it is otherwise sufficient under the law. 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).

Dated: March 16, 2009

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. E9–6649 Filed 3–24–09; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0058; FRL–8780–2]

Approval and Promulgation of Air Quality Implementation Plan; Maryland; Reasonably Available Control Technology Requirements for Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve revisions to the Maryland State Implementation Plan (SIP). The revisions pertain to Maryland's major source volatile organic compound (VOC) reasonable available control technology (RACT) regulation. EPA is converting the conditional limited approval status of Maryland's VOC RACT regulations to a full approval because EPA has approved all of the case-by-case RACT determinations submitted by Maryland pursuant to the generic provisions of its VOC RACT regulation as well as all of the RACT requirements for categories of VOC sources submitted by Maryland in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 26, 2009 without further notice, unless EPA receives adverse written comment by April 24, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0058 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2009–0058, Cristina Fernandez, Chief, Air Quality Planning Branch, Mail code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.