

SUMMARY: The U.S. Copyright Office is amending its regulation governing the group registration option for newspapers. Under the current regulation, applicants are required to upload a complete copy of each newspaper issue through the Office's electronic registration system. Applicants may also submit their newspaper issues on microfilm on a voluntary basis (in addition to and at the same time as submitting the required digital files), provided the microfilm is received by December 31, 2019. The microfilm option expires at the end of this year; therefore, today's final rule eliminates the reference to that option.

DATES: Effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Regan A. Smith, General Counsel and Associate Register of Copyrights, or Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by email at regans@copyright.gov, rkas@copyright.gov, and ebertin@copyright.gov or by telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION: When Congress enacted the Copyright Act of 1976 (the "Act"), it authorized the Register of Copyrights to specify by regulation the administrative classes of works for the purpose of seeking a registration, and the nature of the deposits required for each such class. In addition, Congress granted the Register the discretion to allow groups of related works to be registered with one application and one filing fee. *See* 17 U.S.C. 408(c)(1). Congress cited "the various editions or issues of a daily newspaper" as a specific example of a "group of related works" that would be suitable for a group registration. H.R. Rep. No. 94-1476, at 153-54 (1976); S. Rep. No. 94-473, at 136 (1975).

On January 30, 2018, the Copyright Office (the "Office") issued a final rule amending the regulation governing the group registration option for newspapers ("GRNP"). 83 FR 4144 (Jan. 30, 2018). The 2018 final rule modified the requirements for this group registration option in several respects, including the deposit requirements. Applicants are now required to upload their newspaper issues in digital form through the Office's electronic registration system. In addition, applicants may submit microfilm containing a complete copy of each issue on a voluntary basis, provided the Office receives the microfilm by December 31, 2019.

The Office made these changes to improve the efficiency of the registration system and encourage broader participation in the registration system by reducing the burden on applicants. To that end, the Office provided a one-year phase out period for microfilm deposits to give publishers time to develop quality assurance testing for their digital submissions.

These amendments went into effect on March 1, 2018. Since then, the number of microfilm submissions has steadily declined. For example, in March 2018 the Office received electronic deposits (without any microfilm) for 78% of the applications submitted under this group registration option. That number increased to 87% by the end of December 2018. The trend continued through July 2019, where digital deposit copies accounted for 92% of all GRNP applications. In fact, from May through July 2019 the Office received no microfilm submissions and compliance with the digital deposit requirement has been 100%.

The microfilm option will expire at the end of this year, and based on the submissions received since March 2018, the Office sees no need to extend the phase out period. Accordingly, the Office is amending its regulations to remove the reference to the microfilm option.

Because the updates are technical and non-substantive changes that do not "alter the rights or interests of parties," they are not subject to the notice and comment requirements of the Administrative Procedure Act.¹ Furthermore, the Office finds good cause that providing notice and comment is "unnecessary" because the changed requirements and phase-out period were adopted in a previous public proceeding; this final rule merely removes related obsolete language.²

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

¹ *See Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014); 5 U.S.C. 553(b) (notice and comment not required for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice").

² *See* 5 U.S.C. 553(b).

PART 201—GENERAL PROVISIONS

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

Authority: 17 U.S.C. 702.

§ 201.1 [Amended]

- 2. Amend § 201.1(c)(6) by removing "and newspaper microfilm copies submitted under § 202.4(e) of this chapter,".

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

- 3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.4 [Amended]

- 4. Amend § 202.4 by removing paragraph (e)(6)(ii)(B) and redesignating paragraph (e)(6)(ii)(A) as paragraph (e)(6)(ii).

Dated: October 23, 2019.

Karyn A. Temple,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2018-2]

Group Registration of Serials

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulation governing the group registration option for serials. Under the current regulation, applicants may complete and submit the online application designated for a group of serial issues, or they may complete and submit a paper application using Form SE/Group, provided the Office receives the paper form by December 30, 2019. Applicants submitting Form SE/Group may submit a physical copy of each issue in the group; applicants using the online application may upload one electronic copy of each issue through the Office's electronic registration system or they may submit one physical copy, provided the Office receives the physical copy by December 30, 2019.

This final rule eliminates the reference to paper applications and physical deposit copies. Beginning December 31, 2019, the Office will no longer accept a paper application or a physical deposit for this group registration option.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT:

Regan A. Smith, General Counsel and Associate Register of Copyrights, or Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy & Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by email at regans@copyright.gov, rkas@copyright.gov, and ebertin@copyright.gov, or by telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION: When Congress enacted the Copyright Act of 1976 (the “Act”), it authorized the Register of Copyrights to specify by regulation the administrative classes of works for the purpose of seeking a registration, and the nature of the deposits required for each such class. See 17 U.S.C. 408(c). In addition, Congress granted the Register the discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.” See 17 U.S.C. 408(c)(1). Congress recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive that authors and copyright owners may forgo registration altogether, since copyright registration is not a prerequisite to copyright protection. H.R. Rep. No. 94-1476, at 154 (1976); S. Rep. No. 94-473, at 136 (1975). Pursuant to the authority granted by Congress, the Register has issued regulations permitting the U.S. Copyright Office (the “Office”) to issue a group registration for limited categories of works, including serials, provided that certain conditions have been met. See generally 37 CFR 202.3(b)(5), 202.4.

On November 30, 2018, the Office issued a final rule amending the regulation governing the group registration of serials (“GRSE”). 83 FR 61546 (Nov. 30, 2018). Among other changes, the 2018 final rule updated the application and deposit requirements by phasing out the paper form (known as Form SE/Group) and phasing out the submission of physical copies. Beginning December 31, 2019, applicants will be required to use the online application designated for group serials and to upload a digital copy of each issue.

Requiring applications and deposits to be submitted electronically increases the efficiency of the group registration process. Electronic submissions take less time to process and are easier to track and handle than paper applications and physical copies. They reduce the burden on applicants by eliminating the cost of mailing the deposit to the Office. And they improve the quality of the registration record, because it is easier to locate and retrieve a digital deposit if it is needed for litigation or other legitimate purposes. 83 FR 22896, 22900 (May 17, 2018).

The Office provided a one-year phase-out period to give publishers time to adjust to the new application and deposit requirements. To facilitate this transition, the Literary Division contacted every applicant that has submitted a group serial claim since December 31, 2018, to notify them of the upcoming changes.

Over the past three years, there has been a steady increase in electronic deposits for group serial claims. In 2017, electronic deposits accounted for 23% of these claims and physical deposits accounted for 76%. In 2018, electronic deposits increased to 34% while physical deposits dropped to 65%.¹ This trend accelerated once the 2018 final rule went into effect: Between December 31, 2018, and July 24, 2019, electronic deposit copies accounted for 59% of group serial claims, while physical deposits accounted for the remaining 41%.

The phase out period will expire at the end of this year. Therefore, the Office is amending the regulation to eliminate the reference to Form SE/Group and physical deposit copies. Beginning December 31, 2019, the Office will no longer accept paper applications or physical deposits for this group option.

The regulation does give the Office the discretion to waive the online application filing requirement and grant special relief from the digital deposit requirement in exceptional cases, subject to conditions imposed on the applicant by the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice. 37 CFR 202.4(d)(4), 202.20(d)(1)(iii). Requests for special relief will be considered on a case-by-case basis. But the fact that a serial is published in a physical form does not necessarily mean that a request will be granted. The Office requires digital deposits for most group

¹ For the remainder of claims submitted in 2017 through July 24, 2019, applicants either submitted both an electronic and physical deposit for the same claim or did not submit any deposit at all.

registration options as a quid pro quo for allowing multiple works to be registered with one application and one filing fee.² In the case of group serials, the Office delayed this requirement for one year to give publishers time to prepare for the new workflow. Serials are typically created using digital publishing software, even though the issue itself may be distributed in a physical form. In such cases, the electronic file that was used to create the physical copy may be used to satisfy the digital deposit requirement, as long as it contains a complete copy of the issue and satisfies the other legal and formal requirements for this group option.³

Because the updates are technical and non-substantive changes that do not “alter the rights or interests of parties,” they are not subject to the notice and comment requirements of the Administrative Procedure Act.⁴ Furthermore, the Office finds good cause that providing notice and comment is “unnecessary” because the changed requirements and phase-out period were adopted in a previous public proceeding; this final rule merely removes related obsolete language.⁵

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.4 by revising paragraphs (d)(2) and (3) to read as follows:

§ 202.4 Group registration.

* * * * *

(d) * * *

(2) *Application.* The applicant must complete and submit the online application designated for a group of serial issues. The application may be

² See 37 CFR 202.4(c)(9), (e)(6)(ii)(A), (f)(3), (g)(8), (h)(9), (i)(9).

³ These requirements are currently set forth in 37 CFR 202.4(d)(3)(i).

⁴ See *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014); 5 U.S.C. 553(b) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”).

⁵ See 5 U.S.C. 553(b).

submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. Copies submitted under this paragraph (d)(3) will be considered solely for the purpose of registration under 17 U.S.C. 408, and will not satisfy the mandatory deposit requirement under 17 U.S.C. 407. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office’s website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with the requirement in this paragraph (d)(3).

* * * * *
 Dated: October 23, 2019.

Karyn A. Temple,
Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:
Carla D. Hayden,
Librarian of Congress.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R9-OAR-2018-0821; FRL-10001-65-Region 9]

Determination of Attainment by the Attainment Date for the 2008 Ozone National Ambient Air Quality Standards; Phoenix-Mesa, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the Phoenix-Mesa ozone nonattainment area (“Phoenix NAA”), which is classified as “Moderate” for the 2008 ozone National Ambient Air Quality Standards (NAAQS or

“standards”), attained the NAAQS by the Moderate area attainment date of July 20, 2018. This determination is based on complete, quality-assured, and certified data for 2015–2017. This final action is necessary to fulfill the EPA’s statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the applicable attainment date.

DATES: This rule will be effective on December 12, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0821. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information 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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3848 or by email at levin.nancy@epa.gov.
SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Proposed Action

On June 13, 2019 (84 FR 27566), the EPA proposed to determine that the Phoenix NAA attained the 2008 ozone standard¹ by the Moderate area attainment date of July 20, 2018, based on complete, quality-assured, and certified ambient air quality monitoring data for the 2015–2017 monitoring period. Based on our proposed finding of attainment by the applicable attainment date, we also proposed to determine that the CAA requirement for the State Implementation Plan (SIP) to provide for contingency measures to be implemented in the event the area fails to attain (“attainment contingency

¹ Since the primary and secondary 2008 ozone standards are identical, we hereinafter refer to “standards” in the singular. 73 FR 16436.

measures”) would no longer apply to the Phoenix NAA. Our proposed action contains more information on our determinations.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from five commenters. We summarize the comments and provide our responses below.

Commenter #1: Arizona Center for Law in the Public Interest

Comment: Arizona Center for Law in the Public Interest (ACLIPI) noted that monitoring data from 2018 and 2019 show multiple exceedances of the 2008 ozone standard and concluded that the Phoenix NAA does not “actually” comply with the standard. ACLIPI asserted that “‘paper compliance’ with the 2008 ozone standard does not solve Phoenix’s ongoing ozone pollution problem” and the “EPA’s proposed action allows the State to avoid or significantly delay taking meaningful action to protect public health [which] contravenes the express policy of the Clean Air Act that ‘protection of public health is the highest priority.’”

Response: CAA section 181(b)(2)(A) requires the EPA to determine whether an ozone nonattainment area (NAA) attained the standard by the applicable attainment date “based on the area’s design value (*as of the attainment date*).”² The applicable attainment date for the Phoenix NAA for the 2008 ozone NAAQS is not later than July 20, 2018.³ Because the design value for the 2008 ozone NAAQS is based on the three most recent, complete calendar years of data, attainment must be evaluated based on 2015–2017 data. Accordingly, we are not permitted to consider 2018 or 2019 data in evaluating whether the area attained by the applicable attainment date.

We note that the more recent monitoring data would be relevant if we were making a “clean data determination” and suspending attainment-related requirements for the Phoenix NAA under 40 CFR 51.1118. These data would also be relevant if we were redesignating the area to attainment under CAA section 107(d)(3). However, as explained in our proposal, we are not taking either of those actions at this time. Therefore, the designation and classification of the Phoenix NAA for the 2008 ozone NAAQS will remain Moderate

² CAA section 181(b)(2)(A) (emphasis added).

³ 40 CFR 51.1103; 81 FR 26697, 26698.